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# Rules and Regulations

**Federal Register**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 365 and 390

### RIN 3064–AE22

### Removal of Transferred OTS Regulations Regarding Lending and Investment; and Conforming Amendments to Other Regulation

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule (final rule) to rescind and remove the ''Lending and Investment'' regulations because they are unnecessary, redundant, or duplicative of existing FDIC regulations; to amend certain sections of existing FDIC regulations governing real estate lending standards to make them applicable to all insured depository institutions for which the FDIC is the appropriate Federal banking agency; and to rescind and remove ''Registration of Residential Mortgage Loan Originators'' regulations because supervision and rulemaking authority in this area was transferred to the Consumer Financial Protection Bureau (Bureau) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

**DATES:** The Final Rule is effective on July 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Karen J. Currie, Senior Examination Specialist, (202) 898–3981, *kcurrie@fdic.gov,* Division of Risk Management Supervision; Cassandra Duhaney, Senior Policy Analyst, (202) 898–6804, Division of Depositor and Consumer Protection; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556; Linda Hubble Ku, Counsel, Legal Division, (202) 898–6634; or Gregory S. Feder, Counsel, Legal Division, (202) 898–8724.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[1] the powers, duties and functions of the former Office of Thrift Supervision (OTS) were divided among the FDIC for State savings associations and the Office of the Comptroller of the Currency (OCC) for Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB) for savings and loan holding companies. Section 316(b) of the Dodd-Frank Act provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.[2] The section provides that if such regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and the OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate Federal banking agency modified or removed the regulations in accordance with the applicable laws. The list was published by the FDIC and OCC as a Joint Rule in the **Federal Register** on July 6, 2011,[3] and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391.[4] When it republished the transferred OTS regulations, the FDIC noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS rules into other FDIC rules, amending them or rescinding them, as appropriate.

Further, section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the Federal Deposit Insurance Act (FDI Act)[5] to add State savings associations to the list of entities for which the FDIC is designated the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the ''appropriate Federal banking agency'' for State savings associations, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations as well as for State nonmember banks and insured U.S. branches of foreign banks.[6]

Finally, the Dodd-Frank Act amended the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act),[7] transferring the mortgage loan originator registration authority of the FDIC and certain other Federal agencies (the S.A.F.E. Act Agencies) to the Bureau.[8] On December 10, 2011, the Bureau published its Regulation G[9] which substantially duplicated the FDIC's S.A.F.E. Act regulation at part 365, subpart B of the FDIC's regulations.

## II. Proposed Rule

### *A. Removal of Part 390, Subpart P, Lending and Investment*

On February 5, 2019, the FDIC published an NPR regarding the removal of part 390, subpart P (formerly OTS part 560), which addressed lending and investments by State savings associations.[10] The former OTS rule was transferred to the FDIC with only nominal changes. The NPR proposed removing part 390, subpart P from the Code of Federal Regulations (CFR) because, after careful review and consideration, the FDIC believed it was largely unnecessary, redundant, or duplicative of existing FDIC regulations.[11]

### *B. Amendments to Part 365, Subpart A, Real Estate Lending Standards*

In the NPR, the FDIC also proposed to further effectuate the transfer of

[1] 12 U.S.C. 5411.

[2] 12 U.S.C. 5414(b).

[3] 76 FR 39246 (Jul. 6, 2011).

[4] 76 FR 47652 (Aug. 5, 2011).

[5] 12 U.S.C. 1813(q).

[6] *See also* 12 U.S.C. 5412(b)(2)(C)(ii) (''the Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions transferred under clause (i).'' [relating to State savings associations]).

[7] 12 U.S.C. 5101, *et seq.*

[8] *See* section 1100 of the Dodd-Frank Act.

[9] *See* 12 CFR part 1007.

[10] 84 FR 1653 (Feb. 5, 2019).

[11] *See* 84 FR 1655–58.

supervisory authority for State savings associations from the former OTS to the FDIC by amending certain parts of part 365 of the FDIC's regulations to clarify that part 365, subpart A applies to all insured depository institutions, including State savings associations, for which the FDIC is the appropriate Federal banking agency.[12]

### *C. Removal of Part 365, Subpart B, Registration of Residential Mortgage Loan Originators*

Finally, the FDIC proposed to rescind subpart B of part 365, which relates to registration requirements for residential mortgage loan originators, due to the Bureau's issuance of its [13] regulation, Regulation G, pursuant to the Bureau's authority under the Dodd-Frank Act. In light of the Bureau's action, the FDIC considered the provisions contained in part 365, subpart B to be unnecessary, redundant, or otherwise duplicative of the Bureau regulation governing this area.[14]

## III. Comments

The FDIC issued the NPR with a 60-day comment period, which closed on April 8, 2019. The FDIC received no comments on the NPR, and consequently the final rule is adopted without change.

## IV. Explanation of the Final Rule

As discussed in the NPR, 12 CFR part 390, subpart P is being rescinded in its entirety because other existing FDIC regulations concerning permissible activities, safety and soundness standards, and real estate lending standards replicate the current requirements of part 390, subpart P.

To clarify that part 365 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC is amending sections 365.1 and 365.2 of part 365 to replace the phrases ''insured state nonmember banks (including state-licensed insured branches of foreign banks)'' and ''state nonmember bank'' throughout subpart A with the phrase ''FDIC-supervised institution.'' In addition, section 365.1 is being revised to add the definition of the term ''FDIC-supervised institution'' to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act.[15]

Finally, because the Dodd-Frank Act amended the S.A.F.E. Act, transferring Federal registration requirements for mortgage loan originators from the S.A.F.E. Act Agencies (including the FDIC) to the Bureau, and the Bureau has finalized its Regulation G, the FDIC is rescinding part 365, subpart B, in its entirety, because it is outdated and no longer necessary.

## V. Administrative Law Matters

### *A. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[16] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final rule rescinds and removes from FDIC regulations part 390, subpart P. With regard to part 365, subpart A, the final rule amends sections 365.1 and 365.2 to clarify that State savings associations as well as State nonmember banks and foreign banks having insured branches are all subject to part 365. It also rescinds and removes from the FDIC's regulations part 365, subpart B. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request has been submitted to the OMB for review.

### *B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[17] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[18] For the reasons provided below, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of December 31, 2018, the FDIC supervised 3,489 insured financial institutions, of which 2,674 are considered small banking organizations for the purposes of the RFA. The rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[19]

As explained previously, the rule would remove sections 390.260, 390.261, 390.262, 390.263, 390.264, 390.265, 390.266, 390.267, 390.268, 390.269, 390.270, 390.271, and 390.272 of part 390, subpart P because these sections are unnecessary, redundant of, or otherwise duplicative of other FDIC regulations for safety and soundness standards. Because these regulations are redundant to existing regulations, rescinding them would not have any substantive effects on small FDIC-supervised institutions.

As explained previously, part 364 covers State savings associations in section 364.101 and in appendix A. Because the lending documentation practices and standards in part 364, appendix A are substantively similar to existing regulations for State savings associations found in section 390.271, rescinding section 390.271 and the rest of part 390, subpart P would not have any substantive effects on small FDIC-supervised institutions.

As stated previously, the rule would amend part 365, subpart A so that it would expressly apply to State savings associations. Because the real estate lending requirements in sections 365.1 and 365.2 and part 364, appendix A are substantively identical to currently applicable regulations for State savings associations found in 390.264 and 390.265 (including the appendix to section 390.265), amending part 365, subpart A so that it would apply to all

[12] *See id.* at 1658.

[13] The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, sections 1501–17 (codified at 12 U.S.C. 5101–16) as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376). The S.A.F.E. Act requires residential mortgage loan originators employed by depository institutions, subsidiaries that are owned and controlled by a depository institution and regulated by a Federal banking agency, institutions regulated by the National Credit Union Administration, and institutions regulated by the Farm Credit Administration to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain such registration.

[14] *See* 84 FR 1658–59.

[15] 12 U.S.C. 1813(q).

[16] 44 U.S.C. 3501–3521.

[17] 5 U.S.C. 601, *et seq.*

[18] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of the RFA.

[19] FDIC Call Report, December 31, 2018.

FDIC-supervised institutions would not have any substantive effects on small FDIC-supervised institutions.

As explained previously, the rule would rescind part 365, subpart B because the authority to implement Federal registration requirements for mortgage loan originators has been transferred by statute to the Bureau. Because rulemaking authority for the S.A.F.E. Act was transferred to the Bureau in December 2011, the removal of the FDIC's S.A.F.E. Act regulations would not have any substantive effects on small FDIC-supervised covered institutions.

Based on the information above, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

*C. Small Business Regulatory Enforcement Fairness Act, Congressional Review Act*

The OMB has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[20] As required by SBREFA, the FDIC will submit the Final Rule and other appropriate reports to Congress and the Government Accountability Office for review.

*D. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[21] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the NPR was clearly stated and effectively organized, and how the FDIC might make it easier to understand. No comments on this issue were received. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

*E. The Economic Growth and Regulatory Paperwork Reduction Act*

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[22] the FDIC is required to review all of its regulations at least once every 10 years in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[23] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report), discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the agency will take to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart P, and modifying part 365, this rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

[20] 5 U.S.C. 801 *et seq.*

[21] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), codified at 12 U.S.C. 241 nt.

[22] 12 U.S.C. 3311.

[23] Public Law 104–208, 110 Stat. 3900 (1996).

*F. Riegle Community Development and Regulatory Improvement Act of 1994*

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[24] The FDIC has determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore, the requirements of the RCDRIA do not apply.

**List of Subjects**

*12 CFR Part 365*

Banks, banking, Mortgages, Savings associations.

*12 CFR Part 390*

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

[24] 12 U.S.C. 4802.

**Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 365 and 390 as follows:

## PART 365—REAL ESTATE LENDING STANDARDS

### Subpart A—Real Estate Lending Standards [Amended]

■ 1. Revise the authority citation for part 365 to read as follows:

**Authority:** 12 U.S.C. 1828(o), 5412.

■ 2. Revise § 365.1 to read as follows:

**§ 365.1 Purpose and scope.**

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by FDIC-supervised institutions in adopting internal real estate lending policies. For purposes of this subpart, the term ''FDIC-supervised institution'' means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

■ 3. In § 365.2, revise paragraphs (a), (b)(1)(iii), (b)(2)(iii) and (iv), and (c) to read as follows:

**§ 365.2 Real estate lending standards.**

(a) Each FDIC-supervised institution shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) * * *

(iii) Be reviewed and approved by the FDIC-supervised institution's board of directors at least annually.

(2) * * *

(iii) Loan administration procedures for the FDIC-supervised institution's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the FDIC-supervised institution's real estate lending policies.

(c) Each FDIC-supervised institution must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

* * * * *

### Subpart B—[Removed and Reserved]

■ 4. Remove and reserve subpart B, consisting of §§ 365.101 through 365.105, and appendix A to subpart B.

## PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 5. The authority citation for part 390 continues to read as follows:

**Authority:** 12 U.S.C. 1819.

### Subpart P—[Removed and Reserved]

■ 6. Remove and reserve Subpart P, consisting of §§ 390.260 through 390.272.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 18, 2019.

**Valerie Best,**

*Assistant Executive Secretary.*

[FR Doc. 2019–13449 Filed 6–28–19; 8:45 am]

**BILLING CODE 6714–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2018–1036; Special Conditions No. 25–751–SC]**

## Special Conditions: Dassault Aviation Model Falcon 7X Airplanes; Large Non-Structural Glass in the Passenger Compartment

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 7X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is the installation of large, non-structural glass panels in the passenger compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Dassault on July 1, 2019. Send comments on or before August 15, 2019.

**ADDRESSES:** Send comments identified by Docket No. FAA–2018–1036 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, FAA, Airframe and Cabin Safety Branch, AIR–675, Aircraft Certification Service, 2200 S 216th St., Des Moines, Washington 98198–6547; telephone and fax 206–231–3209.

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On June 14, 2016, Dassault applied for a change to Type Certificate No. A59NM for installation of large, non-structural glass panels in the passenger compartment in Model Falcon 7X airplanes. The Model Falcon 7X airplane has three turbofan engines. The airplane will have a maximum takeoff weight of 73,000 lbs, capacity for 2 crewmembers, and seating for 19 passengers.

### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Dassault must show that the Model Falcon 7X airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A59NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 7X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 7X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

## Novel or Unusual Design Features

The Dassault Model Falcon 7X airplane will have a novel or unusual design feature associated with the installation of large, non-structural glass panels in the cabin area occupied by passengers and crew. Possible installations of large, non-structural glass items include, but are not limited to, the following items:

- Glass partitions.
- Glass floor installations.
- Glass attached to the ceiling.
- Glass parts integrated in a stairway.
- Wall- or door-mounted mirrors and glass panels.
- Mirrors as part of a door blow-out panel.
- Glass plate installed in a doorframe.
- Washstand with glass panel.

The installation of these glass items in the passenger compartment, which can be occupied during taxi, takeoff, and landing (TT&L), is a novel or unusual design feature with respect to the installed material. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

## Discussion

The use of glass results in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury, and which have been known to be lethal. Thus, the use of glass traditionally was limited to windshields, and instrument or display transparencies. The regulations in § 25.775 only address, and likewise only recognize, the unique use of glass in windshield or window applications where no other material will serve. This regulation does address the adverse properties of glass, but pilots occasionally are injured from shattered glass windshields.

The FAA divides other uses of glass in the passenger cabin into four groups. These groups were created to address the practical and functional uses of glass. The four groups are as follows:

The first group is glass items installed in rooms or areas in the cabin that are not occupied during TT&L, and a person does not have to enter or pass through the room or area to get to any emergency exit.

The second group is glass integrated into a functional device the operation of which is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal displays or plasma displays. This group may be installed in any area in the cabin regardless of occupancy during TT&L. Acceptable means of compliance for these items may depend on the size and specific location of the device containing the glass.

The third group is small glass items installed in occupied rooms or areas during TT&L, or rooms or areas that a person does not have to enter or pass through to get to any emergency exit. The FAA defines a small glass item as less than 8.8 lbs (4 kg) in mass.

The fourth group is large glass items, the subject of these special conditions, installed in occupied rooms or areas during TT&L, or rooms or areas that a person must enter or pass through to get to any emergency exit. A large glass item is defined as 8.8 lbs (4 kg) or greater in mass. Groups of glass items that collectively weigh 4 kg or more would also be included. The mass is based on the amount of glass that becomes hazardous in high inertial loads.

The glass items in groups one, two, and three are restricted to applications where the potential for injury is either highly localized, such as flight-instrument faces, or the location is such that injury due to failure of the glass is unlikely, for example mirrors in lavatories, because these installations necessitate the use of glass. These glass items typically are addressed in a method-of-compliance issue paper for each project based on existing part 25 regulations, or in established policy. These issue papers identify specific tests that could include abuse loading and ball-impact testing. In addition, these items are subject to the inertia loads contained in § 25.561, and maximum positive-differential pressure for items like video monitors to meet § 25.789.

The items in group four are much larger and heavier than previously approved, and raise additional safety concerns. These large, heavy glass panels, primarily installed as architectural features, were not envisioned in the regulations. The unique aspects of glass, with the potential to become highly injurious or lethal objects during emergency landing, minor crash conditions, or in flight, warrant a unique approach to certification that addresses the characteristics of glass that prevented its use in the past. These special conditions were developed to ensure that airplanes with large glass features in passenger cabins provide the same level of safety as airplanes using traditional, lightweight materials. The FAA reiterates this intention in the text of the special conditions by qualifying their use for group four glass items.

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

## Applicability

As discussed above, these special conditions are applicable to Dassault Model Falcon 7X airplanes. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

## Conclusion

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

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

## Authority Citation

The authority citation for these special conditions is as follows:

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

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Model Falcon 7X airplane.

For large glass items (a single item, or a collective group of glass items, that weigh 4 kg or more in mass) installed in passenger-occupied rooms or areas during taxi, takeoff, and landing, or installed in rooms or areas that occupants must enter or pass through to access any emergency exit, the glass installations on the Dassault Model Falcon 7X airplane must meet the following conditions:

1. *Material Fragmentation*—The applicant must use tempered or otherwise treated glass to ensure that, when fractured, the glass breaks into small pieces with relatively dull edges. The glass component installation must retain glass fragments to minimize the danger from flying glass shards or pieces. The applicant must demonstrate this characteristic by impact and puncture testing, and testing to failure. The applicant may conduct this test with or without any glass coating that may be utilized in the design.

2. *Strength*—In addition to meeting the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25, the glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

3. *Retention*—The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing, considering both the directional loading and resulting rebound conditions. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

4. *Instructions for Continued Airworthiness*—The instructions for continued airworthiness must reflect the method used to fasten the panel to the cabin interior and must ensure the reliability of the methods used (*e.g.,* life limit of adhesives, or clamp connection). The applicant must define any inspection methods and intervals based upon adhesion data from the manufacturer of the adhesive, or upon actual adhesion-test data, if necessary.

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

**Christopher R. Parker,**

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

[FR Doc. 2019–14009 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2018–1037; Special Conditions No. 25–750–SC]**

### Special Conditions: Dassault Aviation Model Falcon 900EX Airplanes; Large Non-Structural Glass in the Passenger Compartment

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 900EX airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is the installation of large, non-structural glass panels in the passenger compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Dassault on July 1, 2019. Send comments on or before August 15, 2019.

**ADDRESSES:** Send comments identified by Docket No. FAA–2018–1037 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, FAA, Airframe and Cabin Safety Branch, AIR–675, Aircraft Certification Service, 2200 S 216th St., Des Moines, Washington 98198–6547; telephone and fax 206–231–3209.

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

**Background**

On June 14, 2016, Dassault applied for a change to Type Certificate No. A46EU for installation of large, non-structural glass panels in the passenger compartment in Model Falcon 900EX airplane. The Model Falcon 900EX airplane has three turbofan engines. The airplane will have a maximum takeoff weight of 43,800 lbs, capacity for 2 crewmembers, and seating for 19 passengers.

**Type Certification Basis**

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Dassault must show that the Model Falcon 900EX airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A46EU, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 900EX airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 900EX airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

**Novel or Unusual Design Features**

The Dassault Model Falcon 900EX airplane will have a novel or unusual design feature associated with the installation of large, non-structural glass panels in the cabin area occupied by passengers and crew. Possible installations of large, non-structural glass items include, but are not limited to, the following items:

- Glass partitions.
- Glass floor installations.
- Glass attached to the ceiling.
- Glass parts integrated in a stairway.
- Wall- or door-mounted mirrors and glass panels.
- Mirrors as part of a door blow-out panel.
- Glass plate installed in a doorframe.
- Washstand with glass panel.

The installation of these glass items in the passenger compartment, which can be occupied during taxi, takeoff, and landing (TT&L), is a novel or unusual design feature with respect to the installed material. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

**Discussion**

The use of glass results in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury, and which have been known to be lethal. Thus, the use of glass traditionally was limited to windshields, and instrument or display transparencies. The regulations in § 25.775 only address, and likewise only recognize, the unique use of glass in windshield or window applications where no other material will serve. This regulation does address the adverse properties of glass, but pilots occasionally are injured from shattered glass windshields.

The FAA divides other uses of glass in the passenger cabin into four groups. These groups were created to address the practical and functional uses of glass. The four groups are as follows:

The first group is glass items installed in rooms or areas in the cabin that are not occupied during TT&L, and a person does not have to enter or pass through the room or area to get to any emergency exit.

The second group is glass integrated into a functional device the operation of which is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal displays or plasma displays. This group may be installed in any area in the cabin regardless of occupancy during TT&L. Acceptable means of compliance for these items may depend on the size and specific location of the device containing the glass.

The third group is small glass items installed in occupied rooms or areas during TT&L, or rooms or areas that a person does not have to enter or pass through to get to any emergency exit. The FAA defines a small glass item as less than 8.8 lbs (4 kg) in mass.

The fourth group is large glass items, the subject of these special conditions, installed in occupied rooms or areas during TT&L, or rooms or areas that a person must enter or pass through to get to any emergency exit. A large glass item is defined as 8.8 lbs (4 kg) or greater in mass. Groups of glass items that collectively weigh 4 kg or more would also be included. The mass is based on the amount of glass that becomes hazardous in high inertial loads.

The glass items in groups one, two, and three are restricted to applications where the potential for injury is either highly localized, such as flight-instrument faces, or the location is such that injury due to failure of the glass is unlikely, for example mirrors in lavatories, because these installations necessitate the use of glass. These glass items typically are addressed in a method-of-compliance issue paper for each project based on existing part 25 regulations, or in established policy. These issue papers identify specific tests that could include abuse loading and ball-impact testing. In addition, these items are subject to the inertia loads contained in § 25.561, and maximum positive-differential pressure for items like video monitors to meet § 25.789.

The items in group four are much larger and heavier than previously approved, and raise additional safety concerns. These large, heavy glass panels, primarily installed as architectural features, were not envisioned in the regulations. The unique aspects of glass, with the potential to become highly injurious or lethal objects during emergency landing, minor crash conditions, or in flight, warrant a unique approach to certification that addresses the characteristics of glass that prevented its use in the past. These special conditions were developed to ensure that airplanes with large glass features in passenger cabins provide the same level of safety as airplanes using traditional, lightweight materials. The FAA reiterates this intention in the text of the special conditions by qualifying their use for group four glass items.

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

## Applicability

As discussed above, these special conditions are applicable to Dassault Model Falcon 900EX airplanes. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

## Conclusion

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

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

## Authority Citation

The authority citation for these special conditions is as follows:

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

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Model Falcon 900EX airplane.

For large glass items (a single item, or a collective group of glass items, that weigh 4 kg or more in mass) installed in passenger-occupied rooms or areas during taxi, takeoff, and landing, or installed in rooms or areas that occupants must enter or pass through to access any emergency exit, the glass installations on the Dassault Model Falcon 900EX airplane must meet the following conditions:

1. *Material Fragmentation*—The applicant must use tempered or otherwise treated glass to ensure that, when fractured, the glass breaks into small pieces with relatively dull edges. The glass component installation must retain glass fragments to minimize the danger from flying glass shards or pieces. The applicant must demonstrate this characteristic by impact and puncture testing, and testing to failure. The applicant may conduct this test with or without any glass coating that may be utilized in the design.

2. *Strength*—In addition to meeting the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25, the glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

3. *Retention*—The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing, considering both the directional loading and resulting rebound conditions. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

4. *Instructions for Continued Airworthiness*—The instructions for continued airworthiness must reflect the method used to fasten the panel to the cabin interior and must ensure the reliability of the methods used (*e.g.,* life limit of adhesives, or clamp connection). The applicant must define any inspection methods and intervals based upon adhesion data from the manufacturer of the adhesive, or upon actual adhesion-test data, if necessary.

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

**Christopher R. Parker,**

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

[FR Doc. 2019–14008 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2018–1038; Special Conditions No. 25–749–SC]**

# Special Conditions: Dassault Aviation Model Falcon 2000EX Airplanes; Large Non-Structural Glass in the Passenger Compartment

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 2000EX airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is the installation of large, non-structural glass panels in the passenger compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Dassault on July 1, 2019. Send comments on or before August 15, 2019.

**ADDRESSES:** Send comments identified by Docket No. FAA–2018–1038 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building, Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the

West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, FAA, Airframe and Cabin Safety Branch, AIR–675, Aircraft Certification Service, 2200 S 216th St., Des Moines, Washington 98198–6547; telephone and fax 206–231–3209.

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

## Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On June 14, 2016, Dassault applied for a change to Type Certificate No. A50NM for installation of large, non-structural glass panels in the passenger compartment in Model Falcon 2000EX airplane. The Model Falcon 2000EX airplane has three turbofan engines. The airplane will have a maximum takeoff weight of 42,800 lbs, capacity for 2 crewmembers, and seating for 19 passengers.

## Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Dassault must show that the Model Falcon 2000EX airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A50NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 2000EX airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 2000EX airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

## Novel or Unusual Design Features

The Dassault Model Falcon 2000EX airplane will have a novel or unusual design feature associated with the installation of large, non-structural glass panels in the cabin area occupied by passengers and crew. Possible installations of large, non-structural glass items include, but are not limited to, the following items:

- Glass partitions.
- Glass floor installations.
- Glass attached to the ceiling.
- Glass parts integrated in a stairway.
- Wall- or door-mounted mirrors and glass panels.
- Mirrors as part of a door blow-out panel.
- Glass plate installed in a doorframe.
- Washstand with glass panel.

The installation of these glass items in the passenger compartment, which can be occupied during taxi, takeoff, and landing (TT&L), is a novel or unusual design feature with respect to the installed material. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

## Discussion

The use of glass results in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury, and which have been known to be lethal. Thus, the use of glass traditionally was limited to windshields, and instrument or display transparencies. The regulations in § 25.775 only address, and likewise only recognize, the unique use of glass in windshield or window applications where no other material will serve. This regulation does address the adverse properties of glass, but pilots occasionally are injured from shattered glass windshields.

The FAA divides other uses of glass in the passenger cabin into four groups. These groups were created to address the practical and functional uses of glass. The four groups are as follows:

The first group is glass items installed in rooms or areas in the cabin that are not occupied during TT&L, and a person does not have to enter or pass through the room or area to get to any emergency exit.

The second group is glass integrated into a functional device the operation of which is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal displays or plasma displays. This group may be installed in any area in the cabin regardless of occupancy during TT&L. Acceptable means of compliance for these items may depend on the size and specific location of the device containing the glass.

The third group is small glass items installed in occupied rooms or areas during TT&L, or rooms or areas that a person does not have to enter or pass through to get to any emergency exit. The FAA defines a small glass item as less than 8.8 lbs (4 kg) in mass.

The fourth group is large glass items, the subject of these special conditions, installed in occupied rooms or areas during TT&L, or rooms or areas that a person must enter or pass through to get to any emergency exit. A large glass item is defined as 8.8 lbs (4 kg) or greater in mass. Groups of glass items that collectively weigh 4 kg or more would also be included. The mass is based on the amount of glass that becomes hazardous in high inertial loads.

The glass items in groups one, two, and three are restricted to applications where the potential for injury is either highly localized, such as flight-instrument faces, or the location is such that injury due to failure of the glass is unlikely, for example mirrors in lavatories, because these installations necessitate the use of glass. These glass items typically are addressed in a method-of-compliance issue paper for each project based on existing part 25 regulations, or in established policy. These issue papers identify specific tests that could include abuse loading and ball-impact testing. In addition, these items are subject to the inertia loads contained in § 25.561, and maximum positive-differential pressure for items like video monitors to meet § 25.789.

The items in group four are much larger and heavier than previously approved, and raise additional safety concerns. These large, heavy glass panels, primarily installed as architectural features, were not envisioned in the regulations. The unique aspects of glass, with the potential to become highly injurious or lethal objects during emergency landing, minor crash conditions, or in flight, warrant a unique approach to certification that addresses the characteristics of glass that prevented its use in the past. These special conditions were developed to ensure that airplanes with large glass features in passenger cabins provide the same level of safety as airplanes using traditional, lightweight materials. The FAA reiterates this intention in the text of the special conditions by qualifying their use for group four glass items.

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

## Applicability

As discussed above, these special conditions are applicable to Dassault Model Falcon 2000EX airplanes. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

## Conclusion

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

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

## Authority Citation

The authority citation for these special conditions is as follows:

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

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Model Falcon 2000EX airplane.

For large glass items (a single item, or a collective group of glass items, that weigh 4 kg or more in mass) installed in passenger-occupied rooms or areas during taxi, takeoff, and landing, or installed in rooms or areas that occupants must enter or pass through to access any emergency exit, the glass installations on the Dassault Model Falcon 2000EX airplane must meet the following conditions:

1. *Material Fragmentation*—The applicant must use tempered or otherwise treated glass to ensure that, when fractured, the glass breaks into small pieces with relatively dull edges. The glass component installation must retain glass fragments to minimize the danger from flying glass shards or pieces. The applicant must demonstrate this characteristic by impact and puncture testing, and testing to failure. The applicant may conduct this test with or without any glass coating that may be utilized in the design.

2. *Strength*—In addition to meeting the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25, the glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

3. *Retention*—The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing, considering both the directional loading and resulting rebound conditions. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

4. *Instructions for Continued Airworthiness*—The instructions for continued airworthiness must reflect the method used to fasten the panel to the cabin interior and must ensure the reliability of the methods used (*e.g.,* life limit of adhesives, or clamp connection). The applicant must define any inspection methods and intervals based upon adhesion data from the manufacturer of the adhesive, or upon actual adhesion-test data, if necessary.

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

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

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# FEDERAL TRADE COMMISSION

## 16 CFR Part 609

RIN 3084–AB54

## Military Credit Monitoring

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') is publishing a final rule to implement the credit monitoring provisions applicable to active duty military consumers in section 302 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends the Fair Credit Reporting Act (''FCRA''). That section requires nationwide consumer reporting agencies (''NCRAs'') to provide a free electronic credit monitoring service to active duty military consumers, subject to certain conditions. The final rule defines ''electronic credit monitoring service,'' ''contact information,'' ''material additions or modifications to the file of a consumer,'' and ''appropriate proof of identity,'' among other terms. It also contains requirements on how NCRAs must verify that an individual is an active duty military consumer. Further, the final rule contains restrictions on the use of personal information and on communications surrounding enrollment in the electronic credit monitoring service.

**DATES:** The amendments are effective July 31, 2019. However, compliance is not required until October 31, 2019.

**ADDRESSES:** Relevant portions of the record of this proceeding, including this document, are available at *https://www.ftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amanda Koulousias (202–326–3334), *akoulousias@ftc.gov,* Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Overview and Background

The Economic Growth, Regulatory Relief, and Consumer Protection Act (''the Act'') was signed into law on May 24, 2018. Public Law 115–174. The Act, among other things, amends section 605A of the FCRA, 15 U.S.C. 1681c–1, to add a section 605A(k). Section 605A(k)(2) requires that NCRAs provide free electronic credit monitoring services to active duty military consumers.

Section 605A(k)(3) of the FCRA requires the Commission to issue a regulation clarifying the meaning of certain terms used in section 605A(k)(2), including ''electronic credit monitoring service'' and ''material additions or modifications to the file of a consumer.'' In addition, section 605A(k)(3) requires that the Commission's regulation clarify what constitutes appropriate proof that an individual is an active duty military consumer.

On November 16, 2018 (83 FR 57693), the Commission published a notice of proposed rulemaking (''NPRM''). The proposed rule applied to NCRAs, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p). The proposed rule required the NCRAs to provide a free electronic credit monitoring service that notifies a consumer of material additions or modifications to the consumer's file when the consumer provides (1) contact information, (2) appropriate proof that the consumer is an active duty military consumer, and (3) appropriate proof of identity. The proposed rule specified that the NCRA must provide notification to the consumer within 24 hours of the material addition or modification. The proposed rule also required that the notifications to consumers include a hyperlink to a summary of the consumer's rights under the FCRA, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

The proposed rule defined certain key terms, including ''electronic credit monitoring service,'' ''electronic notification,'' and ''material additions or modifications.'' The proposed rule also specified what constitutes appropriate proof that the consumer is an active duty military consumer.

Further, the proposed rule restricted NCRAs' ability to use and disclose the information they collect from consumers in order to provide the required electronic credit monitoring service. Additionally, the proposed rule contained some limitations on communications surrounding enrollment in an electronic credit monitoring service. Finally, the proposed rule prohibited asking or requiring an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service.

In response to the NPRM, the Commission received 19 comments from industry representatives, military and consumer advocacy groups, government agencies, members of Congress, and individual members of the public.[1] In addition to providing feedback on the proposed rule, commenters highlighted the importance of military consumers' financial health for overall military readiness and national security. These commenters noted that ''servicemembers in financial distress are often forced to leave the military due to loss of security clearance or for other reasons.'' [2] Commenters also noted the rule's importance in protecting military consumers from fraud.[3]

## II. Section by Section Analysis

### *a. Scope of Regulations in This Part, § 609.1*

Proposed § 609.1 described the statutory authority for the proposed rule, section 605A(k)(2) of the FCRA, 15 U.S.C. 1681c–1(k)(2). The Commission received no comments on this section, and adopts it as proposed.

### *b. Definitions, Section 609.2*

#### i. Definition of Active Duty Military Consumer, § 609.2(a)

The NPRM proposed defining ''active duty military consumer'' as a consumer in military service, as defined in the FCRA. Prior to enactment of the Act, section 603(q)(1) of the FCRA, 15 U.S.C. 1681a(q)(1), defined an ''active duty military consumer'' as a consumer in military service who—(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and (B) is assigned to service away from the usual duty station of the consumer. The Act added section 605A(k)(1) to the FCRA, 15 U.S.C. 1681c–1(k)(1), and specified that, in the credit monitoring subsection, the term ''active duty military consumer'' also includes a member of the National Guard, with the term ''National Guard'' having the meaning given the term in section 101(c) of title 10, United States Code. Thus, the proposed rule defined ''active duty military consumer'' as a ''consumer in military service as defined in 15 U.S.C. 1681a(q)(1) and 1681c–1(k)(1).'' [4]

The Commission received several comments on this definition. DoD expressed concern that the proposed definition could result in military consumers receiving unequal access to the free credit monitoring services based on their individual military component, duty status, or location.[5] For example, DoD stated that the requirement for the consumer to be ''assigned to service away from the usual duty station'' is severely limiting, as a military consumer is likely to spend most of her active duty career assigned to the ''usual duty station.'' DoD recommended that the Commission modify the definition in order to be consistent with the definition of active duty in the military compensation statute,[6] which does not require that the military consumer be deployed away from her usual duty station. Military groups commented that the Commission should defer to DoD on this definition.[7] Senators Carper and Coons commented that the rule should cover ''the largest number of servicemembers as permitted by the

[1] All comments can be found on the FTC's website at: *https://www.ftc.gov/policy/public-comments/2018/11/initiative-784.*

[2] *See* Veterans Education Success *et al.* (*comment 22*) at 1 (the following veteran and military services organizations submitted a joint comment: Army Aviation Association of America; Association of Military Surgeons of the United States; Association of the United States Navy; Enlisted Association of the National Guard of the United States; Jewish War Veterans; National Guard Association of the United States; National Military Family Association; Tragedy Assistance Program for Survivors; Veterans Education Success; Vietnam Veterans of America).

[3] Robert Palmersheim (*comment 2*).

[4] The Department of Defense (''DoD'') suggested referencing 15 U.S.C. 1681c–1(i)(1) rather than 15 U.S.C. 1681c-1(k)(1), stating that the former contains the provisions related to the National Guard. This appears to be based on a misreading of the statute, as 15 U.S.C. 1681c–1(k)(1) does in fact in contain the provisions related to the National Guard. *See* DoD—Defense Department (*comment 12*) at 2.

[5] *See* DoD—Defense Department (*comment 12*) at 1–2.

[6] 37 U.S.C. 101(18).

[7] *See* Veterans Education Success *et al.* (*comment 22*) at 2. This commenter noted that increased deployments and training require Guard and Reserve members to maintain their financial readiness because they can be called up at a moment's notice.

law.'' [8] Another commenter recommended that the rule cover retired military consumers.[9]

While the Commission recognizes and appreciates the policy rationale behind broadening the group of military consumers who are eligible to receive free credit monitoring, the statutory language limits the Commission's discretion on this topic. In amending the FCRA, Congress recognized that the FCRA's existing definition of ''active duty military consumer'' excluded members of the National Guard. Congress specified that, for purposes of the credit monitoring provisions, an ''active duty military consumer,'' includes a member of the National Guard.[10] The fact that the Act addressed the exclusion of the National Guard, but not the definition's requirement that the military consumer be ''assigned to service away from the usual duty station,'' suggests that Congress may have intended for that limitation to remain. To the extent that Congress intended to provide free credit monitoring more broadly, *i.e.,* to all active duty military, regardless of their duty station, the Commission calls on Congress to address this issue through additional legislation. If Congress passes legislation to provide the Commission with statutory authority to promulgate a more expansive rule, the Commission will act expeditiously to do so.

The Commission acknowledges that the proposed rule's definition did not expressly address whether a National Guard member covered by the definition in 15 U.S.C. 1681c–1(k)(1) also needs to be assigned to service away from the usual duty station. The Commission recognizes that providing National Guard members with free credit monitoring at all times, while limiting the service for individuals serving in other military components, such as the Army or Air Force, to those assigned away from their usual duty station, would result in an inequitable distribution of benefits. However, when Congress amended the FCRA to add section 605A(k)(1), it did not expressly apply the duty station requirement to National Guard members. Thus, the statutory language is imprecise on this question. Therefore, notwithstanding this apparent inequity, the Commission has interpreted the Act as providing the benefit of free credit monitoring to members of the National Guard regardless of whether they are assigned away from their usual duty station. To ensure clarity on this issue, the Commission has determined to modify the definition of active duty military consumer as (1) a consumer in military service that meets the original FCRA definition of ''active duty military consumer'' (15 U.S.C. 1681a(q)(1)); *or* (2) a member of the National Guard (10 U.S.C. 101(c)).

ii. Definition of Appropriate Proof of Identity, § 609.2(b)

The NPRM proposed defining ''appropriate proof of identity'' as having the same meaning set forth in 12 CFR 1022.123. That section requires consumer reporting agencies (''CRAs'') to develop reasonable policies for determining a consumer's identity for purposes of FCRA sections 605A (obtaining a fraud alert), 605B (requesting that information resulting from identity theft be blocked from one's consumer report), and 609(a)(1) (requesting a file disclosure from a CRA). The definition is risk-based, meaning that a CRA's policy with respect to appropriate proof of identity should be commensurate with the risk of harm to the consumer resulting from misidentification, and should not unreasonably restrict a consumer's access to statutorily required services. The NPRM specifically sought comment on whether the rule should keep this cross-reference to 12 CFR 1022.123, stay silent on the definition, or develop a different approach.

The Commission received one comment supporting the NPRM definition and two comments recommending changes. The Consumer Data Industry Association (''CDIA'') commented that referencing the existing standard would reduce the implementation burden for its NCRA members.[11] Consumer and military groups recommended that the Commission tailor ''appropriate proof of identity'' to the unique circumstances of military consumers.[12] These commenters noted that military consumers often move frequently, making it burdensome for them to provide the 2-year address history that CRAs currently require for identity validation for file disclosures. These commenters also stated the NCRAs require less identifying information from consumers who are purchasing their credit report than they do from consumers who are seeking access to their free annual credit report.

After carefully considering the comments received, the Commission has determined to retain the definition of ''appropriate proof of identity'' without modification. The existing definition requires the NCRAs to develop ''reasonable requirements'' that take into account the ''identifiable risk of harm'' that could result from misidentification.[13] The Commission interprets the existing standard's reasonableness requirement to obligate the NCRAs to consider the unique circumstances of military consumers in developing their requirements for proof of identity for the free electronic credit monitoring service. They must weigh any such considerations against the risk of harm from providing sensitive credit report information to the wrong consumer while not restricting access to the statutorily mandated services unreasonably. In response to the concern that NCRAs currently require less identifying information for paid services than for free services, the Commission notes that the fact that a consumer is requesting a free rather than a paid service should not by itself prompt a higher standard for proof of identity, unless the NCRA is using the payment method as an additional form of authentication or there are other identified aspects of the unpaid service that increase the fraud risk.

iii. Definition of Electronic Credit Monitoring Service, § 609.2(g)

The proposed rule defined ''electronic credit monitoring service'' as a service through which NCRAs provide, at a minimum, electronic notification of material additions or modifications to a consumer's file. The Commission solicited comment as to whether this definition is adequate or if any modifications are necessary.

Several commenters stated that the proposed definition is not adequate and that the Commission should expand it to include free electronic access to the consumer's credit file following a notification of a material addition or modification.[14] Commenters noted that

[8] *See* Letter from Senator Thomas R. Carper and Senator Christopher A. Coons of the United States Senate Regarding the Military Credit Monitoring Rulemaking Proceeding and the Proposed Rule Set Forth in the Notice of Proposed Rulemaking (January 23, 2019) at 2.

[9] Patrick Mabry (*comment 9*).

[10] 15 U.S.C. 1681c–1(k)(1).

[11] *See* CDIA (*comment 23*) at 10.

[12] *See* National Consumer Law Center (''NCLC'') *et al.* (*comment 20*) at 5 (the following consumer groups submitted a joint comment: NCLC, Americans For Financial Reform Education Fund, Center for Digital Democracy, Consumer Action, Consumer Federation of America, Demos, National Association of Consumer Advocates, Public Citizen, US PIRG, Woodstock Institute, East Bay Community Law Center, Housing and Economic Rights Advocates, Tzedek DC, and the Legal Aid Society of Palm Beach County); Veterans Education Success *et al.* (*comment 22*) at 2.

[13] 12 CFR 1022.123(a).

[14] *See, e.g.,* NCLC *et al.* (*comment 20*) at 2–3; Veterans Education Success *et al.* (*comment 22*) at 1–2; Mass Mail Campaign (*comment 13*); Law Office of Phillip R. Goldberg (*comment 19*); Jeff Seymour (*comment 18*).

without this free access, military consumers may be required to pay to examine their credit files following the receipt of a notification. One commenter stated that the information contained in the files of the three NCRAs is not always the same and recommended that the rule provide free access to the credit files at all three NCRAs following a notification.[15] The commenters also noted that commercial credit monitoring products typically include access to credit reports.

The Commission agrees with the commenters that free access to their credit files following a notification will allow the active duty military consumer to evaluate the addition or modification in the context of their entire credit report without being required to pay for that access in connection with a service that Congress intended them to receive for free. Indeed, current commercial credit monitoring services offered by the NCRAs advertise that they provide consumers with access to their credit files. However, the Commission declines to require an NCRA to pay the costs of obtaining a consumer's credit files from the other two NCRAs for the purposes of providing the files to the consumer. Instead, consumers who are concerned about potential discrepancies in their files at the three NCRAs can request free credit monitoring services from all three of them.

Given the comments received, the Commission modifies the definition of electronic credit monitoring service as follows: A service through which NCRAs provide, at a minimum, electronic notification of material additions or modifications to a consumer's file and following a notification, access to all information in the consumer's file at the NCRA at the time of the notification, in accordance with 15 U.S.C. 1681g(a).[16]

iv. Definition of Electronic Notification, § 609.2(h)

The proposed rule defined ''electronic notification'' as a notice provided to the consumer via a website; mobile application; email; or text message. The NPRM asked whether this definition is adequate or whether the rule should include additional methods.

The Commission received a number of comments on this definition. CDIA commented that it appreciates the flexibility the definition gives and noted that the proposed definition includes the methods of delivery currently in use in the marketplace.[17] Consumer groups raised a concern that website notifications could result in the NCRAs not actively informing military consumers of material changes, instead requiring the consumer to regularly and proactively check their account on the website. They recommended that the Commission clarify that, when a notification is made via website, there should be some form of active ''push'' notification, whether via email, text, or mobile app notification, of the fact that there have been material additions or modifications.[18] This would ensure a consumer is notified of changes, even if the consumer must then go to the website to determine what that actual change is. Blue Star Families recommended that the notification methods include encrypted messaging platforms such as WhatsApp or Signal, which military consumers may commonly use during training events or deployment.[19] They also recommended that military consumers be able to designate an alternate point of contact when they don't have access to notification platforms or the ability to take action based on an alert.

The Commission has carefully considered the comments received. As to the use of encrypted messaging platforms, the Commission notes that the proposed definition already allows the NCRAs to provide notices via mobile applications; thus, no change to the rule is necessary to allow them to provide notices via these platforms. As to allowing an alternate point of contact, the Commission is concerned about the security implications of requiring NCRAs to transmit sensitive alerts about consumers' credit information to multiple points of contact. Although the Commission declines to modify the proposed rule to require alternative points of contact, we understand the concerns that the military consumer may be unable to access notification platforms or take action based on alerts while deployed. Accordingly, the Commission encourages the NCRAs to explore options for addressing these issues.

Finally, as to notification via website, the Commission agrees that military consumers should not have to proactively log onto to a website in order to continually check whether a material addition or modification has been made to their files. Instead, there should be some form of active notification. Accordingly, the final rule deletes the reference to allowing notification by website. It continues to require electronic notification of material additions or modifications by mobile application, email, or text message, but clarifies that the notices can link to a website where the consumer can find additional information regarding the specifics of the addition or modification.

v. Definition of Free, § 609.2(k)

The proposed rule defined ''free'' as ''provided at no cost to the consumer.'' The Commission received one comment on this definition. Senators Carper and Coons recommended that the Commission define ''free'' to prohibit the secondary use of military consumers' personal information; the disclosure of such information to third parties; the use of such information for marketing purposes; or the implication that the consumer should purchase identity theft insurance.[20] The Commission agrees with the Senators that the rule should not allow secondary uses, disclosures to third parties, or the use of information for marketing purposes, but does not believe that a change to the definition of ''free'' is necessary. As discussed below, the rule already specifies that the NCRAs can use information collected to provide the military credit monitoring service only in four instances: To provide the service requested by the consumer; to process a transaction requested by the consumer at the same time he or she requests the service; to comply with applicable legal requirements; or to update information the NCRA already maintains for the purpose of providing consumer reports, with certain limitations. Thus, the rule would not permit the uses contemplated by the commenters. As to the suggestion that the definition of ''free'' prohibit the implication that the consumer should purchase identity theft insurance, the rule already requires NCRAs to delay all marketing until after the consumer has enrolled in the free electronic credit monitoring service. This requirement would include marketing of insurance products. Given the restrictions on information use, disclosure, and marketing in other sections of the rule, the Commission has determined to

[15] Veterans Education Success *et al.* (*comment 22*) at 1–2.

[16] 15 U.S.C. 1681c–1(k)(2) states that the free electronic credit monitoring service shall ''at a minimum'' notify the consumer of material additions or modifications to the file, and 15 U.S.C. 1681c–1(k)(3) requires the Commission's rule to define electronic credit monitoring service. Thus, the statute contemplates that the Commission can define electronic credit monitoring service to include other features.

[17] *See* CDIA (*comment 23*) at 5.

[18] *See* NCLC *et al.* (*comment 20*) at 4–5.

[19] *See* Blue Star Families (*comment 24*) at 1.

[20] *See* Letter from Senator Thomas R. Carper and Senator Christopher A. Coons of the United States Senate Regarding the Military Credit Monitoring Rulemaking Proceeding and the Proposed Rule Set Forth in the Notice of Proposed Rulemaking (January 23, 2019) at 2.

adopt the proposed rule's definition of ''free'' without modification.

vi. Definition of Material Additions or Modifications, § 609.2(l)

The NPRM defined ''material additions or modifications'' as significant changes to a consumer's file, including the establishment of new accounts; inquiries or requests for a consumer report, other than for prescreening or account review; changes to name, address, or phone number; changes to credit account limits; and negative information. The Commission requested comment on whether this definition was adequate or if the rule should add other elements. The Commission also requested comment on specific issues related to this definition, including whether changes to credit account limits should remain; whether the exceptions for prescreening and account review are appropriate; and whether NCRAs have the ability to differentiate between inquiries made for the purposes of account review and collection.

The Commission received two comments recommending global changes to the definition of material additions or modifications. First, consumer groups recommended that the definition provide an exhaustive list of material changes and that the NCRAs be required to get Commission approval to provide notifications for any changes not on that list.[21] They expressed concern that without such a limitation, the NCRAs may over-notify military consumers and cause unnecessary alarm. Second, CDIA recommended that the list of material changes be examples and that the Commission provide a safe harbor for the NCRAs to provide their commercial credit monitoring services to active duty military consumers for free.[22] CDIA expressed concern that without a safe harbor, the rule will force the NCRAs to develop new products and services. CDIA noted that Congress chose to require only one portion of the consumer reporting market—the NCRAs—to provide their credit monitoring services to active duty military consumers for free. Therefore, CDIA stated that the Commission should seek to reduce the burdens and costs placed on the NCRAs.

The Commission does not believe it is necessary for the rule to provide an exhaustive list of material additions or modifications because the Commission believes the risk of over-notification from allowing NCRAs to notify consumers of additional changes is low. The NCRAs do not have an incentive to increase their costs by providing excessive notifications to military consumers.

The Commission also declines to grant the NCRAs a safe harbor for providing their commercial credit monitoring services to military consumers for free. The Act requires the Commission to promulgate a rule that defines ''material additions or modifications to the file of a consumer.'' In the absence of a minimum standard, NCRAs could create new tiers for commercial credit monitoring products and offer active duty military consumers free versions of a new product with only limited features. Congress could not have intended this result.

At the same time, the Commission appreciates that providing a free electronic credit monitoring service to active duty military consumers will place costs and burdens on the NCRAs. Thus, as discussed below, the Commission has sought to align the requirements with the NCRAs' existing commercial credit monitoring services as much as possible while ensuring that the service required by the rule provides appropriate consumer protections.

In addition to receiving global comments on the definition of ''material addition or modification,'' the Commission received comments on several specific proposals. First, the proposed rule's inclusion of changes to a consumer's name, address, or phone number was the subject of several comments. One commenter expressed support for including these changes.[23] Another commenter recommended that the rule also include a change to email address as a material addition or modification because the CRAs typically notify customers of their commercial credit monitoring services of changes via email.[24] On the other hand, CDIA recommended that the Commission remove changes to consumers' names, addresses and phone numbers from the definition because those changes are not uniformly part of the NCRAs' commercial credit monitoring products.[25]

After considering these comments, the Commission has decided to retain the requirement to notify consumers of changes to their address. The Commission is concerned that failing to provide a notification about the appearance of a new address in a consumer's file will potentially leave consumers without notice of a key indicator of fraud. For example, an identity thief may change the address listed on a consumer's existing credit card account in order to reroute statements so that the consumer does not see fraudulent charges. At least one of the NCRAs currently provides alerts for address changes.[26] Additionally, it appears that new addresses are monitored in all three of the NCRAs' consumer files.[27] Furthermore, in other sections of the FCRA, Congress has put in place requirements that suggest it believed that a change in address could be a sign of fraud.[28] To lessen the chance of over-notification, the Commission has decided to modify the requirement to clarify that only a *material* change to an address requires notification. Thus, if the address 123 Main Street was already included in a consumer's file, the NCRAs are not required to provide a notification if a creditor reports an address of 123 Main St.[29]

However, the Commission has decided to remove the requirement that the NCRAs provide notifications for changes to name and phone number. Unlike addresses, it is not clear whether changes to the names and phone numbers in consumers' files are routinely monitored or included in commercial credit monitoring alerts. For similar reasons, the Commission declines to require notifications for changes to email address. Of course, nothing in the rule prohibits the NCRAs from providing such alerts if they choose to do so.

Second, several commenters addressed the definition's inclusion of changes to credit account limits. Some commenters recommended retaining notification for changes to credit account limits, noting that this information is useful to military consumers.[30] CDIA recommended

[21] *See* NCLC *et al.* (*comment 20*) at 4.

[22] *See* CDIA (*comment 23*) at 6–9.

[23] *See* NCLC *et al.* (*comment 20*) at 3.

[24] *See* Anonymous Students (*comment 8*).

[25] *See* CDIA (*comment 23*) at 8.

[26] *See* Equifax, *What types of credit monitoring alerts should I expect to receive?, https://help.equifax.com/s/article/What-types-of-credit-monitoring-alerts-should-I-expect-to-receive* (last visited May 2, 2019). A number of commercial credit monitoring services provided by companies other than the NCRAs also advertise that they provide alerts for address changes in consumers' files. *See, e.g.,* LastPass, *What triggers a credit monitoring alert, https://lastpass.com/support.php?cmd=showfaq&id=3926* (last visited May 2, 2019).

[27] *See* myFICO, *https://www.myfico.com/Include/Store/Legal/FAQAlertMatrix* (last visited May 2, 2019).

[28] 15 U.S.C. 1681c(h) (related to notice of discrepancy in address); 15 U.S.C. 1681m(e)(C) (related to regulations for card issuers regarding changes of address).

[29] However, as discussed above, the rule's list of material additions or modifications is non-exhaustive, thus the NCRAs may provide notifications of these types of changes if they choose.

[30] *See* NCLC *et al.* (*comment 20*) at 4; Blue Star Families (*comment 24*) at 1. For example, NCLC

removing changes to credit account limits because NCRAs do not uniformly include notification of changes to account limits in commercial credit monitoring services, such changes are not indicative of identity theft or fraud, and the proposed rule gives no guidance on what level of change in account limits would be material.[31]

The Commission has decided to retain the category of ''changes to credit account limits'' in the list of material additions and modifications of which consumers must be notified. The Commission disagrees with the comment that changes to credit account limits are not indicative of identity theft or fraud. For example, an identity thief may call a credit card company and request that an account limit be raised so that she can make additional fraudulent charges. Indeed, in drafting the FCRA provision dealing with fraud alerts, Congress prohibited creditors from increasing the credit limit on an existing account that contains a fraud alert without verifying the requestor's identity. This prohibition illustrates that Congress believed that such a change in account limits could be indicative of fraud. For these reasons, the Commission declines to remove changes to credit account limits from the list of material additions or modifications. The Commission does recognize that the proposed rule did not set a threshold for a material change and that a lack of such a threshold could create uncertainty in the marketplace. Thus, the Commission has determined that the rule will require notifications for changes to credit account limits of $100 or greater. These are the types of changes that are monitored in at least one of the NCRA's consumer files.[32]

Third, the proposed rule included inquiries or requests for a consumer report as a material addition or modification, with an exception for inquiries for prescreening or account review. The NPRM noted that notifying consumers of pre-screening or account review inquiries could result in over-notification, making it difficult for consumers to determine when an inquiry indicates that they are potentially the victim of identity theft or other fraud. The proposed rule did not include an exception for inquiries for the purposes of account collection, but the NPRM asked whether NCRAs have the ability to differentiate between account collection and account review inquiries.

CDIA's comment indicated that NCRAs cannot distinguish between account review and collection.[33] CDIA explained that the NCRAs only require companies to provide their permissible purpose for obtaining a consumer report, but that the permissible purpose for account review and account collection is the same. Thus, if the rule were to require notifications of inquiries made for account collection (as the proposed rule did), NCRAs would likely provide notifications of inquiries for account review, which could result in overnotification. Accordingly, CDIA recommended notification be limited to ''inquiries or requests for a consumer report in connection with the establishment of a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)),[34] in the name of the consumer.'' [35] CDIA noted that similar language is used elsewhere in the FCRA.[36]

Given that the NCRAs do not differentiate between inquiries for account review and account collection, the Commission agrees that inquiries for account collection should be excepted. The Commission notes that if a company establishes a new collection account, the NCRA would already have to send a notification because new accounts are included in the list of material additions or modifications. To ensure that there is no ambiguity about that requirement, the Commission has decided to modify § 609.2(l)(1) to provide that significant changes to a consumer's file includes new accounts opened in the consumer's name, including new collection accounts. With respect to § 609.2(l)(2), the Commission declines to adopt CDIA's proposed language. The proposed language would only require notification for inquiries or requests for a consumer report in connection with a *credit* transaction. Thus, for example, military consumers would not receive a notification if an employer or insurer requested their report because someone applied for employment or insurance in their name, which could be indicative of identity theft. Therefore, the Commission has determined to modify § 609.2(l)(2)(i) to provide that an inquiry made for a prescreened list obtained for the purpose of making a firm offer of credit or insurance as described in 15 U.S.C. 1681b(c)(1)(B) or for the purpose of reviewing or collecting an account of the consumer shall not be considered a material addition or modification.

Finally, two commenters recommended adding a significant drop in credit score, such as 25 points or more, to the list of material additions or modifications. These commenters suggested that such a drop may indicate a significant change to the consumer's file, possibly due to fraud.[37] Military groups also noted that a large drop in credit score could signal a problem that leads to revocation of a military consumer's security clearance.

Although the Commission is sympathetic to these concerns, it declines to make this change. The rule already requires the NCRAs to provide a notification about events that would likely cause a significant drop in credit score, such as a delinquency. Beyond requiring notification of substantive events that would likely cause a significant drop in credit score, the Commission does not have information at this time to determine the feasibility and costs of this proposal. For example, it is not clear how often the NCRAs are calculating credit scores in the absence of a request from a consumer or creditor. Nor is it clear how much it would cost NCRAs to continuously monitor credit scores for the purpose of providing an alert when there is a significant drop. Thus, the Commission declines to include this change.

vii. Definition of Negative Information, § 609.2(n)

The NPRM defined ''negative information'' as having the meaning provided in 15 U.S.C. 1681s–2(a)(7)(G)(i), which in turn defines ''negative information'' to mean ''information concerning a customer's delinquencies, late payments, insolvency, or any form of default,'' in the context of furnishers providing information to the CRAs. The Commission received one comment on this definition. CDIA noted that the proposed definition does not provide enough specificity to the NCRAs as to

noted that credit card issuers are not always required to notify consumers about decreased account limits.

[31] *See* CDIA (*comment 23*) at 8.

[32] *See* myFICO, *https://www.myfico.com/Include/Store/Legal/FAQAlertMatrix* (last visited May 2, 2019).

[33] See CDIA (comment 23) at 9.

[34] An open-end credit plan is ''a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.'' 15 U.S.C. 1602(j). A typical example of an open-end credit plan is a credit card. Thus, under the recommended language an inquiry triggered by a creditor conducting account review for an existing credit card account would not require notification.

[35] *See* CDIA (*comment 23*) at 6–7.

[36] *See* 15 U.S.C. 1681c–1(h).

[37] *See* NCLC *et al.* (*comment 20*) at 3 (NCLC suggested that a credit score drop might be caused by a drastic increase in the usage of a credit line, due to existing account fraud); Veterans Education Success *et al.* (*comment 22*) at 2–3.

when notification is required.[38] CDIA recommended that the Commission modify the definition as follows: Accounts furnished to the NCRAs as more than 30 days delinquent, accounts furnished to the NCRAs as being included in bankruptcy petition filings, and new public records (such as suits or judgments). The Commission believes that CDIA's proposed language covers the negative information that the Commission intended for the proposed rule to require notification of and therefore has decided to modify the language to provide the NCRAs greater specificity. The Commission is also adding additional detail to provide a non-exhaustive list of what types of new public records may constitute negative information. Thus, the Commission has decided to modify the definition of ''negative information'' as follows: Accounts furnished to the NCRAs as more than 30 days delinquent, accounts furnished to the NCRAs as being included in bankruptcy petition filings, and new public records, including, but not limited to, bankruptcy filings, civil court judgments, foreclosures, liens, and convictions.

viii. Definitions of Consumer, Consumer Report, Contact Information, Credit, File, Firm Offer of Credit, and Nationwide Consumer Reporting Agency

The Commission received no comments on the proposed rule's definitions of ''consumer,'' ''consumer report,'' ''contact information,'' ''credit,'' ''file,'' ''firm offer of credit,'' and ''nationwide consumer reporting agency.'' The Commission adopts these definitions without modification.

*c. Requirement To Provide Free Electronic Credit Monitoring Service, § 609.3*

Proposed § 609.3(a) required the NCRAs to provide a free electronic credit monitoring service to active duty military consumers.[39] Proposed § 609.3(b) allowed the NCRAs to condition provision of the service upon the consumer providing appropriate proof of identity; contact information; and appropriate proof that the consumer is an active duty military consumer. Proposed § 609.3(c) provided the methods for verifying a consumer's status as an active duty military consumer. Proposed § 609.3(d) limited the ways that the NCRAs can use or disclose the information collected from consumers as a result of a request to obtain the service. Proposed § 609.3(e) placed limitations on the types of communications that may surround enrollment in the service. Proposed § 609.3(f) prohibited asking or requiring a consumer to agree to terms or conditions in connection with obtaining the service.

i. Appropriate Proof of Active Duty Military Consumer Status, § 609.3(c)

The proposed rule required NCRAs to verify a consumer's status as an active duty military consumer through one of four methods: A copy of the consumer's active duty orders; a copy of a certification of active duty status issued by the DoD; a method or service approved by the DoD; or a certification of active duty status approved by the NCRA. The Commission requested comment on whether these methods are adequate or if other methods should be included. The Commission also asked whether it is burdensome for consumers to provide appropriate proof, and if so, if there are ways to minimize the burden.

The Commission received several comments on the methods for validating a consumer's active duty military consumer status. CDIA recommended that the Commission work with DoD to come up with an automated system to conclusively determine whether a consumer is eligible for the service and that will also verify the time period for which the consumer is eligible for the service.[40] Absent an automated system, CDIA stated that the Commission should clarify that the determination of active duty status is valid for two years and then must be renewed. Consumer groups similarly suggested that the NCRAs be allowed to use the DoD developed database that lenders use to comply with the Military Lending Act (''MLA'').[41]

With respect to the requests for an automated system run by the DoD, the Commission notes that if DoD were to develop such a system, it would be considered ''a method or service approved by the DoD'' and thus would not require any modification to the rule. The Commission will work with the DoD to explore whether a DoD-run system or database is viable.[42] The Commission agrees that in the absence of an automated system, the rule should specify a period of time for which the determination of active duty status is valid. The Commission believes that the two-year time period suggested by CDIA is reasonable. Indeed, it is twice as long as the duration of an active duty military fraud alert.[43] Therefore, the Commission is adding a provision to the final rule establishing that an NCRA's verification of active duty military consumer status is valid for two years. After the expiration of the two-year period, the NCRA may require the consumer to provide proof that the consumer continues to be an active duty military consumer.

Military groups recommended that the Commission remove the option for a certification approved by the NCRA because it may allow inadequate methods of proof.[44] The Commission believes that it would benefit military consumers to allow the NCRAs to accept additional certifications of their choosing, such as having the consumer check a box certifying that they are an active duty military consumer. If the NCRA decides that the ease of such a method outweighs the risk that some consumers may misrepresent that they are eligible for the free service, any costs of such a determination would be borne by the NCRA.

Various commenters recommended additional methods of validation. One commenter raised concerns about whether the current methods of proof would cover members of the National Guard when not on active duty orders.[45] This commenter suggested that a current leave and earnings statement is a method of proof that would be available to the National Guard.[46] Another commenter suggested that a letter from the consumer's commanding officer should be appropriate proof.[47]

The Commission understands the desire to provide military consumers

[38] *See* CDIA (*comment 23*) at 8–9.

[39] The Commission received one comment stating that the FTC should seek rulemaking authority to provide free credit monitoring services to all U.S. residents and not just active duty military consumers. Electronic Privacy Information Center (*comment 26*) at 2–3. The Commission does not take a position on the merits of this proposal because it is outside the scope of this rulemaking.

[40] *See* CDIA (*comment 23*) at 11.

[41] *See* NCLC *et al.* (*comment 20*) at 6.

[42] With respect to the comment that NCRAs be allowed to use the MLA database, the Commission notes that DoD currently only allows the database to be used for determining whether someone is eligible for MLA protections. In any event, the definition of a covered borrower under the MLA is more expansive than the rule's definition of active duty military consumer. For example, the MLA regulations do not require that a military consumer be assigned to service away from their usual duty station. They also cover dependents. *See* 32 CFR 232.3(g).

[43] 12 CFR 1022.121.

[44] See Veterans Education Success *et al.* (*comment* 22) at 2.

[45] *See* NCLC *et al.* (*comment 20*) at 6–7.

[46] *See* NCLC *et al.* (*comment 20*) at 6. *See also* Veterans Education Success *et al.* (*comment 22*) at 2; NCLC *et al.*

[47] American Financial Services Association (*comment 21*) at 2. Another commenter suggested that the methods should include a letter other than active duty orders because the commenter stated that orders may include the consumer's Social Security number. *See* Marlatt (*comment 7*).

and the NCRAs flexibility in the types of documentation that they can use to verify active duty military consumer status. In light of the fact that what constitutes appropriate proof for National Guard members will likely differ from that for active duty military more generally, the Commission has decided not to attempt to include a list of all suitable documents in the rule. Rather, to allow maximum flexibility, the Commission has decided to retain two of the methods from the proposed rule: (1) A method or service approved by the DoD; and (2) a certification of active duty status approved by the NCRA. The Commission notes that while it is removing the two additional methods that were in the proposed rule: (1) A copy of the consumer's active duty orders; and (2) a copy of a certification of active duty status issued by the DoD—those documents, as well as the additional documents recommended by the commenters, can still be incorporated into a certification method approved by DoD or the NCRA.

The Commission is also clarifying that the procedures that the NCRAs use to determine appropriate proof of active duty military consumer status must include methods that allow all eligible consumers to enroll. For example, an NCRA cannot decide that the only proof of status it will accept from a member of the National Guard is active duty orders, given that most members of the National Guard will not have active duty orders. To the extent that the NCRAs find it difficult to verify that individuals meet the definition of an ''active duty military consumer,'' particularly with respect to whether they are assigned to service away from their usual duty station, the Commission encourages the NCRAs to err on the side of providing the free service more broadly. To provide an incentive for the NCRAs to provide the free service to a broader set of military consumers and to reduce the likelihood that an eligible consumer is excluded from the free service, the Commission will deem an NCRA to be in compliance with this provision if it provides free electronic credit monitoring services to (1) consumers who self-certify active duty status, as defined in 10 U.S.C. 101(d); (2) consumers who self-certify that they are a reservist performing duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13); and (3) consumers who self-certify that they are a member of the National Guard, as defined in 10 U.S.C. 101(c).

ii. Information Use and Disclosure, § 609.3(d)

The proposed rule limited the ways that the NCRAs can use or disclose the information collected from consumers as a result of a request to obtain the free electronic credit monitoring service. The proposed rule allowed NCRAs to use the information collected only: (1) To provide the free electronic credit monitoring service requested by the consumer; (2) to process a transaction requested by the consumer at the same time as a request for the service; (3) to comply with applicable legal requirements; or (4) to update information already maintained by the NCRA for the purpose of providing consumer reports, with certain limitations. The NPRM noted that these restrictions on use and disclosure are identical to the requirements placed on the NCRAs' collection of personally identifiable information from consumers using the centralized source for annual credit reports.[48] The Commission requested comment on whether the allowed uses and disclosures are appropriate and whether the rule should permit additional uses.

Several commenters supported these restrictions and noted that they would prevent the use of the personal information collected from military consumers for marketing or other unanticipated uses.[49] On the other hand, CDIA commented that the restrictions are unnecessary in light of the Commission's authority under Section 5 of the FTC Act to address unfair or deceptive acts or practices.[50] CDIA also argued that the restrictions are beyond the scope of the FTC's statutory authority under the Act. The American Financial Services Association commented that the Commission should ensure that the restrictions do not prevent the information's use for the purpose of studying the effect the MLA regulations are having on the availability of credit.[51]

The Commission does not agree that the agency's Section 5 authority renders the proposed rule's restrictions unnecessary. Under Section 5, the Commission would be limited to pursuing a law enforcement action in circumstances where an NCRA deceived a military consumer or used or disclosed the information in a manner that caused or was likely to cause substantial injury that was not reasonably avoidable by consumer themselves and not outweighed by countervailing benefits to consumers or to competition. However, even in circumstances not involving deception or substantial injury, the Commission does not believe that it would be appropriate to make an active duty military consumer's access to the free electronic credit monitoring service contingent on the consumer's willingness to allow a NCRA to use the consumer's information for unrelated, secondary uses. The Commission believes that the use and disclosure restrictions are within its authority under the Act because they are necessary to ensure that the Act's purpose of providing active duty military consumers with free electronic credit monitoring is not undermined by consumers' concerns about secondary uses of their personal information.[52]

With respect to the specific request to allow the information to be used for the purpose of studying the effect MLA regulations have on the availability of credit, the Commission declines to grant an exception to allow military consumers' personal information to be used for such a purpose, which is unrelated to their request for the free electronic credit monitoring. For these reasons, the Commission has decided to retain the proposed rule's information use and disclosure restrictions without modification.

iii. Communications Surrounding Enrollment in Electronic Credit Monitoring Service, § 609.3(e)

Proposed § 609.3(e) placed limitations on the types of communications that may surround enrollment in the electronic credit monitoring service, similar to the restriction on advertising on the annual credit report website.[53] Proposed § 609.3(e)(1) restricted any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services, to a consumer who has

[48] 12 CFR 1022.136(f).

[49] *See* Electronic Privacy Information Center (*comment 26*) at 2; NCLC *et al.* (*comment 20*) at 7; Veterans Education Success *et al.* (*comment 22*) at 2.

[50] *See* CDIA (*comment 23*) at 12.

[51] American Financial Services Association (*comment 21*) at 1–2. This commenter also requested that the Commission encourage the DoD to grant consumer reporting agencies permission to pull data from the MLA database for purposes of such a study. The Commission does not have any role in administering the MLA database and defers to DoD as to appropriate uses of the information contained therein.

[52] Section 605A(k)(3) of the FCRA, 15 U.S.C. 1681c–1(k)(3), requires the Commission to promulgate regulations that ''at a minimum'' define electronic credit monitoring service and material additions or modifications to the file of a consumer and state what constitutes appropriate proof of active duty military status. Thus, the statute contemplates that the Commission's regulations may go beyond defining those terms.

[53] 12 CFR 1022.136(g).

indicated an interest in signing up for the free electronic credit monitoring service until after the consumer has enrolled in the service. Section 609.3(e)(2) of the proposed rule specified that any communications, instructions, or permitted advertising or marketing may not interfere with, detract from, contradict, or otherwise undermine the purpose of providing a free electronic credit monitoring service to active duty military consumers. Section 609.3(e)(3) of the proposed rule provided examples of conduct that would interfere with, detract from, contradict, or undermine the purpose of the rule. The Commission solicited comment on whether the limitations are necessary to ensure that active duty military consumers are able easily to obtain their free electronic credit monitoring service. The Commission also asked whether the limitations impose undue burdens on the NCRAs, and if so, whether there are ways to minimize the burdens. The Commission also asked whether there are more examples of prohibited conduct that should be included in the rule.

Consumer groups stated that the limitations are necessary to allow military consumers to get the free credit monitoring easily without encountering distracting advertising.[54] They further recommended that the Commission prohibit the NCRAs from representing or implying that the service is inferior to the NCRA's commercial credit monitoring services. They also recommended that the Commission prohibit the NCRAs from offering identity theft insurance at any time in connection with the free credit monitoring because of concerns about the usefulness of such insurance.

After carefully considering these suggestions, the Commission has decided not to add prohibitions beyond those already included in the proposed rule. Section 609.3(e)(3)'s prohibited communications are designed to ensure that active duty military consumers are not confused or deceived by communications related to a NCRA's products and services. If a NCRA makes a deceptive representation to consumers about its commercial credit monitoring products or identity theft insurance, the Commission can pursue an enforcement action under Section 5 of the FTC Act. Some consumers may be interested in paying an additional fee in order to obtain services that may not be available within the free electronic credit monitoring service. Therefore, given that the rule already prohibits marketing until after the consumer has enrolled in the free service, the Commission does not believe it is necessary to prohibit truthful advertising regarding the NCRA's products and services after enrollment.

CDIA stated that the restrictions are unnecessary and outside of the Commission's statutory authority under the Act.[55] CDIA also noted that unlike free annual credit reports, which the NCRAs offer through a centralized website, the NCRAs will offer the free electronic credit monitoring through their own commercial websites. CDIA argued that this makes it more difficult to determine when advertising is and is not permitted. CDIA criticized the proposed rule's standard of delaying marketing ''once a consumer has indicated that the consumer is interested in obtaining the service . . . such as by clicking on a link for services'' as ambiguous. Therefore, if the Commission retains the marketing limitations, CDIA requested additional clarification on this point to make clear that marketing is prohibited only during the enrollment process. CDIA recommended the following language for § 609.3(e)(1): ''once a consumer is in the process of accessing the ability to enroll in the service required under paragraph (a) of this section and only during the enrollment process. . . .''

After considering the comments, the Commission has determined that retaining the restrictions on communications is necessary to further the Act's purpose of providing active duty military consumers with a free electronic credit monitoring service. These restrictions help ensure that active duty military consumers are not thwarted by confusing advertisements or communications that dissuade them from enrolling in the free service.

The Commission recognizes that the proposed rule's limitation on advertising from the time the consumer ''has indicated an interest in signing up for the free electronic credit monitoring service'' may have been unclear. The Commission did not intend to ban advertising on all web pages of the NCRAs; rather, it sought to limit advertising on pages that are part of the product enrollment process. To provide greater clarity, the Commission has decided to modify § 609.3(e)(1) to provide that once a consumer is in the process of accessing the ability to enroll in the service required under paragraph (a) and only during the enrollment process, any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services, must be delayed until after the consumer has enrolled in that service. The Commission interprets this to mean that the NCRAs shall not advertise on the pages of the NCRA's website or app dedicated to providing active duty military consumers with their rights under this regulation, until after the consumer has enrolled in the service.

iv. Other Prohibited Practices, § 609.3(f)

The proposed rule also prohibited asking or requiring an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service. The Commission asked whether this prohibition is necessary; whether CRAs currently require customers of commercial credit monitoring services to agree to terms or conditions; and whether the prohibition imposes undue burdens on the NCRAs. Commenters that supported the inclusion of these prohibitions specifically pointed out that without them, the NCRAs could require military consumers to agree to mandatory arbitration clauses in order to receive free credit monitoring.[56] However, CDIA commented that the prohibitions are unnecessary and outside of the FTC's statutory authority under the Act.[57] CDIA also expressed concern that the NCRAs would be in violation of these prohibitions if they sought to condition providing the service on the provision of appropriate proof of identity, contact information, and appropriate proof of active duty military status, as required by the proposed rule. CDIA further posited that seeking the consumer's written instructions to comply with the FCRA's permissible purpose requirements or consent to receive text notifications pursuant to the Telephone Consumer Protection Act could violate this provision.

As the NPRM noted, this restriction is similar to the restriction for the annual credit report website.[58] The Commission believes it is within its statutory authority to ensure that an active duty military consumer's right to obtain a free electronic credit monitoring service is unfettered and without any restrictions or conditions, apart from providing appropriate proof of identity, contact information, and appropriate proof that the consumer is an active duty military consumer. The

[54] *See* NCLC *et al.* (*comment 20*) at 7; *see also* Veterans Education Success *et al.* (*comment 22*) at 2.

[55] *See* CDIA (*comment 23*) at 13.

[56] *See* NCLC *et al.* (*comment 20*) at 8; *see also* Veterans Education Success *et al.* (*comment 22*) at 2.

[57] *See* CDIA (*comment 23*) at 14–15.

[58] 12 CFR 1022.136(h).

Commission believes that allowing the NCRAs to condition provision of the free electronic credit monitoring service on the consumer's agreement to a variety of terms and conditions could dissuade military consumers from availing themselves of the service. However, the Commission recognizes that there may be certain instances in which legal requirements may require the NCRAs to receive consumers' consent for certain aspects of the service. Thus, the Commission has decided to retain the prohibition with the following modification: A NCRA shall not ask or require an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service, other than those terms or conditions required to comply with applicable legal requirements.

*d. Timing of Electronic Credit Monitoring Notices, § 609.4*

The proposed rule required that the electronic notifications be provided within 24 hours of any material additions or modifications to a consumer's file. The Commission requested comment on whether the proposed rule's 24-hour timing was appropriate. The Commission received one comment on the timing requirements. CDIA commented that the timing requirement is outside of the Commission's statutory authority and that it should be kept out of the final rule. It recommended that if the timing requirement remains, the Commission should instead require notifications within 48 hours to be consistent with the NCRA's commercial credit monitoring services. CDIA also recommended that the Commission provide a safe harbor for NCRAs to provide notifications within the same timing that they use for their commercial credit monitoring services.[59]

The Commission believes it is necessary and within its statutory authority under the Act to specify the time within which electronic notifications must be made. If military consumers are not notified of the material additions or modifications to their files within a reasonable amount of time, the electronic credit monitoring service would not be as effective. For example, if a consumer is notified promptly about a new account that has been fraudulently opened in his or her name and appears on his or her consumer report, he or she may decide to place a fraud alert or security freeze on their file, which may help prevent the opening of additional fraudulent accounts. The Commission declines to give the NCRAs a safe harbor for providing the notifications within the same timing that they use for their commercial credit monitoring products because that timing could change in the future, and the Commission believes it is necessary to set a baseline. However, the Commission has decided to modify the timing requirement to require notification within 48 hours of any material additions or modifications to a consumer's file. This will align the requirement with the timing that CDIA states the NCRAs currently use for their commercial services, while still requiring that the NCRAs provide the notifications in a prompt manner upon making a change to the consumer's file.[60]

*e. Additional Information To Be Included in Electronic Credit Monitoring Notices, § 609.5*

The proposed rule also required that the electronic notifications include a hyperlink to a summary of the consumer's rights under the FCRA, as prescribed by the Bureau of Consumer Financial Protection.[61] The Commission noted that it would be useful for consumers to be able to easily access information about their rights to, for example, obtain consumer reports and dispute information on their reports. The Commission requested comment on whether requiring this link would provide useful information to consumers and whether there is a different method of providing this information that would be more effective.

Consumer groups commented that the Commission should also require the provision of the Summary of Rights of Identity Theft Victims outlined in 15 U.S.C. 1681g(d).[62] While the Commission agrees that the Summary of Rights for Identity Theft Victims also provides useful information for consumers, the Commission does not believe it is appropriate to mandate its inclusion in the electronic notifications. The language of that document contemplates that it will be given to consumers when they have contacted a CRA about being the victim of identity theft, which likely will not be true for many of the recipients of the electronic credit monitoring notices.[63]

NCLC also recommended that the Commission require a more prominent method of providing the summary of rights, such as including the document in the same email or web page, rather than just a hyperlink.[64] NCLC also suggested that if the rule requires access to the credit report following a notification, the summary of rights could be appended to the report. On the other hand, CDIA commented that it had no objections to the general requirement, but expressed concern about including the hyperlink in text message or mobile application notifications, which may be space limited. CDIA recommended that the NCRAs have the flexibility to provide the link on any page within the electronic credit monitoring service to which the notification may direct the consumer.

Given the space constraints in text messages and mobile applications, the Commission will modify the rule to allow the NCRAs to provide the link to the summary of rights on the first page of the website to which the electronic notification may direct the consumer. The Commission will also modify the rule to require that the summary of rights be included with the credit report that consumers can choose to access following the receipt of a notification, as required when a consumer requests a copy of their file under section 609 of the FCRA, 15 U.S.C. 1681g.

*f. Severability, § 609.6*

Proposed § 609.6 stated that the provisions of the proposed rule are separate and severable from one another, so that if any provision was stayed or determined to be invalid, it was the Commission's intention that the remaining provisions shall continue in effect. The Commission received no comments on this provision and adopts it without modification.

*g. Compliance Date*

The proposed rule did not address the date by which the NCRAs will be required to comply with the rule. CDIA commented that the rule needs to provide an appropriate amount of time for the NCRAs to implement the service

[59] *See* CDIA (*comment 23*) at 15.

[60] The Commission notes that there is a lag between when many events, such as a late payment, occur and when a creditor reports them to the NCRA and the NCRA updates its files. Thus, the NCRAs can only provide notification once they are aware of these events, which means that even with prompt credit monitoring notifications, there is a delay between when an event occurs and when the consumer will receive an alert.

[61] 15 U.S.C. 1681g(c).

[62] *See* NCLC *et al.* (*comment 20*) at 8–9.

[63] For example, it states at the beginning of the document, ''[y]ou are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft.'' The Bureau's model document can be found at: *https://files.consumerfinance.gov/f/documents/bcfp_consumer-identity-theft-rights-summary_2018-09.docx*.

[64] *See* NCLC *et al.* (*comment 20*) at 9.

required by the rule.[65] CDIA stated that one year from the effective date would be necessary, but that the time could be reduced if the NCRAs are given a safe harbor for providing their existing credit monitoring services to active duty military consumers for free.

The Commission recognizes that the NCRAs will need time following the publication of the final rule to implement the service. For example, they will likely need to create systems to accept proof of active duty military status. They may need to make engineering and product changes to generate alerts about certain changes to a credit file. However, the Commission also notes that Congress gave the Commission only one year from the enactment of the Act to promulgate these regulations, presumably to ensure that active duty military consumers receive the free credit monitoring sooner rather than later. For example, Senators Carper and Coons, who drafted the credit monitoring provision of the Act, requested that the Commission, ''conclude the rulemaking process expeditiously so that servicemembers may begin benefiting from this service as soon as possible.'' [66]

Balancing these factors, the Commission has determined to set a compliance date of 3 months from the effective date of these regulations. However, to give the NCRAs additional time to set up their systems, while still allowing consumers to benefit from the new rights created by the Act, the Commission will allow the NCRAs to comply with §§ 609.3(a), 609.4, and 609.5 by offering their commercial credit monitoring service for free, for a period of up to one year from the effective date of the rule.

**Paperwork Reduction Act**

The Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, requires federal agencies to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons.[67] Under the PRA, a rule creates a ''collection of information'' when ten or more persons are asked to report, provide, disclose, or record information in response to ''identical questions.'' [68] As the notification requirements fall upon the three NCRAs, it does not meet the PRA threshold count of ten or more persons to constitute a ''collection of information.'' Further, the proof of identity the rule requires of those for whom the rulemaking is designed to benefit, consumers on active duty military status, falls within OMB's general exception for disclosures that require persons to provide or display only facts necessary to identify themselves.[69]

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) [70] requires that the Commission conduct an initial and a final analysis of the anticipated economic impact of the rule on small entities. The purpose of a regulatory flexibility analysis is to ensure the agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA [71] provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the rule will not have a significant economic impact on small entities. The final rule applies to NCRAs. The Commission has not identified any NCRAs that are small entities.[72] Therefore, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small businesses.

The final rule is similar to the rule proposed in the NPRM. In its Initial Regulatory Flexibility Analysis (IRFA), the Commission determined that the proposed rule would not have a significant impact on small entities because the NCRAs to which the proposed rule would apply were not small entities.

Although the Commission certifies under the RFA that the rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined that publishing a final regulatory flexibility analysis (FRFA) is appropriate to ensure that the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

*A. Need for and Objectives of the Final Rule*

The Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, directs the Commission to promulgate regulations to implement section 302(d)(1) of the Act, which shall at a minimum: (1) Define ''electronic credit monitoring service'' and ''material additions or modifications to the file of a consumer,'' and (2) establish what constitutes appropriate proof that a consumer is an active duty military consumer. In this action, the Commission issues a rule that would fulfill the statutory mandate. The Act requires that the Commission promulgate this rule not later than one year after the date of enactment, or May 24, 2019.

*B. Significant Issues Raised in Public Comments*

The Commission did not receive any comments that addressed the burden on small entities.

*C. Small Entities To Which the Final Rule Will Apply*

The final rule will apply only to NCRAs. The Commission has not identified any NCRAs that are small entities.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply*

Under the final rule, NCRAs will have to provide free electronic credit monitoring services to active duty military consumers. There are no reporting or recordkeeping requirements, or types of professional skills necessary for preparation of any such report or record, under the rule. In any event, as noted earlier, the final rule applies only to NCRAs, and they are not small entities.

*E. Significant Alternatives to the Final Rule*

The Commission has not identified any particular alternative methods of compliance as necessary to reduce burdens on small entities, because the Commission does not believe any NCRAs subject to the final rule are small entities, as noted earlier.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

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[65] *See* CDIA (*comment 23*) at 16–17.

[66] Letter from Senator Thomas R. Carper and Senator Christopher A. Coons of the United States Senate Regarding the Military Credit Monitoring Rulemaking Proceeding and the Proposed Rule Set Forth in the Notice of Proposed Rulemaking (January 23, 2019) at 2.

[67] 44 U.S.C. 3502(3)(A)(i).

[68] *See* 44 U.S.C. 3502(3)(A).

[69] *See* 5 CFR 1320.3(h)(1).

[70] 5 U.S.C. 601–612.

[71] 5 U.S.C. 605.

[72] The size standard the Small Business Administration has identified by the North American Industry Classification System code for credit bureaus (code number 561450), *i.e.,* CRAs, is $15 million. *See* 13 CFR 121.201. The rule only applies to NCRAs. There are currently only three NCRAs, Equifax, Experian, and TransUnion, and all exceed this size standard.

**List of Subjects in 16 CFR Part 609**

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter F, of the Code of Federal Regulations as follows:

■ 1. Revise the heading of subchapter F to read as follows:

## SUBCHAPTER F—FAIR CREDIT REPORTING ACT

■ 2. Add part 609 to subchapter F to read as follows:

## PART 609—FREE ELECTRONIC CREDIT MONITORING FOR ACTIVE DUTY MILITARY

Sec.
609.1 Scope of regulations in this part.
609.2 Definitions.
609.3 Requirement to provide free electronic credit monitoring service.
609.4 Timing of electronic credit monitoring notices.
609.5 Additional information to be included in electronic credit monitoring notices.
609.6 Severability.

**Authority:** 15 U.S.C. 1681c–1(k).

### § 609.1 Scope of regulations in this part.

This part implements Section 605A(k)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681c–1(k)(2), which requires consumer reporting agencies that compile and maintain files on consumers on a nationwide basis to provide a free electronic credit monitoring service to active duty military consumers that, at a minimum, notifies them of any material additions or modifications to their files.

### § 609.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Active duty military consumer* means:

(1) A consumer in military service as defined in 15 U.S.C. 1681a(q)(1); or

(2) A member of the National Guard as defined in 10 U.S.C. 101(c).

(b) *Appropriate proof of identity* has the meaning set forth in 12 CFR 1022.123.

(c) *Consumer* has the meaning provided in 15 U.S.C. 1681a(c).

(d) *Consumer report* has the meaning provided in 15 U.S.C. 1681a(d).

(e) *Contact information* means information about a consumer, such as a consumer's first and last name and email address, that is reasonably necessary to collect in order to provide the electronic credit monitoring service.

(f) *Credit* has the meaning provided in 15 U.S.C. 1681a(r)(5).

(g) *Electronic credit monitoring service* means a service through which nationwide consumer reporting agencies provide, at a minimum, electronic notification of material additions or modifications to a consumer's file and following a notification, access to all information in the consumer's file at the nationwide consumer reporting agency at the time of the notification, in accordance with 15 U.S.C. 1681g(a).

(h) *Electronic notification* means:

(1) A notice provided to the consumer via:

(i) Mobile application;

(ii) Email; or

(iii) Text message;

(2) If the notice in paragraph (h)(1) of this section does not inform the consumer of the specific material addition or modification that has been made, such notice must link to a website that provides that information.

(i) *File* has the meaning provided in 15 U.S.C. 1681a(g).

(j) *Firm offer of credit* has the meaning provided in 15 U.S.C. 1681a(*l*).

(k) *Free* means provided at no cost to the consumer.

(l) *Material additions or modifications* means significant changes to a consumer's file, including:

(1) New accounts opened in the consumer's name, including new collection accounts;

(2) Inquiries or requests for a consumer report;

(i) However, an inquiry made for a prescreened list obtained for the purpose of making a firm offer of credit or insurance as described in 15 U.S.C. 1681b(c)(1)(B) or for the purpose of reviewing or collecting an account of the consumer shall not be considered a material addition or modification.

(ii) [Reserved]

(3) Material changes to a consumer's address;

(4) Changes to credit account limits of $100 or greater; and

(5) Negative information.

(m) *Nationwide consumer reporting agency* has the meaning provided in 15 U.S.C. 1681a(p).

(n) *Negative information* means accounts furnished to the nationwide consumer reporting agencies as more than 30 days delinquent, accounts furnished to the nationwide consumer reporting agencies as being included in bankruptcy petition filings, and new public records, including, but not limited to, bankruptcy filings, civil court judgments, foreclosures, liens, and convictions.

### § 609.3 Requirement to provide free electronic credit monitoring service.

(a) *General requirements.* Nationwide consumer reporting agencies must provide a free electronic credit monitoring service to active duty military consumers.

(b) *Determining whether a consumer must receive electronic credit monitoring service.* Nationwide consumer reporting agencies may condition provision of the service required under paragraph (a) of this section upon the consumer providing:

(1) Appropriate proof of identity;

(2) Contact information; and

(3) Appropriate proof that the consumer is an active duty military consumer.

(c) *Appropriate proof of active duty military consumer status.* (1) A consumer's status as an active duty military consumer can be verified through:

(i) A method or service approved by the Department of Defense; or

(ii) A certification of active duty military consumer status approved by the nationwide consumer reporting agency.

(2) Provided, however, that the procedures a nationwide consumer reporting agency uses to determine appropriate proof of active duty military consumer status must include methods that allow all eligible consumers to enroll. A nationwide consumer reporting agency shall be deemed in compliance with paragraph (c) of this section if it provides free electronic credit monitoring services to:

(i) Consumers who self-certify active duty status, as defined in 10 U.S.C. 101(d);

(ii) Consumers who self-certify that they are a reservist performing duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13); and

(iii) Consumers who self-certify that they are a member of the National Guard, as defined in 10 U.S.C. 101(c).

(3) A nationwide consumer reporting agency's verification of active duty military consumer status is valid for two years. After the expiration of the two-year period, the nationwide consumer reporting agency may require the consumer to provide proof that the consumer continues to be an active duty military consumer in accordance with paragraphs (c)(1) and (2) of this section.

(d) *Information use and disclosure.* Any information collected from consumers as a result of a request to obtain the service required under paragraph (a) of this section, may be used or disclosed by the nationwide consumer reporting agency only:

(1) To provide the free electronic credit monitoring service requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service;

(3) To comply with applicable legal requirements; or

(4) To update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Communications surrounding enrollment in electronic credit monitoring service.* (1) Once a consumer is in the process of accessing the ability to enroll in the service required under paragraph (a) of this section and only during the enrollment process, any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services, must be delayed until after the consumer has enrolled in that service.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of providing a free electronic credit monitoring service to active duty military consumers that notifies them of any material additions or modifications to their files.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Materials that represent, expressly or by implication, that an active duty military consumer must purchase a paid product or service in order to receive the service required under paragraph (a) of this section; or

(ii) Materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of the free electronic credit monitoring service, such as identity theft insurance, is free, or that fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(f) *Other prohibited practices.* A nationwide consumer reporting agency shall not ask or require an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service, other than those terms or conditions required to comply with applicable legal requirements.

**§ 609.4 Timing of electronic credit monitoring notices.**

The notice required in § 609.3(a) must be provided within 48 hours of any material additions or modifications to a consumer's file.

**§ 609.5 Additional information to be included in electronic credit monitoring notices.**

(a) The notice required in § 609.3(a), or the first page within the electronic credit monitoring service to which the notice may direct the consumer, shall include a hyperlink to a summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

(b) The nationwide consumer reporting agency shall provide to a consumer, with each file disclosure provided in § 609.3(a), the summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

**§ 609.6 Severability.**

The provisions of this part are separate and severable from one another. If any provision is stayed, or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

**April J. Tabor,**

*Acting Secretary.*

[FR Doc. 2019–13598 Filed 6–28–19; 8:45 am]

**BILLING CODE 6750–01–P**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 232

**[Release Nos. 33–10645; 34–86070; 39–2526, IC–33504]**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the ''Commission'') is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules. The EDGAR system was upgraded on June 10, 2019.

**DATES:** Effective July 1, 2019. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning Form ID, contact EDGAR Filer Support at (202) 551–8900. In the Division of Economic and Risk Analysis, for questions concerning Inline XBRL, inclusion of HTML in EDGAR submissions, or retired taxonomies, contact Mike Willis at (202) 551–6627. In the Office of Municipal Securities, for questions regarding Forms MA, MA–A and MA/A, contact Ahmed A. Abonamah at (202) 551–3887. In the Division of Trading and Markets, for questions concerning Form ATS–N, contact Michael R. Broderick at (202) 551–5058. In the Division of Investment Management, for questions concerning the rescission of Form N–SAR, contact Heather Fernandez at (202) 551–6708.

**SUPPLEMENTARY INFORMATION:** We are adopting an updated EDGAR Filer Manual, Volumes I and II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the EDGAR Online Forms website.

The revisions to the Filer Manual reflect changes within EDGAR Filer Manual, Volume I: ''General Information,'' (Version 33) and EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' (Version 51) (June 2019). The updated Filer Manual is incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

The EDGAR System was updated in Release 19.2 and corresponding amendments to the Filer Manual are being made to reflect the changes described below.

EDGAR Release 19.2 introduced changes to the EDGAR Filer

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on March 12, 2018. See Release No. 33–10615 (March 12, 2019) [84 FR 12073].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

Management Interface that provide a more modernized interface for completing an application for EDGAR access using the Form ID. Volume I of the Filer Manual is being revised to provide filers with instructions to use the more modernized interface to complete and submit Form ID. See Chapter 3 (Becoming an EDGAR Filer) of the EDGAR Filer Manual, Volume I: ''General Information.''

In Release 33–10618,[3] the Commission modernized and simplified certain requirements of Regulation S–K and related rules and forms, and made parallel amendments to several rules and forms applicable to investment companies and investment advisers. As part of those amendments, filers are required to tag in Inline XBRL information on the cover pages of annual reports on Forms 10–K, 20–F and 40–F, quarterly reports on Form 10–Q, and current reports on Form 8–K. EDGAR has been updated to provide filers with the ability to include cover page tags within any Inline XBRL document set for submission form types 10–K, 10–K/A, 10–KT, 10–KT/A, 10–Q, 10–Q/A, 10–QT, 10–QT/A, 8–K, 8–K/A, 8–K12B, 8–K12B/A, 8–K12G3, 8–K12G3/A, 8–K15D5, 8–K15D5/A, 20–F, 20–F/A, 20FR12B, 20FR12B/A, 20FR12G, 20FR12G/A, 40–F, 40–F/A, 40FR12B, 40FR12B/A, 40FR12G, and 40FR12G/A. EDGAR validation has been enhanced to help filers identify any required tags that are missing or incomplete. Please refer to Chapter 5 (Constructing Attached Documents and Document Types), Chapter 6 (Interactive Data), and Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

In addition, EDGAR has been updated to permit HTML documents that are included in online submissions to include references to modules and segments constructed in either ASCII or HTML format. See Chapter 5 (Constructing Attached Documents and Document Types), Chapter 6 (Interactive Data), and Appendix A (Messages Reported by EDGAR) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 19.2 made changes to how Schedule C of submission form type MA/A and MA–A presents a ''Summary of Schedule C Changes'' button to display only newly added, edited, or deleted entries. Explanations of the changes are being added to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

Submission form types ATS–N, ATS–N/MA, ATS–N/UA, ATS–N/CA, ATS–N/OFA, ATS–N–C, and ATS–N–W were updated with revised error messages to indicate that invalid characters are not allowed in free-text fields. Filers should refer to Chapter 5 (Constructing Attached Documents and Document Types) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing'' for more details on EDGAR acceptable characters. See Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

In EDGAR Release 19.2, the EDGAR system was updated to support the 2019 IFRS Taxonomy. Also, EDGAR no longer supports the superseded 2017 US–GAAP, 2017EXCH and 2016 CURRENCY Taxonomies.[4]

In Release 33–10231,[5] the Commission rescinded Form N–SAR as of June 1, 2018.[6] Following a full year from the rescission of Form N–SAR, this Release removes Volume III and amends Section 301 of Regulation S–T by removing the fourth sentence ''Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 6 (January 2017).'' In addition, the EDGAR Filer Manual is being updated to inform filers that EDGAR will no longer accept submissions of Form N–SAR and related subtypes.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Because the Filer Manual and the corresponding rule and form amendments relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[7] It follows that the requirements of the Regulatory Flexibility Act[8] do not apply.

The effective date for the updated Filer Manuals and the related rule and form amendments is July 1, 2019. In accordance with the APA,[9] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manuals with these system upgrades.

**Statutory Basis**

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[10] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[11] Section 319 of the Trust Indenture Act of 1939,[12] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[13]

**List of Subjects in 17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

**Text of the Amendments**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 232 REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

[3] *See* FAST Act Modernization and Simplification of Regulation S–K, Release 33–10618 (March 20, 2019) [84 FR 12674].

[4] Please see *https://www.sec.gov/info/edgar/edgartaxonomies.shtml* for a complete list of supported standard taxonomies.

[5] *See* Investment Company Reporting Modernization, Release No. 33–10231 (Oct. 13, 2016) [81 FR 81870].

[6] As an accommodation for certain filers, EDGAR continued acceptance of Form N–SAR and related subtypes through June 30, 2019. *See* Adoption of EDGAR Filer Manual, Release No. 33–10518 (July 10, 2018) [83 FR 33119].

[7] 5 U.S.C. 553(b)(A).

[8] 5 U.S.C. 601–612.

[9] 5 U.S.C. 553(d)(3).

[10] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[11] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[12] 15 U.S.C. 77sss.

[13] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

**§ 232.301 EDGAR Filer Manual.**

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 33 (June 2019). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 51 (June 2019). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You can obtain paper copies of the EDGAR Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

Dated: June 7, 2019

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–13922 Filed 6–28–19; 8:45 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9857]**

**RIN 1545–BL11**

### Recognition and Deferral of Section 987 Gain or Loss; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9857) that were published in the **Federal Register** on Monday, May 13, 2019. The final regulations are relating to combinations and separations of qualified business units (QBUs) subject to section 987 and the recognition and deferral of foreign currency gain or loss with respect to a QBU subject to section 987 in connection with certain QBU terminations and certain other transactions involving partnerships.

**DATES:** This correction is effective on July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Jensen at (202) 317–6938 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9857) that are the subject of this correction are issued under section 987 of the Internal Revenue Code.

**Need for Correction**

As published May 13, 2019 (84 FR 20790) the final regulations (TD 9857) contain errors that need to be corrected.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.987–0 is amended by revising the entries of the table of contents for § 1.987–12(b) and (j) to read as follows:

**§ 1.987–0 Table of contents.**

* * * * *

**§ 1.987–12 Deferral of section 987 gain or loss.**

* * * * *

(b) Gain and loss recognition in connection with a deferral event.

* * * * *

(j) Applicability date.

* * * * *

■ **Par. 3.** Section 1.987–2 is amended by revising the fifth sentence of paragraph (c)(9)(iii) and revising paragraph (e)(1) to read as follows:

**§ 1.987–2 Attribution of items to eligible QBUs; definition of a transfer and related rules.**

* * * * *

(c) * * *

(9) * * *

(iii) * * * A separation may also result when a section 987 QBU that is subject to a grouping election under § 1.987–1(b)(2)(ii) changes its functional currency. * * *

* * * * *

(e) * * *

(1) *In general.* Except as set forth in paragraph (e)(2) of this section, this section is applicable as specified in § 1.987–11.

* * * * *

■ **Par. 4.** Section 1.987–4 is amended by revising the third sentence of paragraph (f)(2) to read as follows:

**§ 1.987–4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.**

* * * * *

(f) * * *

(2) * * * For purposes of determining the owner functional currency net value of the separated QBUs on the last day of the taxable year preceding the taxable year of separation under paragraphs (d)(1)(B) and (e) of this section, the balance sheets of the separated QBUs on that day will be deemed to reflect the assets and liabilities reflected on the balance sheet of the separating QBU on that day, apportioned between the separated QBUs in a reasonable manner that takes into account the assets and liabilities reflected on the balance sheets of the separated QBUs immediately after the separation. * * *

* * * * *

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2019–13615 Filed 6–28–19; 8:45 am]

BILLING CODE 4830–01–P

## OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

### 32 CFR Part 1701

### Privacy Act of 1974: System of Records

**AGENCY:** Office of the Director of National Intelligence.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Director of National Intelligence (ODNI) exempts a new system of records (Continuous Evaluation System) from the requirements of the Privacy Act to the extent that information in the system is subject to the Privacy Act's exemption provisions. The ODNI also adds a new

section which restores and updates a list of all ODNI systems of records that are subject to Privacy Act exemption.

**DATES:** This rule is effective July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Gaviria, Director, Information Management Division, (301–243–1054).

**SUPPLEMENTARY INFORMATION:** In compliance with the Privacy Act, 5 U.S.C. 552a(e)(4), ODNI has already described in the notice section of the **Federal Register** (83 FR 61395, document 18–25970), published on November 29, 2018, the following new system of records: Continuous Evaluation System (ODNI/NCSC–003). This new system of records facilitates implementation of the National Counterintelligence and Security Center (NCSC) Continuous Evaluation system, which conducts ongoing automated checks of security-relevant databases to ensure that individuals who have been determined to be eligible for access to classified information or to hold a sensitive position remain eligible, as required by Executive Orders 12968 as amended (Access to Classified Information), and 13467 as amended (Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information). The system of records will contain biographic and personnel security-relevant records pertaining to current Executive Branch employees, detailees, contractors, and other sponsored individuals (enrollees).

In its final rule, the ODNI exempts the above new system of records, Continuous Evaluation System (ODNI/NCSC–003), from certain provisions of the Privacy Act to prevent the compromise of classified information and to ensure the integrity of any law enforcement, counterintelligence, or administrative investigation that may be undertaken with respect to the subject of the record.

In addition, this ODNI final rule restores and updates the list of ODNI exempt systems of records at 32 CFR 1701.22, as redesignated. The original list had been deleted by final action published at 80 FR 63427 (October 20, 2015). The restored list reflects the updated break-down of exempt systems of records by ODNI component.

### Regulatory Flexibility Act

This final rule affects the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking does not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, no regulatory flexibility analysis is required for this rule.

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within ODNI jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's web page at *http://www.sga.gov/advo/law/law_lib.html.*

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this final rule and therefore no analysis of burden is required.

### Executive Order 12866, Regulatory Planning and Review

This final rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. This rule does not have an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; does not create inconsistency with, or interfere with, other agency action; does not materially alter the budgetary impact of entitlements, grants, fees, or loans or the rights and obligations of recipients thereof; and does not raise legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This final rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

### Executive Order 13132, Federalism

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this final rule. ODNI concludes that the final rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law, and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

### Environmental Impact

ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action does not have a significant effect on the human environment.

### Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

### List of Subjects in 32 CFR Part 1701

Privacy Act, Records.

For the reasons set forth above, ODNI amends 32 CFR part 1701 as follows:

## PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for part 1701 continues to read as follows:

**Authority:** 50 U.S.C. 3002–3231; 5 U.S.C. 552a.

## Subpart B—Exemption of Record Systems Under the Privacy Act

#### §§ 1701.21, 1701.22, and 1701.23 [Removed]

■ 2. Remove §§ 1701.21 through 1701.23.

#### § 1701.24 [Redesignated as § 1701.21]

■ 3. Redesignate § 1701.24 as § 1701.21 and revise newly redesignated § 1701.21 to read as follows:

#### § 1701.21 Exemption of the Office of the Director of National Intelligence (ODNI) systems of records.

(a) ODNI exempts the systems of records listed in § 1701.22 from the requirements of paragraphs (c)(3); (d)(1), (2), (3) and (4); (e)(1) and (e)(4)(G), (H), and (I); and (f) of the Privacy Act (5 U.S.C. 552a) to the extent that information in the system is subject to exemption pursuant to paragraph (k)(1), (k)(2), or (k)(5) of the Act as noted in § 1701.22. ODNI also derivatively preserves the exempt status of records it receives from source agencies when the reason for the exemption remains valid, as set forth in § 1701.20.

(b) Systems of records utilized by the Office of the Intelligence Community Inspector General (ICIG) are additionally exempted from the requirements of paragraphs (c)(4); (e)(2); (e)(3); (e)(5); (e)(8); (e)(12); and (g) of the Privacy Act (5 U.S.C. 552a) to the extent that information in the system is subject to exemption pursuant to paragraph (j)(2) of the Privacy Act (5 U.S.C. 552a).

(c) Exemption of records in these systems from any or all of the enumerated requirements may be necessary for the following reasons:

(1) From paragraph (c)(3) of the Privacy Act (5 U.S.C. 552a) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of ODNI or the recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From paragraph (c)(4) of the Privacy Act (5 U.S.C. 552a) (notice of amendment to record recipients) because the system is exempted from the access and amendment provisions of paragraph (d) of the Privacy Act.

(3) From paragraphs (d)(1) through (4) of the Privacy Act (5 U.S.C. 552a) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(4) From paragraph (e)(1) of the Privacy Act (5 U.S.C. 552a) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under paragraph (k)(1) of the Privacy Act (5 U.S.C. 552a), records in this system may be exempted from the relevance requirement pursuant to paragraphs (k)(2) and (5) of the Privacy Act (5 U.S.C. 552a) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(5) From paragraph (e)(2) of the Privacy Act (5 U.S.C. 552a) (collection directly from the individual) because application of this provision would alert the subject of a counterterrorism investigation, study, or analysis to that fact, permitting the subject to frustrate or impede the activity. Counterterrorism investigations necessarily rely on information obtained from third parties rather than information furnished by subjects themselves.

(6) From paragraph (e)(3) of the Privacy Act (5 U.S.C. 552a) (provide Privacy Act Statement to subjects furnishing information) because the system is exempted from requirements in paragraph (e)(2) of the Privacy Act to collect information directly from the subject.

(7) From paragraphs (e)(4)(G) and (H) of the Privacy Act (5 U.S.C. 552a) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from provisions in paragraph (d) of the Privacy Act (5 U.S.C. 552a) regarding access and amendment, and from the requirement in paragraph (f) of the Privacy Act to promulgate agency rules for notification, access, and amendment. Nevertheless, ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(8) From paragraph (e)(4)(I) of the Privacy Act (5 U.S.C. 552a) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(9) From paragraph (e)(5) of the Privacy Act (5 U.S.C. 552a) (maintain timely, accurate, complete and up-to-date records) because many of the records in the system are derived from other domestic and foreign agency record systems over which ODNI exercises no control. In addition, in collecting information for counterterrorism, intelligence, and law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time and the development of additional facts and circumstances, seemingly irrelevant or dated information may acquire significance. The restrictions imposed by paragraph (e)(5) of the Privacy Act (5 U.S.C. 552a) would limit the ability of intelligence analysts to exercise judgment in conducting investigations and impede development of intelligence necessary for effective counterterrorism and law enforcement efforts.

(10) From paragraph (e)(8) of the Privacy Act (5 U.S.C. 552a) (notice of compelled disclosures) because requiring individual notice of legally compelled disclosure poses an impossible administrative burden and could alert subjects of counterterrorism, law enforcement, or intelligence investigations to the previously unknown fact of those investigations.

(11) From paragraph (e)(12) of the Privacy Act (public notice of matching activity) because, to the extent such activities are not otherwise excluded from the matching requirements of the Privacy Act (5 U.S.C. 552a), publishing advance notice in the **Federal Register** would frustrate the ability of intelligence analysts to act quickly in furtherance of analytical efforts.

(12) From paragraph (f) of the Privacy Act (5 U.S.C. 552a) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from provisions in paragraph (d) of the Privacy Act regarding access and amendment of records by record subjects. Nevertheless, ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, ODNI may determine it appropriate to satisfy a record subject's access request.

(13) From paragraph (g) of the Privacy Act (5 U.S.C. 552a) (civil remedies) to the extent that the civil remedies relate

to provisions of 5 U.S.C. 552a from which this rule exempts the system.

■ 4. Add new § 1701.22 to read as follows:

**§ 1701.22 ODNI systems of records subject to exemption.**

(a) ODNI systems of records subject to exemption:

(1) Manuscript, Presentation, and Resume Review Records (ODNI–01), 5 U.S.C. 552a(k)(1).

(2) Executive Secretary Action Management System Records (ODNI–02), 5 U.S.C. 552a(k)(1).

(3) Public Affairs Office Records (ODNI–03), 5 U.S.C. 552a(k)(1).

(4) Office of Legislative Affairs Records (ODNI–04), 5 U.S.C. 552a(k)(1).

(5) ODNI Guest Speaker Records (ODNI–05), 5 U.S.C. 552a(k)(1).

(6) Office of General Counsel Records (ODNI–06), 5 U.S.C. 552a(k)(1), (2), and (5).

(7) Intelligence Community Customer Registry (ODNI–09), 5 U.S.C. 552a(k)(1).

(8) Office of Intelligence Community Equal Employment Opportunity and Diversity Records (ODNI–10), 5 U.S.C. 552a(k)(1), (2), and (5).

(9) Office of Protocol Records (ODNI–11), 5 U.S.C. 552a(k)(1).

(10) Intelligence Community Security Clearance and Access Approval Repository (ODNI–12), 5 U.S.C. 552a(k)(1), (2), and (5).

(11) Security Clearance Reform Research and Oversight Records (ODNI–13), 5 U.S.C. 552a(k)(1), (2), and (5).

(12) Civil Liberties and Privacy Office Complaint Records (ODNI–14), 5 U.S.C. 552a(k)(1), (2), and (5).

(13) Mission Outreach and Collaboration Records (ODNI–15), 5 U.S.C. 552a(k)(1).

(14) ODNI Human Resource Records (ODNI–16), 5 U.S.C. 552a(k)(1).

(15) ODNI Personnel Security Records (ODNI–17), 5 U.S.C. 552a(k)(1), (2), and (5).

(16) ODNI Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Request Records (ODNI–18), 5 U.S.C. 552a(k)(1), (2), and (5).

(17) ODNI Information Technology Systems Activity and Access Records (ODNI–19), 5 U.S.C. 552a(k)(1), (2), and (5).

(18) ODNI Security Clearance Reciprocity Hotline Records (ODNI–20), 5 U.S.C. 552a(k)(1) and (5).

(19) ODNI Information Technology Network Support, Administration and Analysis Records (ODNI–21), 5 U.S.C. 552a(k)(1).

(20) Insider Threat Program Records (ODNI–22), 5 U.S.C. 552a(k)(1), (2), and (5).

(b) ODNI/National Counterintelligence and Security Center (NCSC) systems of records:

(1) Damage Assessment Records (ODNI/NCIX–001), 5 U.S.C. 552a(k)(1) and (2).

(2) Counterintelligence Trends Analyses Records (ODNI/NCSC–002), 5 U.S.C. 552a(k)(1) and (2).

(3) Continuous Evaluation Records (ODNI/NCSC–003), 5 U.S.C. 552a(k)(1), (2), and (5).

(c) ODNI/National Counterterrorism Center (NCTC) systems of records:

(1) NCTC Access Authorization Records (ODNI/NCTC–002), 5 U.S.C. 552a(k)(1).

(2) NCTC Telephone Directory (ODNI/NCTC–003), 5 U.S.C. 552a(k)(1).

(3) NCTC Knowledge Repository (ODNI/NCTC–004), 5 U.S.C. 552a(k)(1) and (2).

(4) NCTC Current (ODNI/NCTC–005), 5 U.S.C. 552a(k)(1) and (2).

(5) NCTC Partnership Management Records (ODNI/NCTC–006), 5 U.S.C. 552a(k)(1).

(6) NCTC Tacit Knowledge Management Records (ODNI/NCTC–007), 5 U.S.C. 552a(k)(1).

(7) NCTC Terrorism Analysis Records (ODNI/NCTC–008), 5 U.S.C. 552a(k)(1) and (2).

(8) Terrorist Identities Records (ODNI/NCTC–009), 5 U.S.C. 552a(k)(1) and (2).

(d) ODNI/Office of the Intelligence Community Inspector General (ICIG) systems of records:

(1) OIG Human Resources Records (ODNI/OIG–001), 5 U.S.C. 552a(k)(1) and (5).

(2) OIG Experts Contact Records (ODNI/OIG–002), 5 U.S.C. 552a(k)(1) and (5).

(3) OIG Investigation and Interview Records (ODNI/OIG–003), 5 U.S.C. 552a(j)(2); (k)(1), (2), and (5).

Dated: June 12, 2019.

**Deirdre M. Walsh,**

*Chief Operating Officer, Office of the Director of National Intelligence.*

[FR Doc. 2019–12987 Filed 6–28–19; 8:45 am]

BILLING CODE 3910–A79–P–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2019–0526]**

**RIN 1625–AA00**

## Safety Zone; Corpus Christi Bay, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of Corpus Christi Bay, Corpus Christi, TX. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with firework displays. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective from 9 p.m. until 10 p.m. on July 4, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0526 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Margaret Brown, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Margaret.A.Brown@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by July 4, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the safety of life on these navigable waters.

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

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the fireworks display occurring on July 4, 2019 will be a safety concern for anyone within a 1,000-foot radius of the fireworks display. This rule is necessary to protect personnel, vessels, and the marine environment before, during, and after the scheduled firework displays.

**IV. Discussion of the Rule**

This rule establishes a safety zone from 9 p.m. until 10 p.m. on July 4, 2019. The safety zone will cover all navigable waters within 1,000 feet of the fireworks barge located in the approximate position 027°48′05.51″ N, 097°23′13.89″ W in Corpus Christi, TX. The duration of the zone is intended to protect personnel, vessels, and the marine environment before, during, and after the scheduled firework displays. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

Entry into the safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and dates for the safety zones.

**V. Regulatory Analyses**

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

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, duration, and location of the safety zone. This rule will impact a small designated area of the Corpus Christi Bay for 1 hour during a time that vessel traffic is normally low. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the zones.

*B. Impact on Small Entities*

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary fixed safety zone around display barge located in Corpus Christi Bay at position 27°48′05.51″ N, 097°23′13.89″ W. It is categorically excluded from further review under paragraph L60(A), in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T08–0526 to read as follows:

**§ 165.T08–0526 Safety Zone; Corpus Christi Bay, Corpus Christi, TX.**

(a) *Location.* The following area is a temporary safety zone: All navigable waters of Corpus Christi Bay encompassing a 1000-foot radius around a fireworks display barge in the approximate position of 027°48′05.51″ N, 097°23′13.89″ W, in Corpus Christi, TX.

(b) *Effective period.* This section is effective from 9 p.m. until 10 p.m. on July 4, 2019.

(c) *Regulations.* (1) The general regulations in § 165.33 apply. Entry into these zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and date for these safety zones.

Dated: June 20, 2019.

**E.J. Gaynor,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.*

[FR Doc. 2019–14014 Filed 6–28–19; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2019–0546]**

## Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone for Events Beginning in July 2019

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce established safety zones for maritime events starting in July, 2019 to provide for the safety of life on navigable waterways. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for these safety zones. During the enforcement periods, vessels must stay out of the established safety zone and may only enter with permission from the designated representative of the Captain of the Port Sault Sainte Marie.

**DATES:** The regulations in 33 CFR 165.918 will be enforced for the safety zones identified in Table 1 of the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this publication, call or email LT Sean Murphy, Waterways Management, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906–635–3223, email *Sean.V.Murphy@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1.

TABLE 1

[Datum NAD 1983]

| Event | Location | Event Date |
| --- | --- | --- |
| (1) Festivals of Fireworks Celebration Fireworks; St. Ignace, MI. | All U.S. navigable waters of East Moran Bay within an approximate 350-foot radius from the fireworks launch site at the end of the Starline Mill Slip, centered in position: 45°52′24.62″ N, 084°43′18.13″ W. | July 4 and Saturday nights June 29 to August 31, 2019; 30 minutes before sunset and 30 minutes after the end of the fireworks display. |
| (2) Canada Day Celebration Fireworks; Sault Sainte Marie, MI. | All U.S. navigable waters of the St. Marys River within an approximate 600-foot radius from the fireworks launch site, centered approximately 160 yards north of the U.S. Army Corps of Engineers Soo Locks North East Pier, at position 46°30′20.40″ N, 084°20′17.64″ W. | July 1, 2019 from 10 p.m. to 11 p.m. |

TABLE 1—Continued

[Datum NAD 1983]

| Event | Location | Event Date |
|---|---|---|
| (3) Bay Harbor Yacht Club Fourth of July Celebration Fireworks; Petoskey, MI. | All U.S. navigable waters of Lake Michigan and Bay Harbor Lake within the arc of a circle with an approximate 840-foot radius from the fireworks launch site located on a barge in position 45°21′50″ N, 085°01′37″ W. | July 3, 2019 from 10 p.m. to 11:30 p.m. |
| (4) Marquette Fourth of July Celebration Fireworks; Marquette, MI. | All U.S. navigable waters of Marquette Harbor within an approximate 840-foot radius of the fireworks launch site, centered in position 46°32′23.0″ N, 087°23′13.1″ W. | July 4, 2019 from 9 p.m. to 11 p.m. Rain date July 5, 2019 from 9 p.m. to 11 p.m. |
| (5) Munising Fourth of July Celebration Fireworks; Munising, MI. | All U.S. navigable waters of South Bay within an approximate 800-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24′50.08″ N, 086°39′08.52″ W. | July 4, 2019 from 10:30 p.m. to 11:30 p.m. Rain date July 5, 2019 from 10:30 p.m. to 11:30 p.m. |
| (6) Sault Sainte Marie Fourth of July Celebration Fireworks; Sault Sainte Marie, MI. | All U.S. navigable waters of the St. Marys River within an approximate 700-foot radius around the eastern portion of the U.S. Army Corps of Engineers Soo Locks North East Pier, centered in position: 46°30′19.66″ N, 084°20′31.61″ W. | July 4, 2019 from 9 p.m. to 11 p.m. Rain date July 5, 2019 from 9 p.m. to 11 p.m. |
| (7) Mackinac Island Fourth of July Celebration Fireworks; Mackinac Island, MI. | All U.S. navigable waters of Lake Huron within an approximate 420-foot radius of the fireworks launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50′34.92″ N, 084°37′38.16″ W. | July 4, 2019 from 9 p.m. to 11:30 p.m. Rain date July 5, 2019 from 9 p.m. to 11:30 p.m. |
| (8) Harbor Springs Fourth of July Celebration Fireworks; Harbor Springs, MI. | All U.S. navigable waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with an approximate 700-foot radius from the fireworks launch site located on a barge in position 45°25′30″ N, 084°59′06″ W. | July 4, 2019 from 10 p.m. to 11 p.m. Rain date July 5, 2019 from 10 p.m. to 11 p.m. |
| (9) Petoskey Fourth of July Celebration Fireworks; Petoskey, MI. | All U.S. navigable waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with an approximate 720-foot radius from the fireworks launch site located in position 45°22′40″ N, 084°57′30″ W. | July 4, 2019 from 9:30 p.m. to 11:30 p.m. Rain date July 5, 2019 from 9:30 p.m. to 11:30 p.m. |
| (10) Boyne City Fourth of July Celebration Fireworks; Boyne City, MI. | All U.S. navigable waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with an approximate 1400-foot radius from the fireworks launch site located in position 45°13′30″ N, 085°01′40″ W. | July 4, 2019 from 10 p.m. to 11:30 p.m. Rain date July 5, 2019 from 10 p.m. to 11:30 p.m. |
| (11) Alpena Fourth of July Celebration Fireworks; Alpena, MI. | All U.S. navigable waters of Lake Huron within an approximate 1000-foot radius of the fireworks launch site located near the end of Mason Street, South of State Avenue, at position 45°02′42″ N, 083°26′48″ W. | July 4, 2019 from 9 p.m. to 11:30 p.m. Rain date July 5, 2019 from 9 p.m. to 11:30 p.m. |
| (12) Traverse City Fourth of July Celebration Fireworks; Traverse City, MI. | All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 840-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W. | July 4, 2019 from 9 p.m. to 11 p.m. Rain date July 5, 2019 from 9 p.m. to 11 p.m. |
| (13) National Cherry Festival Finale Fireworks; Traverse City, MI. | All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 840-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W. | July 6, 2019 from 9:30 p.m. to 11 p.m. |

This action is being taken to provide for the safety of life on navigable waterways during the fireworks displays. The regulations for safety zones within the Captain of the Port Sault Sainte Marie Zone, § 165.918, apply for these fireworks displays.

This notice of enforcement is issued under authority of 33 CFR 165.918 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Sault Sainte Marie determines that the safety zone need not be enforced for the full duration stated in this notice of enforcement he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 26, 2019.

**P.S. Nelson,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.*

[FR Doc. 2019–13998 Filed 6–28–19; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2019–0465]**

**RIN 1625–AA00**

## Safety Zone; Canalside 4th of July, Lake Erie, Buffalo, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 560-foot radius of the launch site located near the Buffalo Outer Harbor, Buffalo, NY. This safety zone is intended to restrict vessels from portions of the Buffalo

Outer Harbor and Lake Erie during the Canalside 4th of July fireworks display. The safety zone is necessary to protect mariners and vessels from potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

**DATES:** This rule is effective from 10 p.m. on July 4, 2019 through 10:30 p.m. on July 5, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0465 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Sean Dolan, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with a fireworks display.

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

## III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones under 46 U.S.C. 70034 (previously 33 U.S.C. 1231), 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Captain of the Port Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone prior to, during, and immediately after the fireworks display.

## IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. through 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, the safety zone will be enforced at the same times on July 5, 2019. The safety zone will cover all navigable waters of Lake Erie at the Buffalo Outer Harbor, Buffalo, NY contained within a 560-foot radius of: 42°52′07.93″ N, 078°53′01.86″ W.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks event takes place. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP.

### *B. Impact on Small Entities*

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone lasting only a half hour that will prohibit entry within the established safety zone for the fireworks display. It is categorically excluded from further review under paragraph L[60](a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T09–0465 to read as follows:

**§ 165.T09–0465 Safety Zone; Canalside 4th of July, Lake Erie, Buffalo, NY.**

(a) *Location.* The safety zone will encompass all waters of Lake Erie at the Buffalo Outer Harbor; Buffalo, NY contained within a 560-foot radius of: 42°52′07.93″ N, 078°53′01.86″ W.

(b) *Enforcement period.* The regulation in this section will be enforced from 10 p.m. through 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, the safety zone will be enforced at the same times on July 5, 2019.

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his or her on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his or her on-scene representative may be contacted via VHF Channel 16 or alternatively they may contact the Captain of the Port Buffalo via landline at 716–843–9525. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his or her on-scene representative.

Dated: June 25, 2019.

**Joseph S. Dufresne,**

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

[FR Doc. 2019–13949 Filed 6–28–19; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2019–0513]**

**RIN 1625–AA00**

## Safety Zone; Upper Mississippi River, Miles 483 to 484, Rock Island, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Upper Mississippi River between Mile Marker (MM) 483 and MM 484. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless

specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective from 9 p.m. to 10:30 p.m. on July 3, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0513 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Sector Upper Mississippi River Waterways Management Division, 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 Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Recent flooding in the area prompted the need for a sudden change in the launch site for the annual fireworks display from the location published in 33 CFR 165.801 Table 2, Line 19, Davenport One Chamber, Red White and Boom to a location approximately one-half mile up-river and immediate action is needed to respond to the potential safety hazards associated with the fireworks display. It is impracticable to publish an NPRM because we must establish this safety zone by July 3, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the change in the fireworks display location.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with a fireworks display on July 3, 2019 will be a safety concern for anyone on the Upper Mississippi River between Mile Marker (MM) 483 and MM 484. This rule resulted from a sudden change in the launch site for the fireworks display from the location published in 33 CFR 165.801 Table 2, line 19, Davenport One Chamber, Red White and Boom. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the fireworks display.

## IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. until 10:30 p.m. on July 3, 2019. The safety zone will cover all navigable waters of the Upper Mississippi River between MM 483 and 484. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after an annual fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNMs), and/or actual notice.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the duration and location of the temporary safety zone. This action involves an annually recurring fireworks display that is only changing location to a site approximately one-half mile up-river due to recent flooding in the area and only impacts a one-mile stretch of the Upper Mississippi River for a short amount of time. All other details of this event remain as published in 33 CFR 165.801 Table 2, line 19, Davenport One Chamber, Red White and Boom.

### *B. Impact on Small Entities*

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

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one and one-half hours that will prohibit entry on the Upper Mississippi River between MM 483 and MM 484. It is categorically excluded from further review under paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

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

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

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

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

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

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

■ 2. Add § 165.T08–0513 to read as follows:

**§ 165.T08–0513 Safety Zone; Upper Mississippi River, Miles 483 to 483, Rock Island, IL.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Upper Mississippi River between Mile Marker (MM) 483 and MM 484.

(b) *Period of enforcement.* This section will be enforced from 9 p.m. through 10:30 p.m. on July 3, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted by telephone at 314–269–2332.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNMs), and/or actual notice.

Dated: June 25, 2019.

**R.M. Scott,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2019–13947 Filed 6–28–19; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2018–0176; FRL–9995–44–Region 6]**

## Air Plan Approval; New Mexico; Albuquerque/Bernalillo County; Minor New Source Review (NSR) Preconstruction Permitting Program Revisions

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County minor New Source Review (NSR) program submitted on January 18, 2018. The EPA is also converting our earlier conditional approval of the

minor NSR Preconstruction Permitting Program to full approval. We are taking this action in accordance with the Clean Air Act (CAA, the Act) requirements.

**DATES:** This rule is effective on July 31, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0176. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kyndall Cox, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–8567, *cox.kyndall@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Kyndall Cox or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

## I. Background

The background for this action is discussed in detail in our April 24, 2019 proposed approval (84 FR 17129). In that document we proposed to approve the revisions to the City of Albuquerque-Bernalillo County minor NSR preconstruction permitting program submitted on January 18, 2018 and to convert the conditional approval of the minor NSR permitting program to a full approval. The proposal addressed the County's submittal regarding accelerated permitting procedures, technical permit revisions, and conflict of interest and we found the submitted revisions to be consistent with the required elements of minor NSR programs at 40 CFR 51.160–51.164. We did not receive any comments regarding our proposal.

## II. Final Action

We are approving revisions to the City of Albuquerque-Bernalillo County minor NSR permitting program submitted on January 18, 2018. The revisions were adopted and submitted in accordance with the requirements of the CAA and federal regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque-Bernalillo County minor NSR program are consistent with federal regulations at 40 CFR 51.160–51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted November 8, 2017, and submitted to the EPA on January 18, 2018:

- 20.11.41.13 NMAC, Application for Permit;
- 20.11.41.14 NMAC, Public Notice by Department—Public Participation;
- 20.11.41.15 NMAC, Public Information Hearing (PIH);
- 20.11.41.28 NMAC, Administrative and Technical Permit Revisions; and
- 20.11.41.32 NMAC, Accelerated Review of Application.

We are also approving the following definitions since they are consistent with federal requirements for minor NSR permitting. Specifically, the EPA is approving the definition of ''conflict of interest'' at 20.11.41.7.J NMAC, the definition of ''technical permit revision or technical revision'' at 20.11.41.7.RR NMAC; as well as, the references to ''technical permit revisions'' in the definition of ''permit'' at 20.11.41.7.EE NMAC. Because of our final approval of the January 18, 2018, submitted revisions, we are converting our prior conditional approval of the City of Albuquerque-Bernalillo County minor NSR permitting program to a full approval. This action is being taken under section 110 of the Act.

## III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

## IV. Statutory and Executive Order Reviews

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

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

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

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: June 24, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

## PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart GG—New Mexico

■ 2. In § 52.1620, in paragraph (c), the second table, titled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations,'' is amended by revising the entry for Part 41 (20.11.41 NMAC) ''Authority to Construct'' to read as follows:

**§ 52.1620 Identification of plan.**

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

| State citation | Title/subject | State approval/effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Part 41 (20.11.41 NMAC) | Authority to Construct | 11/08/2017 | 7/1/2019, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2019–13765 Filed 6–28–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2018–0789; FRL–9995–71–Region 1]**

### Air Plan Approval; Massachusetts; Boston Metropolitan Area, Lowell, Springfield, Waltham, and Worcester Second 10-Year Carbon Monoxide Limited Maintenance Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision includes the second 10-year limited maintenance plan (LMP) for Carbon Monoxide (CO) for the Boston Metropolitan Area, as well as for the cities of Lowell, Springfield, Waltham, and Worcester. This LMP addresses maintenance of the CO National Ambient Air Quality Standard (NAAQS) for a second 10-year period beyond the original re-designation to attainment. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on July 31, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0789. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ariel Garcia, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square, Suite 100 (mail code: 05–2), Boston, MA 02109–3912, telephone number (617) 918–1660, email *garcia.ariel@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

**Table of Contents**



## I. Background and Purpose

On May 16, 2019 (84 FR 22087), EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts. The NPRM proposed approval of a SIP revision consisting of the second 10-year limited maintenance plan (LMP) for Carbon Monoxide (CO) for the Boston Metropolitan Area, as well as for the cities of Lowell, Springfield, Waltham, and Worcester. The formal SIP revision was submitted by Massachusetts on February 9, 2018.

Other specific requirements for a second maintenance plan covering a second 10-year maintenance period, the utilization of the LMP option, and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

## II. Final Action

EPA is approving Massachusetts' second 10-year LMP for CO, for the Boston Metropolitan area, Lowell, Springfield, Waltham, and Worcester, as a revision to the Massachusetts SIP. EPA is also approving Massachusetts' alternative CO monitoring strategy for the Springfield area. EPA's approval of this LMP satisfies the CAA section 175A requirements for the second 10-year period in the aforementioned CO maintenance areas.

## III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit byAugust 30, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: June 21, 2019.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart W—Massachusetts

■ 2. In § 52.1120, in paragraph (e), amend the table by adding an entry entitled ''Carbon Monoxide 2nd 10-Year Limited Maintenance Plan'' at the end of the table to read as follows:

**§ 52.1120 Identification of plan.**

* * * * *

(e) * * *

MASSACHUSETTS NON REGULATORY

| Name of non regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date [3] | Explanations |
| --- | --- | --- | --- | --- |
| * * | * | * | * * | * |
| Carbon Monoxide 2nd 10-Year Limited Maintenance Plan. | Boston Metropolitan Area, Lowell, Springfield, Waltham, and Worcester. | 2/9/2018 | 7/1/2019 [Insert **Federal Register** citation]. | |

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019–13936 Filed 6–28–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2018–0630; FRL–9994–36]**

## Fluopyram; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluopyram in or on cranberry; lentil, dry seed; and pea, dry seed. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 1, 2019. Objections and requests for hearings must be received on or before August 30, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0630, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0630 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 30, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0630, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 21, 2018 (83 FR 65660) (FRL–9985–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8638) by Bayer CropScience, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.661 be amended by establishing tolerances for residues of the fungicide fluopyram, N-[2-[3-chloro, -5-(trifluoromethyl)-2-

pyridinyl] ethyl]-2-(trifluoromethyl) benzamide in or on cranberry at 2.0 parts per million (ppm); dry peas at 0.70 ppm; and lentils at 0.70 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing, in accordance with section 408(d)(4)(a)(i), tolerances that vary in some respects from what the petitioner requested. These variations and the Agency's underlying rationale for those variations are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

### *A. Toxicological Profile*

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

Decreased body weight and liver effects were the common and frequent findings in the fluopyram subchronic and chronic oral toxicity studies in rats, mice, and dogs, and they appeared to be the most sensitive effects. Liver effects were characterized by increased liver weight, hepatocellular hypertrophy, hepatocellular vacuolation, increased mitosis and hepatocellular necrosis. Thyroid effects were found at dose levels similar to those that produced liver effects in rats and mice; these effects consisted of follicular cell hypertrophy, increased thyroid weight, and hyperplasia at dose levels greater than or equal to 100 milligrams/kilogram/day (mg/kg/day). Changes in thyroid hormone levels were also seen in a subchronic toxicity study. In male mice, there was an increased incidence of thyroid adenomas.

Although increased liver tumors were observed in female rats in the carcinogenicity study, EPA has concluded that fluopyram is ''Not Likely to be Carcinogenic to Humans'' at doses that do not induce cellular proliferation in the liver or thyroid glands. This classification was based on convincing evidence that non-genotoxic modes of action for liver tumors in rats and thyroid tumors in mice have been established and that the carcinogenic effects have been demonstrated as a result of a mode of action dependent on activation of the CAR/PXR receptors. The Agency is using a point of departure for regulating fluopyram (NOAEL of 1.2 mg/kg/day) that is below the doses that cause cell proliferation in the liver (11 mg/kg/day) and subsequent liver tumor formation (89 mg/kg/day); therefore, the Agency concludes that exposure to fluopyram will not be carcinogenic.

Moreover, fluopyram is not genotoxic or mutagenic. Fluopyram is not a developmental toxicant, nor did it adversely affect reproductive parameters. No evidence of qualitative or quantitative susceptibility was observed in developmental studies in rats and rabbits or in a multigeneration study in rats. In an acute neurotoxicity study, transient decreased motor activity was seen only on the day of treatment, but no other findings demonstrating neurotoxicity were observed. In addition, no neurotoxicity was observed in the subchronic neurotoxicity study in the presence of other systemic adverse effects. Fluopyram did not produce treatment-related effects on the immune system.

Fluopyram has low acute toxicity via the oral, dermal, and inhalation routes of exposure. Fluopyram is not a skin or eye irritant or sensitizer under the conditions of the murine lymph node assay.

Specific information on the studies received and the nature of the adverse effects caused by fluopyram as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Fluopyram. Human Health Risk Assessment in Support of Tolerances without U.S. Registration on Lentils, Dry Peas, and Cranberries at pages 4–6 and page 12 in docket ID number EPA–HQ–OPP–2018–0630.

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

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

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

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

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (General population, including all sub-populations). | NOAEL = 50 mg/kg/day. $UF_A$ = 10x $UF_H$ = 10x FQPA SF = 1x | Acute RfD = 0.50 mg/kg/day. aPAD = 0.50 mg/kg/day | Acute Neurotoxicity—Rat. LOAEL = 100 mg/kg/day based on decreased motor and locomotor activity in females. The LOAEL in males was 125 mg/kg/day. |
| Chronic dietary (All populations) | NOAEL = 1.2 mg/kg/day. $UF_A$ = 10x $UF_H$ = 10x FQPA SF = 1x | Chronic RfD = 0.012 mg/kg/day. cPAD = 0.012 mg/kg/day | Combined Chronic Toxicity/Carcinogenicity—Rat. LOAEL = 6.0 mg/kg/day based on follicular cell hypertrophy in the thyroid, and increased liver weight with gross pathological and histopathological findings. |
| Incidental oral short-term (1–30 days) & Intermediate-term (1–6 months). | NOAEL = 14.5 mg/kg/day. $UF_A$ = 10x $UF_H$= 10x FQPA SF = 1x | Residential LOC for MOE = 100. | 2-generation reproduction study—Rats. LOAEL = 82.8 mg/kg/day based on clinical chemistry changes and increased kidney weight in parents, and decreased body weight and body weight gain with decreases in spleen and thymus weights in offspring. |
| Dermal short-term (1–30 days) & Intermediate-term (1–6 months). | NOAEL = 300 mg/kg/day. $UF_A$= 10x $UF_H$= 10x FQPA SF = 1x | Residential LOC for MOE = 100. | 28-day dermal study—Rat. LOAEL = 1000 mg/kg/day based on increased cholesterol (females), and increased prothrombin time (males). |
| Inhalation short-term (1–30 days) & Intermediate-term (1–6 months). | NOAEL = 14.5 mg/kg/day. $UF_A$ = 10x $UF_H$ = 10x FQPA SF = 1x | Residential LOC for MOE = 100. | 2-generation reproduction study—Rats. LOAEL = 82.8 mg/kg/day based on clinical chemistry changes and increased kidney weight in parents, and decreased body weight and body weight gain with decreases in spleen and thymus weights in offspring. |
| Cancer (Oral, dermal, inhalation). | Fluopyram is classified as "not likely to be carcinogenic to humans". | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopyram, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopyram tolerances in 40 CFR 180.180.661. EPA assessed dietary exposures from fluopyram in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fluopyram. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) Nationwide Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, the acute dietary analysis was obtained from the Dietary Exposure Evaluation Model using the Food Commodity Intake Database (DEEM–FCID; version 3.16). The assessment is based on 100 percent crop treated (PCT) and tolerance-level residues for all commodities. Default and empirical processing factors were used in the assessment. Additionally, certain correction factors for metabolites were also incorporated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA Nationwide Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, the chronic dietary analysis was obtained from the Dietary Exposure Evaluation Model using the Food Commodity Intake Database (DEEM–FCID; version 3.16). In the assessment, average field trial residues and average PCT were used. Empirical processing factors were included for processed commodities where available. Otherwise, DEEM 2018 default processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluopyram does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

• *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic reevaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the average PCT for existing uses as follows: Almonds, 20%; apples, 25%; apricots, 5%; artichoke, 15%; broccoli, 2.5%; cabbage, 2.5%; carrots, 1%; cauliflower, 1%; cherries, 25%; cotton, 1%; dry beans and peas, 1%; grapefruit, 10%; grapes, raisins, 1%; table grapes, 5%; wine grapes; 20%; lemons, 1%; lettuce, 1%; onions, 1%; oranges, 15%; peaches, 1%; peanuts, 2.5%; pears, 5%; peppers, 5%; pistachios, 15%; potatoes, 20%; strawberries, 10%; tomatoes, 1%; walnuts, 10%; and watermelons, 15%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figures for each existing use are derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluopyram in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluopyram. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of fluopyram for acute exposures are estimated to be 50.6 parts per billion (ppb) for surface water and 97.6 ppb for ground water. For chronic exposures for non-cancer assessments, the EDWCs of fluopyram are estimated to be 17.3 ppb for surface water and 90.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 97.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 90.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluopyram is currently registered for use on golf course turf, residential lawns, fruit trees, nut trees, ornamentals and gardens that could result in residential exposures. EPA assessed residential exposure using the following assumptions. For residential handler exposure, EPA assessed short-term dermal and inhalation handler exposure (derived from treating lawns by hose-end sprayers in adults). For residential post-application exposures, EPA assessed dermal exposure scenarios (for adults and children (1 to <2 years old) dermal exposure to treated turf during high contact lawn activities; for adults and youths (11 to <16 yr old) dermal exposure to treated turf during mowing and golfing activities; for children (6 to <11 years old) dermal exposure to treated turf during golfing activities; and for adults and children (6 to <11 years old) dermal exposure to treated gardens) and oral exposure (for children (1 to <2 years old) incidental oral exposure as a result of contacting treated turf). The Agency used the most conservative residential risk estimates (from the adult inhalation handler exposures from treating lawns with hose-end sprayer and from the child (1 to <2 years old) incidental oral hand-to-mouth post-application exposures to treated lawns) in the fluopyram aggregate assessment. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

EPA has not found fluopyram to share a common mechanism of toxicity with any other substances, and fluopyram does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluopyram does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

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

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

additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility in the developing or young animals which were exposed during pre- or post-natal periods.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for fluopyram is complete.

ii. There is no indication that fluopyram is a neurotoxic chemical. Although transient decreases in motor and locomotor activities in the acute neurotoxicity study were seen on the day of treatment and limited use of hind-limbs and reduced motor activity was seen in the rat chronic/carcinogenicity study, there were no other associated neurobehavioral or histopathology changes found in other studies in the fluopyram toxicity database. The effects seen in the chronic/carcinogenicity study were in the presence of increased mortality and morbidity such as general pallor and emaciated appearance. Therefore, the reduced motor activity and limited use of hind-limbs seen in these two studies were judged to be the consequence of the systemic effects and not direct neurotoxicity. Additionally, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluopyram results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary exposure assessment was performed using conservative exposure inputs, including tolerance-level residues for all crops, whereas the chronic dietary assessment included average field-trial residue levels for all crops. The acute dietary assessment assumed 100 PCT, whereas the chronic dietary assessment utilized average PCT numbers for several crops. Both acute and chronic dietary assessments incorporated empirical or default processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluopyram in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluopyram.

*E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluopyram will occupy 30% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopyram from food and water will utilize 84% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluopyram is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluopyram is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluopyram. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1500 for adults and 1400 for children (1 to <2 years old). Because EPA's level of concern for fluopyram is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, fluopyram is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluopyram.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluopyram is not expected to pose a cancer risk to humans.

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (German multiresidue method DFG Method S19 and GC/MSD (gas chromatography with mass-selective detection)) is available to enforce the tolerance expression.

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

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for fluopyram in or on dry pea and lentil (0.7 ppm); the US tolerances being established in this rule for those commodities are harmonized with the Codex MRLs. Codex has not established an MRL for residues of fluopyram on cranberry.

*C. Response to Comments*

Two comments were received in response to the notice of filing. Although it is difficult to decipher the real meaning, one comment appeared to suggest that EPA focus on enforcing proper use of the pesticide by farmers and workers rather than revising tolerance regulations. The Agency directs the commenter to the Federal Insecticide, Fungicide, and Rodenticide Act, which is the existing law that provides for enforcing appropriate use of the pesticide. This tolerance rulemaking is being undertaken under the Federal Food, Drug, and Cosmetic Act, which directs EPA to establish tolerances for residues of pesticides in or on food that it determines are safe. The Agency has assessed the safety of these tolerances and made that determination, as indicated in this rulemaking and supporting documents. The second comment to the notice of filing is not germane to this action.

*D. Revisions to Petitioned-For Tolerances*

The Agency is revising the commodity definition on lentils and dry peas to reflect the common commodity vocabulary currently used by the Agency. The commodity definition was revised from lentils to lentil, dry seed and dry peas to pea, dry seed. Moreover, tolerances are being established without the requested trailing zeros in accordance with the Agency's current rounding class practice.

**V. Conclusion**

Therefore, tolerances are established for residues of fluopyram, in or on cranberry at 2 ppm; lentil, dry seed at 0.7 ppm; and pea, dry seed at 0.7 ppm. There are currently no U.S. registrations for use of fluopyram on these commodities; these tolerances are being established to cover residues in or on these commodities that are imported into the United States.

**VI. Statutory and Executive Order Reviews**

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

**VII. Congressional Review Act**

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

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

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

Dated: June 18, 2019.

**Michael Goodis,**

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

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.661, add alphabetically the entries for ''Cranberry''; ''Lentil, dry seed''; and ''Pea, dry seed'' to read as follows:

**§ 180.661 Fluopyram; tolerances for residues.**

(a) * * *

(1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cranberry [1] | 2 |
| * * * * * | |
| Lentil, dry seed [1] | 0.7 |
| * * * * * | |
| Pea, dry seed [1] | 0.7 |
| * * * * * | |

[1] There are no U.S. registrations.

* * * * *

[FR Doc. 2019–13523 Filed 6–28–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2017–0417; FRL–9994–93]**

## Valifenalate; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of valifenalate in or on bulb vegetable crop group 3–07, celery, cucurbit vegetables crop group 9, fruiting vegetables crop group 8–10, potato, potato-granules/flakes, and tolerances without U.S. registrations in/on grape; and grape, raisin. FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 1, 2019. Objections and requests for hearings must be received on or before August 30, 2019 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0417, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0417 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 30, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0417, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of November 27, 2017 (82 FR 56017) (FRL–9968–5), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8582) by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide valifenalate, methyl N-(isopropoxycarbonyl)-L-valyl-(3RS)-3-(4-chlorophenyl)-β-alainate, in or on bulb vegetable crop group 3–07 at 0.40 parts per million (ppm); celery at 6.0 ppm; cucurbit vegetable crop group 9 at 0.3 ppm; fruiting vegetable crop group 8–10 at 0.60 ppm; potato at 0.04 ppm; potato-chips at 0.05 ppm; potato-dried pulp at 0.06 ppm; potato-granules/flakes at 0.15 ppm; tomato, wet-peel at 1.8 ppm; and a tolerance without U.S. registration in/on grape at 3.0 ppm. After that notice of that petition was published, the petitioner made some revisions to the petition, so EPA issued another document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), in the **Federal Register** of March 6, 2018 (83 FR 9471) (FRL–9973–27), announcing the new petition requests. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide valifenalate, methyl N-(isopropoxycarbonyl)-L-valyl-(3RS)-3-(4-chlorophenyl)-β-alainate, in or on bulb vegetable crop group 3–07 at 0.40 ppm; celery at 5.0 ppm; cucurbit vegetable crop group 9 at 0.30 ppm; fruiting vegetable crop group 8–10 at 0.50 ppm; potato at 0.01 ppm; tomato, wet-peel at 0.9 ppm; and a tolerance without U.S. registration in/on grape at 5.0 ppm.

Summaries of the petition prepared by FMC Corporation, the registrant, are available in the docket, *http://*

*www.regulations.gov.* Comments were received on both notices of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from the petitioner's request in accordance with section 408(d)(4(A)(i). The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

### *A. Toxicological Profile*

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

The liver and the thyroid are the main target organs for valifenalate. Following subchronic exposures to dogs, treatment-related effects in the liver were observed including alterations in liver enzyme parameters and histopathological findings as well as increased liver weights. Following chronic exposures, liver effects included increased liver weight (dog, mouse, rat) and histopathological findings (mouse and/or dog). In mice, at 78 weeks there were treatment-related liver adenomas and carcinomas in males and liver adenomas in females. Based on available data demonstrating a non-genotoxic mode of action for the liver tumors, valifenalate has been classified as ''not likely to be carcinogenic to humans'' at dose levels that do not cause a proliferative response in the liver.

Increases in absolute and relative thyroid weights and follicular cell hypertrophy were observed in the subchronic and chronic dog studies, in the parental animals in the two-generation reproduction study in rats and in the combined chronic toxicity/carcinogenicity study in rats (at 52 weeks). Other effects observed following chronic exposures include decreased prostate and spleen weights in males, decreased ovary weights and lack of corpora lutea in dogs, as well as an increased incidence and severity of pelvic/papillary epithelial hyperplasia in the kidney in rats.

There was no evidence of increased susceptibility to the fetus or offspring in the available developmental and reproduction toxicity studies. There were no developmental or maternal effects seen in either the rat or rabbit studies and no offspring effects were observed in the two-generation reproduction study in rats up to the limit dose of 1,000 milligram/kilogram/day (mg/kg/day). There was also no evidence of neurotoxicity in the database.

Valifenalate is categorized as having low acute lethality via oral, inhalation, and dermal routes of exposure. It is not irritating to the eyes or skin and is not a dermal sensitizer.

Specific information on the studies received and the nature of the adverse effects caused by valifenalate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Valifenalate. Human Health Risk Assessment for the Section 3 Registration Action of the New Active Ingredient on Bulb Vegetables, Cucurbits, Fruiting Vegetables, Celery, and Potatoes and Establishment of a Tolerance Without U.S. Registration on Grapes in docket ID number EPA–HQ–OPP–2017–0417.

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

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for valifenalate used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR VALIFENALATE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (All Populations) | Endpoint not selected as there are no adverse effects attributable to a single dose observed in the database. | | |

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR VALIFENALATE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
| --- | --- | --- | --- |
| Chronic dietary (All populations) | NOAEL = 22 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.22 mg/kg/day.<br>cPAD = 0.22 mg/kg/day | Carcinogenicity—Mouse.<br>LOAEL = 97 mg/kg/day based on an increased absolute and relative liver weights, and hepatocyte hypertrophy as well as an increased incidence of macroscopic liver abnormalities (liver masses, pale areas, accentuated lobular patterns, and increased eosinophilic foci) in both sexes and centrilobular vacuolation in males. |
| Cancer (Oral, dermal, inhalation). | ''*Not Likely to be Carcinogenic to Humans*'' at dose levels that do not cause a proliferative response in the liver. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to valifenalate, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from valifenalate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for valifenalate; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). The chronic analysis assumed 100% crop treated, tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern (ROC) for risk assessment, HED's 2018 default processing factors, and modeled drinking water estimates.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that the chronic assessment will adequately account for all chronic toxicity, including potential carcinogenicity. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for valifenalate. Tolerance level residues or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for valifenalate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of valifenalate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model Ground Water (PRZM GW) and Pesticide Root Zone Model 5—Variable Volume Water Model (PRZM5-VVWM), the estimated drinking water concentrations (EDWCs) of valifenalate for acute exposures are estimated to be 2.6 parts per billion (ppb) for surface water and 0.05 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 2.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Valifenalate is not registered for any specific use patterns that would result in residential.

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

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

*D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative or qualitative susceptibility in the developmental toxicity studies in

rabbits or rats or the reproduction toxicity study in rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for valifenalate is complete.

ii. There is no indication that valifenalate is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that valifenalate results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues and upper bound drinking water residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to valifenalate in drinking water. These assessments will not underestimate the exposure and risks posed by valifenalate.

*E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, valifenalate is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to valifenalate from food and water will utilize 8.6% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for valifenalate.

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

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

5. *Aggregate cancer risk for U.S. population.* EPA concludes that aggregate cancer risk for valifenalate has been accounted for the chronic risk assessment, which does not present a risk of concern. Therefore, EPA concludes that aggregate exposure to valifenalate does not pose a cancer risk.

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromotography with tandem mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression.

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for valifenalate in or on the relevant commodities.

*C. Response to Comments*

The EPA received several comments during the two 30-day comment periods following the publication of the two notices of filing. All the comments were anonymous public comments. Four comments raised issues related to pesticides, while the remainder raised issues unrelated to pesticides, and thus unrelated to this rulemaking. Of the four comments related to pesticides, one expressed concern about farmworker health, which is not an issue relevant to the assessment of the safety of the tolerances under the FFDCA. The three remaining comments expressed general concern about the potential of pesticide residues in food, although none provided any substantive information to take into consideration in EPA's safety assessment. The FFDCA authorizes EPA to establish tolerances that permit certain levels of pesticide residues in or on food when the Agency can determine that such residues are safe. EPA has made that determination for the tolerances subject to this action; commenters provided no information relevant to that conclusion.

*D. Revisions to Petitioned-For Tolerances*

Based on available residue data and using the OECD tolerance calculation procedure, EPA is establishing tolerance values for several commodities that vary slightly from what the petition requested. In addition, EPA has determined based on available data that the tolerance requested for tomato, wet peel is not necessary as residues will be covered by the fruiting vegetables crop group tolerance. Finally, EPA is establishing a separate tolerance for grape, raisin, and for potato, granules/flakes because the application of processing factors indicates that residues are likely to concentrate in these processed commodities of the raw agricultural commodities on which valifenalate will be used.

**V. Conclusion**

Therefore, tolerances are established for residues of valifenalate in or on celery at 5 ppm; grape at 5 ppm; grape, raisin at 6 ppm; potato at 0.04 ppm; potato, granules/flakes at 0.09 ppm; vegetable, bulb, group 3–07 at 0.6 ppm; vegetable, cucurbit, group 9 at 0.3 ppm; vegetable, fruiting, group 8–10 at 1 ppm.

**VI. Statutory and Executive Order Reviews**

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

**VII. Congressional Review Act**

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

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

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

Dated: June 25, 2019.

**Richard Keigwin,**

*Director, Office of Pesticide Programs, US Environmental Protection Agency.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Add § 180.706 to subpart C to read as follows:

**§ 180.706 Valifenalate; tolerances for residues.**

(a)(1) Tolerances are established for residues of the fungicide valifenalate, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring only valifenalate (methyl N-(isopropoxycarbonyl)-L-valyl-(3RS)-3-(4-chlorophenyl)-β-alainate), in or on the following commodities.

| Commodity | Parts per million |
|---|---|
| Celery | 5 |
| Grape [1] | 5 |
| Grape, raisin [1] | 6 |
| Vegetable, bulb, group 3–07 | 0.6 |
| Vegetable, cucurbit, group 9 | 0.3 |
| Vegetable, fruiting, group 8–10 | 1 |

[1] As of July 1, 2019, valifenalate is not registered in the United States for use on this commodity.

(2) Tolerances are established for residues of the fungicide valifenalate, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring only the sum of valifenalate, methyl N-(isopropoxycarbonyl)-L-valyl-(3RS)-3-(4-chlorophenyl)-β-alainate and valifenalate acid, 3-(4-chlorophenyl)-3-[[N-(isopropoxycarbonyl)-L-valyl]-amino] propionic acid calculated as the stoichiometric equivalent of valifenalate, in or on the following commodities.

| Commodity | Parts per million |
|---|---|
| Potato | 0.04 |
| Potato, granules/flakes | 0.09 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

* * * * *

[FR Doc. 2019–13990 Filed 6–28–19; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 3830

**[LLWO320000–L1999000.PP0000]**

**RIN 1004–AE64**

## Required Fees for Mining Claims or Sites

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is issuing this final rule to make statutorily required adjustments to its location and maintenance fees for unpatented mining claims, mill sites, and tunnel sites. These adjustments reflect changes in the Consumer Price Index (CPI), which is published by the Bureau of Labor Statistics.

**DATES:** The final rule is effective July 1, 2019.

**ADDRESSES:**

*Mail:* Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW, Washington, DC 20240, Attention: ''RIN 1004–AE64''.

*Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M St. SE, Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

**FOR FURTHER INFORMATION CONTACT:** Elaine Guenaga at (775) 861–6539 in the Solid Minerals Group as to program matters or the substance of the final rule, or Chandra Little in the Division of Regulatory Affairs at (202) 912–7403 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

**SUPPLEMENTARY INFORMATION:**



### I. Background

The Mining Law of 1872 allows individuals and corporations to stake (or ''locate'') a claim on the deposits discovered. Historically, annual assessment work and related filings have been required by statute in order to maintain an unpatented mining claim or site. 30 U.S.C. 28–28e; 43 U.S.C. 1744(a) and (c).

Beginning in fiscal year 1993, mining claimants have been required to pay an annual fee in lieu of performing annual assessment work and making annual filings. Mining claimants locating new claims or sites must pay an initial ''maintenance'' fee for the assessment year in which the mining claim was located, and also pay a one-time location fee. *See* 30 U.S.C. 28f–28l.

This rule implements 30 U.S.C. 28j(c), which requires adjustments to the location and maintenance fees ''to reflect changes in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.'' Section 28j(c) also requires that mining claimants be provided ''notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made,'' and that any fee adjustment ''shall begin to apply the first assessment year which begins after adjustment is made.''

As enacted in 1993, the one-time location fee was $25, and the annual maintenance fee was $100 per mining claim or site. In 2004, the BLM increased the amount of the location and maintenance fees to $30 and $125 respectively, based on the change in the CPI from September 1, 1993 to December 31, 2003. (69 FR 40294–40296 (July 1, 2004)). In 2009, the BLM increased the amount of the location and maintenance fees to $34 and $140, respectively, based on the change in the CPI from December 31, 2003, to December 31, 2008. (74 FR 30959). On July 27, 2012, the BLM issued a rule (77 FR 44155 (July 27, 2012)), that also amended 43 CFR 3830.21, based on a law that changed the way the maintenance fee is calculated for unpatented placer mining claims. Then in 2014, the BLM increased the amount of the location fee to $37, and increased the maintenance fee to $155 for lode mining claims or sites, and $155 for each 20 acres or portion thereof for placer mining claims, based on the change in the CPI from December 31, 2008, to December 31, 2013. (79 FR 36662).

The adjustments made in this rule are based upon the change in the CPI from December 31, 2013, to December 31, 2018, as reported by the Bureau of Labor Statistics (BLS) in the ''CPI Databases'' (*https://www.bls.gov/cpi/data.htm*). The particular series used for this update is the ''All Urban Consumers (Current Series) (Consumer Price Index—CPI–U).'' This is a change from the last adjustment to these fees, made in 2014. The BLM decided to use the CPI–U series as the basis for this update (instead of the Chain CPI for All Urban Consumers (C–CPI–U)), because the release of the CPI–U data is final and timely and because it is the more common series used by Federal agencies for this type of exercise. By contrast, using the C–CPI–U series would necessitate the use of preliminary data. See the Economic and Threshold Analysis for this rule for further explanation of this change.

The calculated change is 7.80 percent from December 31, 2013, through December 31, 2018. A calculated value for the fees was obtained by inflating the location and maintenance fees established in the 2014 rulemaking by 7.80 percent. The new location fee is $40, and the new maintenance fee is $165 per lode mining claim or site and $165 for each 20 acres or portion thereof for placer mining claims. The new location fee is based on rounding the calculated value to the nearest $1. The maintenance fee is based on rounding the calculated value to the nearest $5.

Mining claimants must pay the new location fee and maintenance fee for any mining claim or site located on or after September 1, 2019. Mining claimants must pay the new maintenance fee to maintain existing mining claims and sites beginning with the 2020 maintenance year. The maintenance fee is due on or before September 1, 2019. Under 43 CFR 3834.23(d), mining claimants who have already submitted maintenance fees for the 2020 assessment year, and those who timely pay the 2020 assessment year maintenance fee based on the fee in effect immediately before the adjustment was made, will be given an opportunity to pay the additional amount without penalty upon notice from the BLM. The BLM will also give claimants the opportunity to cure deficient maintenance and location fee payments for new claims or sites located on or after September 1, 2019, and timely received on or before December 31, 2019.

### II. Discussion of the Administrative Final Rule

*Why the Rule Is Being Published on a Final Basis*

The BLM is adopting this final rule solely to adjust the location and maintenance fee amounts in section

3830.21. The BLM for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and an opportunity for public comment for this rule are unnecessary, and that this rule may properly take effect upon publication. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees at least every 5 years, and the last adjustment was made in 2014. The statute specifies the method of calculation of the fee adjustments and prescribes the form and manner of notice of the fee adjustment, and the BLM has no discretion in implementing the statute. The BLM also determines under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because the adjustments made in the rule are explicitly authorized by statute.

*Organization of the Final Rule*

This final rule contains only the specific amendments necessary to conform to the requirements of the statute. The amendments appear as modifications of the fee transaction table at 43 CFR 3830.21 to change the amount of the location and annual maintenance fees required to be paid for each lode mining claim, mill site, or tunnel site and for each 20 acres or portion thereof for a placer mining claim.

**III. Procedural Matters**

*Executive Order 12866, Regulatory Planning and Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. This rule is not significant and OIRA will not formally review it because it does not meet one or more of the Executive Order 12866 criteria for significance as follows:

(a) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule increases the maintenance and location fees as provided for by statute. We estimate that the rule will likely result in a small increase in transfer payments from mining claimants to the Federal government. The fee adjustment does not change the substance of current mining claim administration within the BLM. The total amount of fees to be collected, including the effects of the adjustment, is estimated to be $76 million annually, of which approximately $5.51 million will be attributable to the adjustments made in this rule.

(b) This rule will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The rule affects only the BLM's administration of its minerals program and does not change the relationships of the BLM to other agencies and their actions.

(c) This rule does not change the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(d) This rule does not raise novel legal or policy issues. It merely updates the maintenance and location fees that BLM assesses.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This rule has been developed in a manner consistent with these requirements.

*Regulatory Flexibility Act*

The rule would affect business entities across many industries. The BLM reviewed the potentially affected entities and determined the industries to which they identify. The BLM also evaluated the extent to which the proposed rule would affect entities that are small businesses, as defined by the Small Business Administration (SBA). See the Economic and Threshold Analysis for this rule for a discussion of SBA size standards.

The entities potentially affected by the rule locate mining claims or sites, and may be actively involved in the exploration and development of locatable minerals [1] on Federal lands. These entities are defined by the SBA as an individual, limited partnership, or small company considered being at ''arm's length'' from the control of any parent companies. The BLM does not have the authority to collect information concerning the number of employees, whether for companies locating mining claims or sites, or for companies actively involved in the exploration and development of locatable minerals on Federal lands. However, by reviewing U.S. Census Bureau data on entities involved in the development of locatable type minerals, we can make a reasonable conclusion about the extent to which the rule will affect small business as defined by the SBA.

Based on statistics from the U.S. Census Bureau's 2012 Economic Census, all of the potentially affected industries are overwhelmingly comprised of small businesses, as defined by the SBA. Based on this information, the rule could impact a substantial number of small entities.

In addition to determining if a substantial number of small entities are likely to be impacted by this final rule, the BLM must also determine whether the final rule is anticipated to have a significant economic impact on those small entities. The Regulatory Flexibility Act (RFA) does not define ''significant.'' Significance must be determined on a case-by-case basis. Significance should not be viewed in absolute terms, but should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.

An analysis that looks at the individual financial circumstances, *i.e.,* profit margin, for each firm within an industry would help in answering the significance question. However, such financial information on individual claimants is not available. Even assessing an individual entity's ability to pay is problematic as there is limited information on most claimants. Most entities holding mining claims or sites are either individuals or privately held companies.

At the end of Fiscal Year (FY) 2018, there were approximately 27,800 claimants holding approximately 413,000 mining claims and sites. This works out to be an average of 15 claims or sites per claimant. Assuming that the number of claims and sites, and the number of claimants who do not file a fee waiver, do not significantly change because of the rule, we estimate a total maintenance fee increase of about $5.34 million per year. This represents an average maintenance fee increase of about $192 per claimant. The actual impact on an individual claimant will depend on a number of factors,

[1] Locatable minerals are minerals that may be ''located'' with a mining claim under the Mining Law of 1872, (Act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28)), as amended. Locatable minerals include, but are not limited to, gold, silver, platinum, precious gems, uranium, bentonite, chemical grade limestone, chemical grade silica sand and gypsum.

including the number of claims or sites that are actually held. However, the average number of claims and sites actually held by individuals and companies that would be considered small entities by SBA would likely be significantly less than the 15 claims or sites per claimant figure. This average claims-per-claimant figure is skewed by the large number of claims and sites held by a few large mining companies. For example, the three companies holding the most mining claims or sites at the end of FY 2018 each held over 10,000 claims or sites. All three of those companies were large multi-national corporations.

For the location fee increase, we estimate a total annual fee increase of about $172,000. Assuming 57,000 new filings per year and using the average figure of 15 claims or sites per claimant, we estimate approximately 3,800 claimants will be impacted by the change in the location fee. The average location fee increase will be approximately $45 per claimant. As with the maintenance fee increase, the actual location fee increase per claimant that classifies as a small entity by SBA will likely be significantly less than this $45 figure.

Therefore, the BLM has determined that this rule will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

Will not have an annual effect on the economy of $100 million or more. The revised regulation will not materially alter current BLM policy. The fee adjustments are authorized by statute. The total amount of fees collected, including the effects of the adjustment, is estimated to be $76 million annually, of which $5.51 million is attributable to the adjustments made in this rule.

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is unnecessary.

This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

*Executive Order 12630, Takings*

In accordance with Executive Order 12630, the BLM finds that the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The courts have upheld the fee legislation and the BLM regulations as a proper exercise of Congressional and Executive authorities.

*Executive Order 13132, Federalism*

The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

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

In accordance with Executive Order 13175, the BLM finds that the final rule does not include policies that have Tribal implications. Because this rule does not make significant substantive changes in the regulations and does not specifically involve Indian reservation lands (which are closed to the operation of the Mining Law), the BLM finds that the rule will have no implications for Indians, Indian Tribes, and Tribal governments.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

*Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs*

This rule is not a significant regulatory action as defined in Section 3(f) of Executive Order 12866 and, therefore, is not a regulatory action under Executive Order 13711, per OMB issued guidance for implementing that executive order. As such, the BLM is not required to identify at least two existing regulations to be repealed, ensure that the costs of the rule are less than or equal to $0, or offset the costs of the rule by the elimination of existing costs associated with at least two prior regulations.

The BLM has complied with Executive Order 13711 and the OMB implementation guidance for that order.

*Executive Order 12988, Civil Justice Reform*

In accordance with Executive Order 12988, the BLM finds that the final rule does not unduly burden the judicial system, and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with the Department of the Interior's Office of the Solicitor during the drafting process.

*Paperwork Reduction Act*

The BLM has determined this final rule does not contain any information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*National Environmental Policy Act (NEPA)*

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is part of the routine administration of the fee legislation and is covered by a categorical exclusion. This rule will result in no new surface disturbing activities and therefore will have no effect on ecological or cultural resources. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department, the term ''categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.,* uranium and other fissionable metals), the rule applies only a statutory adjustment of the mining claim location and maintenance fees that the BLM has been collecting for many years. It will not significantly change financial obligations of the mining industry.

*Author*

The principal author of this final rule is Elaine Guenaga in the Solid Minerals Group assisted by the Division of Regulatory Affairs, Washington Office, BLM.

**List of Subjects in 43 CFR Part 3830**

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the BLM amends 43 CFR part 3830 as follows:

## PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

■ 1. The authority citation for part 3830 continues to read as follows:

**Authority:** 18 U.S.C. 1001, 3571; 30 U.S.C. 22, 28, 28k, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1740, 1744; 115 Stat. 414; Pub. L. 112–74, 125 Stat. 786.

### Subpart D—BLM Service Charge and Fee Requirements

■ 2. Amend § 3830.21 by revising paragraphs (a) and (d) of the table to read as follows:

**§ 3830.21 What are the different types of service charges and fees?**

* * * * *

| Transaction | Amount due per mining claim or site | Waiver available |
|---|---|---|
| (a) Recording a mining claim or site location (part 3833) .. | A total sum which includes:<br>(1) The processing fee for notices of location found in the fee schedule in § 3000.12 of this chapter;.<br>(2) A one-time $40 location fee; and<br>(3)(i) For lode claims, mill sites and tunnel sites, an initial $165 maintenance fee; or<br>(ii) For placer claims, an initial $165 maintenance fee for each 20 acres of the placer claim or portion thereof. | No. |
| * * * | * * * | * |
| (d) Maintaining a mining claim or site for one assessment year (part 3834). | (1) For lode claims, mill sites and tunnel sites, an annual maintenance fee of $165 must be paid on or before September 1 each year.<br>(2) For placer claims, a $165 annual maintenance fee for each 20 acres of the placer claim or portion thereof must be paid on or before September 1 each year. | Yes. See part 3835. |
| * * * | * * * | * |

Dated: June 24, 2019.

**Joseph R. Balash,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 2019–13963 Filed 6–28–19; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 190409351–9512–02]**

**RIN 0648–XG972**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement annual management measures and catch limits for the northern subpopulation of Pacific sardine for the fishing year from July 1, 2019, through June 30, 2020. This action prohibits directed commercial fishing for Pacific sardine off the U.S. Pacific Coast, except in the live bait or minor directed fisheries, or as part of exempted fishing permit activities, and establishes limits on the incidental harvest of Pacific sardine in other fisheries. This action is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Effective July 1, 2019, through June 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Lynn Massey, West Coast Region, NMFS, (562) 436–2462, *lynn.massey@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific Coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

This final rule implements the annual catch levels and reference points for the 2019–2020 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 28, 2019 (84 FR 24459), including the OFL and ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the U.S. Pacific Coast. The proposed rule for this action included additional background on specifications and the details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information, please refer to the proposed rule for this action.

TABLE 1—REFERENCE POINTS FOR THE 2019–2020 SARDINE FISHING YEAR IN METRIC TONS

[mt]

| Biomass estimate | OFL | ABC | HG | ACL | ACT |
|---|---|---|---|---|---|
| 27,547 | 5,816 | 4,514 | 0 | 4,514 | 4,000 |

This final rule implements an OFL of 5,816 mt, an ABC and ACL of 4,514 mt, and allows Pacific sardine catch only for live bait, in a minor directed fishery, as incidental catch in other fisheries, or under an exempted fishing permit (EFP). Additionally, this rule implements an annual catch target (ACT) of 4,000 mt, as well as restrictions on the incidental catch of Pacific sardine by other fisheries and a trip limit that could be imposed on directed fishing for sardine as live bait.

For the first time, the estimated biomass for Pacific sardine has fallen below the 50,000-mt minimum stock size threshold (MSST) defined in the CPS FMP, which requires NMFS to initiate a process to declare the Pacific sardine stock overfished. Although NMFS has not officially determined the stock to be overfished, the Council made recommendations for the 2019–2020 Pacific sardine harvest specifications in anticipation of NMFS making such a determination in the near future. The CPS FMP previously required that when a CPS stock is overfished, live bait landings of that stock be restricted to only incidental catch up to 15 percent of total CPS on board. However, on June 10, 2019, NMFS approved Amendment 17 to the CPS FMP, which removed this pre-specified limit on fishing for live bait of a CPS stock that is overfished. Because Amendment 17 was still under Secretarial review at the April 2019 Council meeting, the Council recommended management measures for the 2019–2020 sardine fishing year that matched the status quo FMP provisions (*i.e.,* no directed live bait for overfished stocks and 15 percent maximum incidental limit on live bait for overfished stocks) but also stated its desire to use the provision of Amendment 17 (*i.e.,* allow directed live bait for overfished stocks with no predetermined limits) if it is approved. Because NMFS approved Amendment 17, directed live bait fishing for sardine will be permitted for the 2019–2020 fishing year per the Council's recommendation.

The final specifications include the following management measures and inseason accountability measures for commercial sardine harvest during the 2019–2020 fishing year:

(1) Directed live bait fishing is allowed, subject to the accountability measure specified under number 2 below.

(2) If landings by the live bait fishery reach 2,500 mt, NMFS will impose a 1-mt trip limit on retention of sardine in the live bait fishery.

(3) A 20-percent incidental per landing by weight catch allowance will be applied to other CPS primary directed commercial fisheries (*e.g.,* Pacific mackerel).

(4) A 2-mt per trip incidental catch allowance will apply to non-CPS fisheries.

(5) If the ACT of 4,000 mt is harvested by all fishing sectors combined, NMFS will impose a 1-mt trip limit on sardine caught as live bait, and a 1-mt trip limit on incidentally-caught sardine when caught while targeting other CPS.

All sources of catch, including any EFP set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries, and minor directed fishing, will be counted against the ACL.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements through other means, including emails to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule, the Quinault Indian Nation did not request a tribal set-aside for the 2019–2020 fishing year and therefore no set-aside was established and none is accounted for under the ACL.

At the April 2019 meeting, the Council also voted in support of two EFP proposals that would exempt the permit holders from the prohibition on direct harvest of Pacific sardine. The ACT and ACL were formulated with the assumption that up to 405 mt of Pacific sardine would be harvested under these two EFPs.

On May 28, 2019, NMFS published a proposed rule for this action and solicited public comments (84 FR 24459) through June 12, 2018. NMFS received two public comment letters—one from the CPS industry group California Wetfish Producers Association (CWPA), and one from the environmental advocacy organization Oceana. Both comment letters included multiple comments, including some comments that were beyond the scope of this rulemaking. After considering both public comments, no changes were made from the proposed rule. NMFS summarizes and responds to the comment letters below.

## Comments and Responses

*Comment 1:* The CWPA stated that it disagrees with the determination made for this rule by the Chief Counsel for Regulation of the Department of Commerce under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* which concluded that the 2019–2020 proposed harvest specifications and management measures would not have a significant economic impact on a substantial number of small entities. The commenter's primary objection to the determination is that the proposed action would significantly reduce profit for a substantial number of small entities, and specifically that the proposed 20-percent incidental landing allowance of Pacific sardine in other CPS directed fisheries would have a significant impact on the affected entities.

*Response:* As stated in the proposed rule, the annual HG is the main tool used to manage the principal commercial sardine fishery and is the harvest level NMFS typically uses for profitability analysis. For the purposes of profitability analysis, this final rule implements an HG of zero for the 2019–2020 Pacific sardine fishing season (July 1, 2019, through June 30, 2020). Likewise, the HG for the previous 3 fishing years was also set at zero, thereby prohibiting the primary commercial directed Pacific sardine fishery. Therefore, NMFS determined that this rule will not change the potential profitability compared to recent fishing years for the primary commercial fishery for Pacific sardine.

In addition to the primary commercial fishery, NMFS recognized that this action also affects other fisheries for Pacific sardine such as live bait and minor directed fisheries, as well as other CPS fisheries that incidentally catch Pacific sardine. NMFS also determined that the proposed action will not significantly reduce the profitability of those fisheries compared to previous years. Specifically, the various directed and incidental catch allowances, such as the maximum allowed incidental catch rate of 20 percent, and other inseason management measures in this rule, are intended to not only help prevent overfishing but also ensure, to the extent practicable, maximum access to Pacific sardine throughout the fishing year for these other fishery sectors.

Regarding the commenter's objection to setting the incidental landing allowance at 20 percent, NMFS notes that the FMP requires that the incidental catch allowance for an overfished CPS stock be set between 0 and 20 percent of the landed weight of the target stock. Therefore, the incidental catch allowances for other CPS fisheries cannot be higher than 20 percent. According to the CPS FMP, Pacific sardine is in an overfished condition when its biomass is below 50,000 mt. The 2019 Pacific sardine stock assessment, which has been determined to be the best scientific information available for setting the 2019–2020 harvest specifications, shows that Pacific sardine biomass is below this level. Although NMFS has not officially determined the stock to be overfished, the Council recognized that NMFS would likely declare the stock overfished in the upcoming several months, and accordingly recommended an incidental allowance limit within this 0 to 20 percent range during the April meeting when the Council makes decisions about annual Pacific sardine specifications for the season that starts the following July. The only alternative to the 20-percent incidental allowance would have been a lower incidental allowance. For this reason, implementing a 20-percent incidental allowance has the lowest possible economic impact on small entities permitted under the CPS FMP.

Fishery information from recent years suggests that a 20-percent incidental landing limit will not unnecessarily constrain other CPS fisheries that encounter Pacific sardine. In the previous years when the commercial directed Pacific sardine fishery was closed, the maximum incidental harvest limit of Pacific sardine in other CPS fisheries was set initially at 40 percent, and then set to be reduced when the year's cumulative landings hit a certain level. For example, for the 2018–2019 Pacific sardine fishing year, incidental harvest allocation for Pacific sardine in other CPS fisheries was set at 40 percent by weight until 2,500 mt were caught, after which the limit would be reduced to 20 percent. Similarly for the 2017–2018 fishing year, 40 percent incidental sardine harvest was allowed until 2,000 mt were caught, after which it would have been reduced to 20 percent. The 2017–2018 fishing year also had a provision to further reduce incidental sardine harvest to 10 percent if total catch reached 5,000 mt. NMFS considered the reduction in the Pacific sardine incidental allowances for the 2019–2020 fishing year and potential impact for CPS fisheries that incidentally catch this stock in the RFA determination for this action. During the 2017–2018 and 2018–2019 fishing years, while operating with a 40-percent incidental trip limit, the other CPS fisheries only incidentally caught 275 mt and 174 mt (as of April 1, 2019) of Pacific sardine, respectively. Over this same time period of the 2018–2019 Pacific sardine fishing year, the commercial anchovy fishery off of California caught approximately 11,000 mt of anchovy, leading to one of the highest annual anchovy landing levels in California in recent history. These numbers demonstrate that the anchovy fishery did not need to regularly utilize a high percentage mix of Pacific sardine when harvesting anchovy.

Although the commenter presents landings data that they state demonstrates that a lower incidental limit will constrain other CPS fisheries, based on the information above, it appears that when this data is put in the larger context of all landings per species, not just landings that had incidental catch, a 20 percent incidental may not be as restrictive as looks based on that data. For example, the commenter references data showing that four anchovy landings during the current 2018–2019 Pacific sardine fishing season had incidental Pacific sardine in amounts higher than 20 percent. However, this is only 4 out of 406 landings made by CPS fishermen targeting anchovy that had any incidental Pacific sardine landings greater than 20 percent. Similarly, for the Pacific mackerel fishery, only 1 landing in the 2017–2018 fishing year, and none of the 177 Pacific mackerel landings in the 2018–2019 fishing year had any Pacific sardine landings that exceeded than 20 percent. Therefore based on recent fishing practices, and recent utilization allowances for incidental Pacific sardine landings, NMFS determined that this action would not significantly affect profitability. NMFS recognizes that CPS-species mixing rates can change and fishing conditions are dynamic. To accommodate the dynamic nature of the CPS fisheries, NMFS has supported Council recommendations over the last few years that have allowed access to the applicable Pacific sardine ACLs by other CPS fisheries that have available quota, including the maximum 40-percent incidental harvest limit during the last 2 years and the maximum 20-percent incidental harvest limit this year.

*Comment 2:* The CWPA stated that NMFS did not adequately consider the potential for significant environmental effects, including socioeconomic effects, from the proposed action, and should have conducted an environmental assessment (EA) under the National Environmental Policy Act.

*Response:* NMFS considered whether this action triggered any extraordinary circumstances that may require analysis in an EA or environmental impact statement (EIS). NMFS did not find that any extraordinary circumstances were triggered. In addition, NMFS determined that there were no significant adverse economic impacts caused by this action. Additionally, NMFS determined that this rule does not demonstrate any potential for adverse impacts to the marine environment because the level of allowable fishing has been analyzed within the scope of impacts considered in the EIS prepared for the original FMP and the EA prepared for Amendment 13 to the FMP. Lastly, this rule prohibits the primary commercial fishery from harvesting Pacific sardine during the upcoming fishing year to protect the Pacific sardine resource, thereby negating the potential for any significant impacts on any target or non-target species or other marine resources.

*Comment 3:* The CWPA comment letter stated that NMFS should disapprove this action because it is not based on the best scientific information available. The commenter's primary rationale for this is that the Pacific sardine stock assessment is inaccurate and that Pacific sardine biomass is higher than the estimate from the most recent stock assessment.

*Response:* NMFS determined that this action is based on the best scientific information available. This includes the 2019 Pacific sardine stock assessment, which the Council's SSC and NMFS reviewed and approved as the best scientific information available for setting Pacific sardine harvest specifications. NMFS did not identify inaccuracies in the 2019 Pacific sardine assessment. NMFS recognizes that during various reviews of the Pacific sardine assessment, the assessors and reviewers explored uncertainty in the data used in the model and the technical methods used to analyze the data (*e.g.* selectivity patterns for the survey data, use of different age and length composition data, recruitment). However, the uncertainty in the data or the technical methods was not substantial enough to invalidate the determination that the assessment represents the best scientific information available for setting Pacific sardine harvest specifications.

NMFS is continually working to improve methods to estimate Pacific sardine biomass. In recent years, the commenter and other CPS industry members have stated that the Pacific sardine abundance they observe at sea is inconsistent with the results of the Pacific sardine assessment. To that end, the harvest specifications in this action were set to allow up to 405 mt of Pacific sardine to be harvested under two EFPs supporting industry-run research on Pacific sardine and other CPS. These EFPs will allow participants to assess CPS abundance in inshore areas that are too shallow for NOAA vessels to survey. NMFS is currently finalizing review and approval for this important research.

*Comment 4:* Oceana supported the prohibition on primary directed fishing for Pacific sardine and the reduction in the incidental catch allowance of Pacific sardine in other CPS fisheries from 40 percent to 20 percent. In addition to commenting on the proposed rule, Oceana's comment (and previous public comments by Oceana referenced in its letter) requested reconsideration of various aspects of Pacific sardine management that are not within the scope of this action. The recommendations in the comment letter include changing the start date of the fishery, revising the MSST value, and modifying various parameters in the OFL, ABC, and HG control rules. Oceana also commented on NMFS' timeline on declaring the Pacific sardine stock overfished and requested that NMFS declare that overfishing occurred on Pacific sardine in past years based on exploitation rates presented in the 2019 Pacific sardine stock assessment, specifically that overfishing occurred in 2017 and 2018 based on the combined U.S. and Mexico exploitation rate, which are also actions outside the scope of this rule.

*Response:* NMFS agrees with the commenter regarding the prohibition on primary directed fishing and the 20-percent incidental landing limit for Pacific sardine. Changes to the management framework of Pacific sardine and to the Pacific sardine harvest control rules are set in the CPS FMP and are beyond the scope of this rulemaking. NMFS notes that some of these changes, such as to the value for Distribution in the Pacific sardine harvest control rules and the MSST, have been previously reviewed during specific agenda items at Council meetings. However, NMFS will communicate other concerns to the PFMC for their consideration during related future management planning for the Pacific sardine stock.

Regarding the change in stock status for Pacific sardine, NMFS is still in the process of making a formal declaration on a change to the stock status of Pacific sardine to overfished, however we still expect to submit a letter to the Council regarding a change in the status of the Pacific sardine stock in the coming months.

As it relates to the comment that overfishing has occurred, it appears the commenter is confused with regard to how overfishing is determined for Pacific sardine, how ABC is calculated, and the differences between rate/fishing mortality based overfishing criteria and total catch based criteria. As stated in the preamble of the proposed rule and this final rule, Pacific sardine uses a total catch-based method to determine whether overfishing is occurring. That is why the OFL is set annually in the harvest specifications. Pacific sardine harvest specifications do not set a fishing *mortality level* or *rate* as the indicator for whether overfishing will occur. Although NMFS' Magnuson-Stevens Act National Standard 1 guidelines at 50 CFR part 600 Subpart D provide the option of defining ''overfishing status'' by using *either* a fishing mortality rate measured against a maximum fishing mortality threshold or catch in terms of numbers or weight of fish measured against an OFL, the CPS FMP defines overfishing for Pacific sardine by establishing an OFL annually. Overfishing would occur for Pacific sardine if total United States catch exceeded the OFL. As noted by the commenter this has never happened. Therefore overfishing has never occurred in this fishery.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of these final harvest specifications for the 2019–2020 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2019. The contents of this rule were based on the best available information on the population status of Pacific sardine at that time. Making these final specifications effective on July 1, the first day of the fishing season, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2019–2020 fishing year because the sardine biomass has dropped below the 150,000-mt threshold for a primary directed commercial fishery. The purpose of this threshold in the FMP, and for prohibiting directed fishing when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. A delay in the effectiveness of this rule for a full 30 days would result in the re-opening the directed commercial fishery on July 1.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen are aware that the Council recommended that directed commercial fishing be prohibited for the 2019–2020 fishing year and are fully prepared to comply with the prohibition.

This final rule is exempt from the procedures of E.O. 12866 because this action is an annual fishery management specification under the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received a comment regarding this certification that is summarized above in the preamble of the final rule. This comment did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

Dated: June 25, 2019.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2019–13960 Filed 6–28–19; 8:45 am]

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# Proposed Rules

Federal Register

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 210, 220, and 226

**[FNS–2019–0005]**

**RIN 0584–AE65**

## Delayed Implementation of Grains Ounce Equivalents in the Child and Adult Care Food Program

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to delay, from October 1, 2019 until October 1, 2021, the implementation date of the ''ounce equivalents'' requirement for crediting grains served in the Child and Adult Care Food Program (CACFP). The final rule, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010,* published at 81 FR 24347 on April 25, 2016, specified that meal planners must use ounce equivalents to determine the amount of creditable grain served as part of a reimbursable meal or snack. The new implementation date would allow more time for FNS to develop additional technical assistance materials and for State agencies and sponsoring organizations to provide training and technical assistance to make compliance easier for meal planners nationwide.

**DATES:** Written comments must be received on or before July 31, 2019 to be assured of consideration.

**ADDRESSES:** FNS invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 3101 Park Center Drive, 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 via *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 703–305–2590.

**SUPPLEMENTARY INFORMATION:**

### Background

The final rule, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010,* published at 81 FR 24347 on April 25, 2016, specified that grains must be credited using ''ounce equivalents.'' Historically, meal planners at day care homes and centers in CACFP have credited grains served as part of a reimbursable meal or snack based on household measures, such as cups or ''servings'' of breads and other grain-based foods. The ounce equivalents provision would bring CACFP in line with the National School Lunch and School Breakfast Programs, as well as the technical measurement approach reflected in the *Dietary Guidelines for Americans.*

To make compliance easier, particularly as State agencies and local partners were focused on implementing more significant aspects of the meal pattern rule, FNS initially delayed implementation of the ounce equivalents provision until October 1, 2019. However, even with the additional time, input from stakeholders—including public comments received through a request for information, *Food Crediting in Child Nutrition Programs,* published at 82 FR 58792 on February 14, 2017—has convinced FNS that meal planners may not be universally ready to effectively implement the ounce equivalents requirement by October of this year without additional training and resources. Confusion over the implementation of ounce equivalents amongst some meal planners has generated fears about meal disallowances and meal documentation requirements, which may discourage day care homes and centers from participating in CACFP. FNS believes that additional training and technical assistance will be needed to provide meal planners with the tools they need to more easily implement this provision.

Accordingly, FNS is proposing a delay of implementation of the ounce equivalents requirement until October 1, 2021. Corresponding changes would be made to the infant meal pattern tables at 7 CFR 210.10(o), 210.10(q), 220.8(p), and 226.20(c); preschool meal pattern tables at 7 CFR 210.10(o), 210.10(p), and 220.8(o); and meal pattern tables for children and adult participants at 226.20(c). The new implementation date would allow more time for FNS to continue to develop additional technical assistance materials to better support providers. By proposing a two-year extension, State agencies and sponsoring organizations should have adequate time to use these materials to provide training and technical assistance to make compliance easier for meal planners nationwide. This proposed action is consistent with our efforts to provide excellent customer service as we work with State and local partners to ensure high quality, nutritious meals for children and adult participants in CACFP.

### Procedural Matters

*Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The FNS Administrator has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule allows meal planners additional time to receive training and technical assistance and additional time for State agencies and sponsoring organizations to facilitate implementation of the new requirement. While this rule will affect State agencies, sponsoring organizations, and day care homes and centers, any economic effect will not be significant.

*Executive Order 13771*

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is not expected to be an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, under the regulatory provisions of title II of UMRA, for State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

*Executive Order 12372*

CACFP is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.558 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding CACFP requirements and operation. This provides FNS with the opportunity to receive regular input from State administrators and local CACFP operators, which contributes to the development of feasible requirements.

*Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. FNS has determined that this proposed rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

*Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, *Civil Rights Impact Analysis,* to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of protected classes of individuals to participate as CACFP operators or as recipients of CACFP meal benefits. FNS also does not expect this rule to have any disparate impacts on CACFP operators by protected classes of individuals.

*Executive Order 13175*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS anticipates that this action would have no significant cost and no major increase in regulatory burden on tribal organizations.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 and 5 CFR 1320, requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that have been approved by OMB under control number 0584–0055. This rule does not add any new information collection requirements.

*E-Government Act Compliance*

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

**List of Subjects**

*7 CFR Part 210*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 220*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

*7 CFR Part 226*

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 220 and 226 are amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10, revise the tables in paragraphs (o)(3)(ii), (o)(4)(ii), (p)(2), and (q)(2) to read as follows:

### § 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(o) * * *

(3) * * *

(ii) * * *

PRESCHOOL SNACK MEAL PATTERN

| Food components and food items [1] | Minimum quantities | |
|---|---|---|
| | Ages 1–2 | Ages 3–5 |
| Fluid Milk [2] | 4 fluid ounces | 4 fluid ounces. |
| Meat/meat alternates (edible portion as served): | | |
| Lean meat, poultry, or fish | ½ ounce | ½ ounce. |
| Tofu, soy products, or alternate protein products [4] | ½ ounce | ½ ounce. |
| Cheese | ½ ounce | ½ ounce. |
| Large egg | ½ | ½. |
| Cooked dry beans or peas | ⅛ cup | ⅛ cup. |
| Peanut butter or soy nut butter or other nut or seed butters | 1 Tbsp | 1 Tbsp. |
| Yogurt, plain or flavored unsweetened or sweetened [5] | 2 ounces or ¼ cup | 2 ounces or ¼ cup. |
| Peanuts, soy nuts, tree nuts, or seeds | ½ ounce | ½ ounce. |
| Vegetables [3] | ½ cup | ½ cup. |
| Fruits [3] | ½ cup | ½ cup. |
| Grains (oz eq): [6 7] | | |
| Whole grain-rich or enriched bread | ½ slice | ½ slice. |
| Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin | ½ serving | ½ serving. |
| Whole grain-rich, enriched, or fortified cooked breakfast cereal,[8] cereal grain, and/or pasta. | ¼ cup | ¼ cup. |
| Whole grain-rich, enriched, or fortified ready-to-eat cereal (dry, cold): [8 9] | | |
| Flakes or rounds | ½ cup | ½ cup. |
| Puffed cereal | ¾ cup | ¾ cup. |
| Granola | ⅛ cup | ⅛ cup. |

**Endnotes:**

[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

[3] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[4] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

[5] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[6] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

[7] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

[9] Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereal is ¼ cup for children ages 1–2 and ⅓ cup for children ages 3–5.

(4) * * *

(ii) * * *

INFANT SNACK MEAL PATTERN

| Birth through 5 months | 6 through 11 months |
|---|---|
| 4–6 fluid ounces breastmilk [1] or formula [2] | 2–4 fluid ounces breastmilk [1] or formula; [2] and<br>0–½ slice bread; [3 4] or<br>0–2 cracker; [3 4] or<br>0–4 tablespoons infant cereal [2 3 4] or ready-to-eat breakfast cereal; [3 4 5 6] and<br>0–2 tablespoons vegetable or fruit, or a combination of both [6 7] |

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

[2] Infant formula and dry infant cereal must be iron-fortified.

[3] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

[4] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[5] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

[6] A serving of this component is required when the infant is developmentally ready to accept it.

[7] Fruit and vegetable juices must not be served.

* * * * *

(p) * * *

(2) * * *

PRESCHOOL LUNCH MEAL PATTERN

| Food components and food items [1] | Minimum quantities | |
|---|---|---|
| | Ages 1–2 | Ages 3–5 |
| Fluid Milk [2] | 4 fluid ounces | 6 fluid ounces. |
| Meat/meat alternates (edible portion as served): | | |
| Lean meat, poultry, or fish | 1 ounce | 1½ ounces. |
| Tofu, soy products, or alternate protein products [3] | 1 ounce | 1½ ounces. |
| Cheese | 1 ounce | 1½ ounces. |
| Large egg | ½ | ¾. |
| Cooked dry beans or peas | ¼ cup | ⅜ cup. |
| Peanut butter or soy nut butter or other nut or seed butters | 2 Tbsp | 3 Tbsp. |
| Yogurt, plain or flavored unsweetened or sweetened [4] | 4 ounces or ½ cup | 6 ounces or ¾ cup. |
| The following may be used to meet no more than 50% of the requirement: Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish). | ½ ounce = 50% | ¾ ounce = 50%. |
| Vegetables [5] | ⅛ cup | ¼ cup. |
| Fruits [5 6] | ⅛ cup | ¼ cup. |
| Grains (oz eq): [7 8] | | |
| Whole grain-rich or enriched bread | ½ slice | ½ slice. |
| Whole grain-rich or enriched bread product, such as biscuit, roll, muffin | ½ serving | ½ serving. |
| Whole grain-rich, enriched, or fortified cooked breakfast cereal,[9] cereal grain, and/or pasta. | ¼ cup | ¼ cup. |

**Endnotes:**

[1] Must serve all five components for a reimbursable meal.

[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

[3] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[5] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[6] A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

[7] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

[8] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grain.

[9] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(q) * * *

(2) * * *

INFANT LUNCH MEAL PATTERN

| Birth through 5 months | 6 through 11 months |
|---|---|
| 4–6 fluid ounces breastmilk [1] or formula [2] | 6–8 fluid ounces breastmilk [1] or formula; [2] and<br>0–4 tablespoons<br>infant cereal [2 3]<br>meat,<br>fish,<br>poultry,<br>whole egg,<br>cooked dry beans, or<br>cooked dry peas; or<br>0–2 ounces of cheese; or<br>0–4 ounces (volume) of cottage cheese; or<br>0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and<br>0–2 tablespoons vegetable or fruit or a combination of both [5 6] |

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

[2] Infant formula and dry infant cereal must be iron-fortified.

[3] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[5] A serving of this component is required when the infant is developmentally ready to accept it.

[6] Fruit and vegetable juices must not be served.

* * * * *

## PART 220—SCHOOL BREAKFAST PROGRAM

■ 3. The authority citation for part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

### § 220.8 Amended

■ 4. In § 220.8, revise the tables in paragraphs (o)(2) and (p)(2), to read as follows:

### § 220.8 Meal requirements for breakfasts.

* * * * *

(o) * * *

(2) * * *

PRESCHOOL BREAKFAST MEAL PATTERN

| Food components and food items [1] | Minimum quantities | |
|---|---|---|
| | Ages 1–2 | Ages 3–5 |
| Fluid Milk [2] | 4 fluid ounces | 6 fluid ounces. |
| Vegetables, fruits, or portions of both [3] | ¼ cup | ½ cup. |
| Grains (oz eq) [4 5 6]: | | |
| Whole grain-rich or enriched bread | ½ slice | ½ slice. |
| Whole grain-rich or enriched bread product, such as biscuit, roll, muffin | ½ serving | ½ serving. |
| Whole grain-rich, enriched, or fortified cooked breakfast cereal,[7] cereal grain, and/or pasta. | ¼ cup | ¼ cup. |
| Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold)[7 8]: | | |
| Flakes or rounds | ½ cup | ½ cup. |
| Puffed cereal | ¾ cup | ¾ cup. |
| Granola | ⅛ cup | ⅛ cup. |

**Endnotes:**

[1] Must serve all three components for a reimbursable meal.

[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

[3] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[4] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

[5] Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

[6] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[7] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

[8] Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereal is ¼ cup for children ages 1–2 and ⅓ cup for children ages 3–5.

(p) * * *

(2) * * *

INFANT BREAKFAST MEAL PATTERN

| Birth through 5 months | 6 through 11 months |
|---|---|
| 4–6 fluid ounces breastmilk [1] or formula [2] | 6–8 fluid ounces breastmilk [1] or formula [2]; and<br>0–4 tablespoons<br>infant cereal [2 3]<br>meat,<br>fish,<br>poultry,<br>whole egg,<br>cooked dry beans, or<br>cooked dry peas; or<br>0–2 ounces of cheese; or<br>0–4 ounces (volume) of cottage cheese; or<br>0–4 ounces or ½ cup of yogurt [4]; or a combination of the above [5]; and<br>0–2 tablespoons vegetable or fruit or a combination of both [5 6] |

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

[2] Infant formula and dry infant cereal must be iron-fortified.

[3] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[5] A serving of this component is required when the infant is developmentally ready to accept it.

[6] Fruit and vegetable juices must not be served.

* * * * *

## PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 5. The authority citation for 7 CFR part 226 continues to read as follows:

**Authority:** Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766.

**§ 220.20 Amended**

■ 6. In § 226.20, remove the date ''October 1, 2019'' and add in its place ''October 1, 2021'' in the following places:

■ a. Endnote 3 of the table in paragraph (b)(5);

■ b. Endnote 7 of the table in paragraph (c)(1);

■ c. Endnote 10 of the table in paragraph (c)(2); and

■ d. Endnote 8 of the table in paragraph (c)(3).

Dated: June 14, 2019.

**Brandon Lipps,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2019–13733 Filed 6–28–19; 8:45 am]

BILLING CODE 3410–30–P

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## DEPARTMENT OF ENERGY

## 10 CFR Part 431

**[EERE–2017–BT–STD–0016]**

## Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures

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

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (''DOE'') is attempting to determine whether to amend the current energy conservation standards for metal halide lamp fixtures. Under the Energy Policy and Conservation Act, as amended, DOE must review these standards at least once every six years and publish either a proposal to amend these standards or a notice of determination that the existing standards do not need amending. DOE is soliciting the public for information to help determine whether the current standards require amending under the applicable statutory criteria. DOE welcomes written comments from the public on any subject within the scope of this document, including topics not specifically raised.

**DATES:** Written comments and information are requested and will be accepted on or before August 15, 2019.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0016, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: MHLF2017STD0016@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0016 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document.

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

The docket web page can be found at *http://www.regulations.gov.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



## I. Introduction

### A. Authority and Background

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include metal halide lamp fixtures (''MHLFs''), the subject of this request for information (''RFI'').[3] (42 U.S.C. 6292(a)(19)) EPCA prescribed energy conservation standards (''ECS'') for

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[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] Although MHLFs (which are industrial lighting equipment) are treated as covered products under EPCA, as a matter of administrative convenience and to minimize confusion among interested parties, DOE adopted its MHLF provisions into subpart S of 10 CFR part 431 (the portion of DOE's regulations dealing with commercial and industrial equipment) because businesses, rather than individuals, purchase them. 74 FR 12058, 12062 (March 23, 2009). For the purpose of this notice, DOE refers to MHLFs generally as ''equipment.'' When the notice refers to specific provisions in Part A of EPCA, the term ''product'' is used.

these products. (42 U.S.C. 6295(hh)(1)), and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(hh)(2)–(3))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

DOE completed the first of these rulemaking cycles in 2014 by adopting amended performance standards for MHLFs manufactured on or after February 10, 2017 (''2014 MHLF ECS final rule''). 79 FR 7746 (February 10, 2014). The current energy conservation standards are located in title 10 of the Code of Federal Regulations (''CFR'') part 431. See 10 CFR 431.326 (detailing the applicable energy conservation standards for different classes of MHLFs). The currently applicable DOE test procedures for MHLFs appear at 10 CFR 431.324. Under 42 U.S.C. 6295(hh)(3)(A), the agency must conduct a second review of its energy conservation standards for MHLFs and publish a final rule to determine whether to amend those standards. This document initiates that second review.

*B. Rulemaking Process*

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

| EPCA requirement | Corresponding DOE analysis |
|---|---|
| Technological Feasibility | • Market and Technology Assessment.<br>• Screening Analysis.<br>• Engineering Analysis. |
| Economic Justification: | |
| 1. Economic impact on manufacturers and consumers | • Manufacturer Impact Analysis.<br>• Life-Cycle Cost and Payback Period Analysis.<br>• Life-Cycle Cost Subgroup Analysis.<br>• Shipments Analysis. |
| 2. Lifetime operating cost savings compared to increased cost for the product | • Markups for Product Price Determination.<br>• Energy and Water Use Determination.<br>• Life-Cycle Cost and Payback Period Analysis. |
| 3. Total projected energy savings | • Shipments Analysis.<br>• National Impact Analysis. |
| 4. Impact on utility or performance | • Screening Analysis.<br>• Engineering Analysis. |
| 5. Impact of any lessening of competition | • Manufacturer Impact Analysis. |
| 6. Need for national energy and water conservation | • Shipments Analysis.<br>• National Impact Analysis. |
| 7. Other factors the Secretary considers relevant | • Employment Impact Analysis.<br>• Utility Impact Analysis.<br>• Emissions Analysis.<br>• Monetization of Emission Reductions Benefits.<br>• Regulatory Impact Analysis. |

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for MHLFs.

## II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether to amend its standards for MHLFs. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, executive branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (February 3, 2017) Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to MHLFs while remaining consistent with the requirements of EPCA.

*Issue II.1:* DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards update that may justify a new rulemaking to consider more stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: 1. Would not result in a significant savings of energy; 2. is not technologically feasible; 3. is not economically justified; or 4. any combination of the foregoing.

*Issue II.2:* DOE recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (September 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data and information on the issues presented in the RFI as they may be applicable to MHLFs.

*A. Equipment Covered by This Rulemaking*

This RFI addresses equipment meeting the MHLF definition, as codified in 10 CFR 431.322. An MHLF is defined as a light fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp. 42 U.S.C. 6291(64); 10 CFR 431.322. DOE has also defined several terms related to MHLF in 10 CFR 431.322.

The Energy Independence and Security Act of 2007, Public Law 110–140 (December 19, 2007) (''EISA 2007''), established energy conservation standards for MHLFs with ballasts designed to operate lamps with rated wattages between 150 watts (''W'') and 500 W and excluded three types of fixtures within the covered wattage range from energy conservation standards: (1) MHLFs with regulated-lag ballasts; (2) MHLFs that use electronic ballasts and operate at 480 volts; and (3) MHLFs that are rated only for 150 watt lamps, are rated for use in wet locations as specified by the National Fire Protection Association (''NFPA'') in NFPA 70, ''National Electrical Code 2002 Edition,'' [4] and contain a ballast that is rated to operate at ambient air temperatures above 50 °C as specified by Underwriters Laboratory (''UL'') in UL 1029, ''Standard for Safety High-Intensity-Discharge Lamp Ballasts.'' (42 U.S.C. 6295(hh)(1)) In the 2014 MHLF ECS final rule, DOE also promulgated standards for the group of MHLFs with ballasts designed to operate lamps rated 50 W–150 W and 501 W–1,000 W. DOE also promulgated standards for one type of previously excluded fixture: A 150 W MHLF rated for use in wet locations [4] and containing a ballast that is rated to operate at ambient air temperatures greater than 50 °C—*i.e.,* those fixtures that fall under 42 U.S.C. 6295(hh)(1)(B)(iii). DOE continued to exclude from standards MHLFs with regulated-lag ballasts and 480 V electronic ballasts. In addition, due to a lack of applicable test method for high-frequency electronic (''HFE'') ballasts, in the 2014 MHLF ECS final rule, DOE did not establish standards for MHLFs with HFE ballasts. 79 FR 7754–7756 (February 10, 2014).

Although current standards for MHLFs require them to contain a ballast that meets or exceeds a minimum ballast efficiency, the entity responsible for certifying compliance with the applicable standard is the MHLF manufacturer or importer. The MHLF manufacturer may opt to use a third-party to certify on its behalf, such as the ballast manufacturer. However, the MHLF manufacturer or importer is ultimately responsible for certifying compliance to DOE. See generally 42 U.S.C. 6291(10)–(12) and 10 CFR 429.12.

[4] DOE notes that although the exclusion in 42 U.S.C. 6295(hh)(1)(B)(iii)(II) identifies those fixtures that are rated for use in wet locations as specified by the National Electrical Code 2002 section 410.4(A), the National Fire Protection Agency (''NFPA'') is responsible for authoring the National Electrical Code, which is identified as NFPA 70. Accordingly, DOE's use of NFPA 70 under the MHLF-related provision in 10 CFR 431.326(b)(3)(iii) is identical to the statutory exclusion set out by Congress.

*Issue A.1:* DOE seeks input on whether definitions related to MHLFs in 10 CFR 431.322 require any revisions—and if so, how those definitions should be revised. DOE also seeks input on whether additional definitions are necessary for DOE to clarify or otherwise implement its regulatory requirements related to MHLFs.

*B. Market and Technology Assessment*

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides information about the MHLF industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of MHLFs. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies for MHLFs.

1. Product/Equipment Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. *Id.*

For MHLFs, the current energy conservation standards specified in 10 CFR 431.326 are based on 24 equipment classes that were analyzed in the 2014 MHLF ECS final rule according to the following performance-related features that provide utility to the customer: Input voltage, rated lamp wattage, and designation for indoor versus outdoor applications. Table II.1 lists the 24 MHLF equipment classes from the 2014 MHLF ECS final rule.

TABLE II.1—MHLF EQUIPMENT CLASSES FROM THE 2014 MHLF ECS FINAL RULE

| Designed to be operated with lamps of the following rated lamp wattage | Indoor/outdoor | Input voltage type |
|---|---|---|
| ≥50 W and ≤100 W | Indoor | Tested at 480 V. |
| ≥50 W and ≤100 W | Indoor | All others. |
| ≥50 W and ≤100 W | Outdoor | Tested at 480 V. |
| ≥50 W and ≤100 W | Outdoor | All others. |
| >100 W and <150 W * | Indoor | Tested at 480 V. |
| >100 W and <150 W * | Indoor | All others. |
| >100 W and <150 W * | Outdoor | Tested at 480 V. |
| >100 W and <150 W * | Outdoor | All others. |
| ≥150 W ** and ≤250 W | Indoor | Tested at 480 V. |
| ≥150 W ** and ≤250 W | Indoor | All others. |
| ≥150 W ** and ≤250 W | Outdoor | Tested at 480 V. |
| ≥150 W ** and ≤250 W | Outdoor | All others. |
| >250 W and ≤500 W | Indoor | Tested at 480 V. |
| >250 W and ≤500 W | Indoor | All others. |
| >250 W and ≤500 W | Outdoor | Tested at 480 V. |
| >250 W and ≤500 W | Outdoor | All others. |
| >500 W and ≤1,000 W | Indoor | Tested at 480 V. |
| >500 W and ≤1,000 W | Indoor | All others. |
| >500 W and ≤1,000 W | Outdoor | Tested at 480 V. |
| >500 W and ≤1,000 W | Outdoor | All others. |
| >1,000 W and ≤2,000 W | Indoor | Tested at 480 V. |
| >1,000 W and ≤2,000 W | Indoor | All others. |
| >1,000 W and ≤2,000 W | Outdoor | Tested at 480 V. |
| >1,000 W and ≤2,000 W | Outdoor | All others. |

* Includes 150 W MHLFs exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W MHLFs exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

DOE notes that since Table II.1 represents all equipment classes in the 2014 MHLF ECS final rule, it also includes a number of individual classes for which standards were not set. For example, DOE did not adopt standards in the 2014 MHLF ECS final rule for MHLFs designed to be operated with lamps rated greater than 1,000 W and less than or equal to 2,000 W but they are included as one of the many different MHLF equipment classes that DOE is currently considering within the context of this RFI. Consequently, the table of standards presented in Table I.1 in the 2014 MHLF ECS final rule does not include MHLFs that operate those lamps. 79 FR 7747–7748 (February 10, 2014). See also id. at 79 FR 7832–7836 (detailing DOE's reasoning under the ''Conclusions'' of the preamble discussion). Furthermore, because DOE adopted the same standards for indoor and outdoor equipment classes that are tested at the same input voltage and that operate lamps of the same wattage, DOE omitted the indoor/outdoor distinction when codifying the table of standards into 10 CFR 431.326(c). DOE previously analyzed indoor and outdoor fixtures separately as part of its prior rulemaking because these two types of fixtures offer different performance-related features. When electronic ballasts are used in outdoor applications, they require additional transient protection because of the potential for voltage surges in outdoor locations. Indoor fixtures with electronic ballasts also have an added feature to provide 120 V auxiliary power functionality for use in the event of a power outage. Based on these different features, DOE established separate equipment classes for indoor and outdoor fixtures, 79 FR 7763–7764 (February 10, 2014), but adopted the same minimum energy conservation standards for these classes. (See section II.D for more information).

*Issue B.1:* DOE requests feedback on the 24 MHLF equipment classes from the 2014 MHLF ECS final rule and whether changes to these individual equipment classes and their descriptions should be made or whether certain classes should be merged or separated (*e.g.,* indoor and outdoor, wattage ranges). DOE further requests feedback on whether combining certain classes could impact utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for this equipment. Specifically, DOE requests comment on whether the features associated with indoor and/or outdoor fixtures (*e.g.,* thermal management, transient protection, auxiliary power functionality) remain in the market today.

DOE is also aware that new configurations and features could be available for MHLFs that may not have been available at the time of the last energy conservation standards analysis. Based on DOE's review of the market, DOE found metal halide dimming ballasts available from multiple manufacturers that could be used in MHLFs. DOE has identified both step-level dimming and continuous dimming metal halide systems that are dimmable down to 50 percent of rated power.

*Issue B.2:* DOE seeks information regarding any new equipment classes it should consider for inclusion in its analysis. Specifically, DOE requests information on any performance-related features (*e.g.,* dimmability, *etc.*) that may provide unique customer utility and data detailing the corresponding impacts on energy use that would justify separate equipment classes (*i.e.,* explanation for why the presence of these performance-related features would increase energy consumption).

In describing which MHLFs are included in each equipment class, DOE incorporates by reference the 2002 version of NFPA 70 and the 2007 version of UL 1029 in DOE's regulations. NFPA 70 is a national safety standard for electrical design, installation, and inspection, and is also known as the 2002 National Electrical

Code. UL 1029 is a safety standard specific to high intensity discharge (''HID'') lamp ballasts; a metal halide lamp ballast is a type of HID lamp ballast. Both NFPA 70 and UL 1029 are used to describe the applicable equipment class for MHLFs that EISA 2007 excluded from the statutory standards enacted by Congress but that were later included as part of the 2014 MHLF ECS final rule (see section II.A). DOE has found that a 2017 version of NFPA 70 (NFPA 70–2017) ''NFPA 70 National Electrical Code 2017 Edition'' [5] and a 2014 version of UL 1029 (UL 1029–2014) ''Standard for Safety High-Intensity-Discharge Lamp Ballasts'' [6] are now available.

*Issue B.3:* DOE requests comment on whether incorporating by reference the updated industry standards NFPA 70–2017 and UL 1029–2014 will impact the MHLFs included in each equipment class in DOE's regulations.

2. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will likely include a number of the technology options DOE previously considered during its most recent rulemaking for MHLFs. A complete list of those prior options appears in Table II.2 of this RFI.

TABLE II.2—PREVIOUSLY CONSIDERED TECHNOLOGY OPTIONS FROM THE 2014 MHLF ECS FINAL RULE

| Ballast type | Design option | | Description |
|---|---|---|---|
| Magnetic | Improved Core Steel. | | Use a higher grade of electrical steel, including grain-oriented silicon steel, to lower core losses. |
| | Copper Wiring. | | Use copper wiring in place of aluminum wiring to lower resistive losses. |
| | Increased Stack Height. | | Add steel laminations to lower core losses. |
| | Increased Conductor Cross Section. | | Increase conductor cross section to lower winding losses. |
| | Electronic Ballast. | | Replace magnetic ballasts with electronic ballasts. |
| | Amorphous Steel. | | Create the core of the inductor from laminated sheets of amorphous steel insulated from each other. |
| Electronic | Improved Components | Magnetics | Use grain-oriented or amorphous electrical steel to reduce core losses. |
| | | | Use optimized-gauge copper or litz wire to reduce winding losses. |
| | | | Add steel laminations to lower core losses. |
| | | | Increase conductor cross section to lower winding losses. |
| | | Diodes | Use diodes with lower losses. |
| | | Capacitors | Use capacitors with a lower effective series resistance and output capacitance. |
| | | Transistors | Use transistors with lower drain-to-source resistance. |
| | Improved Circuit Design | Integrated Circuits | Substitute discrete components with an integrated circuit. |
| | Amorphous Steel. | | Create the core of the inductor from laminated sheets of amorphous steel insulated from each other. |

*Issue B.4:* DOE seeks information on the technologies listed in Table II.2 of this RFI regarding their applicability to the current market and how these technologies may impact the efficiency of MHLFs as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the 2014 MHLF ECS final rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

*Issue B.5:* DOE seeks comment on other technology options that it should consider for inclusion in its analysis and if these technologies may impact equipment features or customer utility.

*C. Screening Analysis*

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies will be eliminated from further consideration and which will be considered in the engineering analysis.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or

[5] Approved August 24, 2016.

[6] Approved December 6, 2013.

result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE's analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the four criteria are eliminated from consideration.

Table II.3 summarizes the screened-out technology option, and the applicable screening criteria, from the 2014 MHLF ECS final rule.

TABLE II.3—SCREENED-OUT TECHNOLOGY OPTIONS FROM THE 2014 MHLF ECS FINAL RULE

| Screened technology option | EPCA criteria (X = basis for screening out) | | | |
|---|---|---|---|---|
| | Technological feasibility | Practicability to manufacture, install, and service | Adverse impact on product utility | Adverse impacts on health and safety |
| Amorphous Steel | X | X | X | |

*Issue C.1:* DOE requests feedback on what impact, if any, the four screening criteria described in this section would have on each of the technology options listed in Table II.2 of this RFI with respect to MHLFs. Similarly, DOE seeks information regarding how these same criteria would affect any other technology options not already identified in this document with respect to their potential use in MHLFs.

*Issue C.2:* With respect to the screened-out technology option listed in Table II.3 of this RFI, DOE seeks information on whether this option would, based on current and projected assessments, remain screened out under the four screening criteria described in this section. With respect to this technology option, what steps, if any, could be (or have already been) taken to facilitate the introduction of the option as a means to improve the energy performance of MHLFs and the potential to impact customer utility of the MHLFs.

*D. Engineering Analysis*

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency (efficiency levels). This relationship serves as the basis for the cost-benefit calculations for customers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production cost (''MPC'') associated with increasing the efficiency of equipment above the baseline, up to the maximum technologically feasible (''max-tech'') efficiency level for each equipment class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (''ELs'') for analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed cost data for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Baselines

For each established equipment class, DOE selects a baseline model as a reference point against which any changes resulting from energy conservation standards can be measured. The baseline model in each equipment class represents the characteristics of common or typical equipment in that class. Typically, a baseline model is one that meets the current minimum energy conservation standard and provides basic customer utility.

Consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservation standards (which were required for compliance starting on February 10, 2017) to establish the baseline model for each equipment class. The current standards for each equipment class are based on ballast efficiency. The current standards for MHLFs are found in 10 CFR 431.326.

*Issue D.1:* DOE requests feedback on whether using the current energy conservation standards for MHLFs provide an appropriate baseline efficiency level for DOE to use in evaluating whether to amend the current energy conservation standards for any of the equipment classes regulated by DOE. DOE requests data and suggestions to select the baseline models in order to better evaluate amending energy conservation standards for this equipment. In particular, DOE requests comment on the most common wattages and features of MHLFs sold today.

*Issue D.2:* DOE requests feedback on the appropriate baseline models for any newly analyzed equipment classes for which standards are not currently in place or for the contemplated combined equipment classes, as discussed in II.B.1 of this document.

2. Efficiency Levels and Maximum Technologically Feasible Levels

For the 2014 MHLF ECS final rule, DOE did not analyze all 24 MHLF equipment classes. Rather, DOE focused on 12 equipment classes and then scaled the ELs from representative equipment classes to those equipment classes it did not analyze directly (see the end of this section for more detail on the scaling factor). DOE did not directly analyze the equipment classes containing only fixtures tested at 480 V because their low shipment volume (as indicated by manufacturer interviews) would not make them representative of the MHLF market. See 79 FR 7767 (February 10, 2014) and chapter 5 of the final rule technical support document (''TSD'') for that rulemaking.

In the 2014 MHLF ECS final rule, after identifying more efficient substitutes for each baseline model, DOE developed ELs. DOE developed ELs based on: (1) The design options associated with the equipment class studied, and (2) the max-tech level for that class. In the 2014 MHLF ECS final rule, EL1 represented a moderately higher-efficiency magnetic ballast, and EL2 represented the max-tech magnetic ballast. EL3 represented the least efficient commercially available electronic ballast, and EL4 represented the max-tech level for all ballasts incorporated into MHLFs. 79 FR 7776 (February 10, 2014). In the 2014 MHLF ECS final rule, DOE adopted the ELs representing the highest efficiency level available for magnetic ballasts that resulted in a positive NPV while also maintaining the same ELs for both indoor and outdoor fixtures.

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. The maximum available efficiencies for the 12 analyzed equipment classes from the 2014 MHLF ECS final rule are included in Table II.4 of this RFI.

TABLE II.4—MAXIMUM EFFICIENCY LEVELS FROM 2014 MHLF ECS FINAL RULE

| Designed to be operated with lamps of the following rated lamp wattage | Indoor/outdoor | Input voltage type | Maximum efficiency level | |
|---|---|---|---|---|
| ≥50 W and ≤100 W | Indoor | All others | $1/(1 + 0.360 \times P\wedge(-0.297))$ | |
| ≥50 W and ≤100 W | Outdoor | All others | | |
| >100 W and <150 W * | Indoor | All others | $1/(1 + 0.360 \times P\wedge(-0.297))$ | |
| >100 W and <150 W * | Outdoor | All others | | |
| ≥150 W ** and ≤250 W | Indoor | All others | $1/(1 + 0.360 \times P\wedge(-0.297))$ | |
| ≥150 W ** and ≤250 W | Outdoor | All others | | |
| >250 W and ≤500 W | Indoor | All others | $1/(1 + 0.360 \times P\wedge(-0.297))$ | |
| >250 W and ≤500 W | Outdoor | All others | | |
| >500 W and ≤1,000 W | Indoor | All others | >500 W and ≤750 W: 0.910. | >750 W and ≤1,000 W: $0.000104 \times P + 0.832$ |
| >500 W and ≤1,000 W | Outdoor | All others. | | |
| >1,000 W and ≤2,000 W | Indoor | All others | 0.936 | |
| >1,000 W and ≤2,000 W | Outdoor | All others | | |

* Includes 150 W MHLFs exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W MHLFs exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

DOE defines a max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in the equipment. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible. In the 2014 MHLF ECS final rule, all max-tech levels analyzed were commercially available. 79 FR 7777 (February 10, 2014). Since the 2014 MHLF ECS final rule, DOE found metal halide ballasts that indicate ballast efficiency could be up to 0.8 percent more efficient in the 50 W to 500 W range, up to 3.3 percent more efficient in the 500 W to 1,000 W range, and up to 1.3 percent more efficient in the 1,000 W to 2,000 W range than the values indicated in Table II.4 of this RFI.

*Issue D.3:* DOE requests shipment data that indicate the breakdown over the last five years (or longer) between MHLFs with electronic ballasts and those with magnetic ballasts.

*Issue D.4:* DOE seeks input on whether the increased maximum available efficiency levels (discussed in the previous paragraph) are appropriate and technologically feasible for potential consideration as possible energy conservation standards for the equipment at issue—and if not, why not. DOE also requests feedback on whether the maximum available efficiencies discussed in the previous paragraph are representative of those for the other MHLF equipment classes not directly analyzed in the 2014 MHLF ECS final rule. If the range of possible efficiencies is different for the other equipment classes not directly analyzed, what alternative approaches should DOE consider using for those equipment classes and why?

*Issue D.5:* DOE seeks feedback on what design options would be incorporated at a max-tech efficiency level, and the efficiencies associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options that would be necessary to achieve the max-tech efficiency level.

After developing ELs, DOE then scales the ELs from representative equipment classes to those equipment classes it does not analyze directly. In the 2014 MHLF ECS final rule, DOE developed a scaling factor by comparing quad-voltage ballasts over all representative wattages to their 480 V ballast counterparts using catalog data. DOE found that the difference in efficiency between ballasts tested at 480 V and ballasts tested at other input voltages varied based on the wattage of the ballast. DOE concluded a scaling factor of 2.0 percent (in the form of a subtraction of 2 percent from the representative equipment class ELs) to be appropriate from 50 W–150 W, a scaling factor of 1.0 percent to be appropriate from 150 W to 1,000 W, and a scaling factor of 0.0 percent (*i.e.,* no reduction) to be appropriate from 1,001 W to 2,000 W. 79 FR 7780–7781 (February 10, 2014).

*Issue D.6:* DOE requests feedback on how the performance of ballasts that are tested at 480 V compares to ballasts of the same wattage and indoor/outdoor classification that are in other equipment classes.

3. Manufacturer Production Costs and Manufacturing Selling Price

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency equipment for the analyzed equipment classes. For the 2014 MHLF ECS final rule, DOE determined the MPC either through a teardown or retail pricing analysis. DOE generated ballast and empty fixture (*i.e.,* physical enclosure and optics) MPCs separately and then combined the prices, as well as any relevant cost adders based on ballast and fixture type (*e.g.,* electronic or magnetic ballast, indoor or outdoor fixture), to create an overall MHLF MPC.

*Issue D.7:* DOE requests feedback on how manufacturers would incorporate the technology options listed in Table II.2 to increase energy efficiency in MHLFs beyond the baseline. This includes information on the sequencing manufacturers would follow when incorporating the different technologies to incrementally improve MHLF efficiency. DOE also requests feedback on whether increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to customer demand. DOE is also interested in the extent to which (if at all) any design changes may adversely impact the ability of a given MHLF to operate with currently compatible applications.

*Issue D.8:* DOE seeks input on the increase in MPC associated with incorporating each particular design option (*e.g.,* improved core steel). Specifically, DOE is interested in whether and how the costs estimated for design options in the 2014 MHLF ECS final rule have changed since the time of that analysis (see chapter 5 of the 2014 MHLF ECS TSD). DOE also requests information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

*Issue D.9:* DOE requests comment on whether certain design options may not be applicable to (or incompatible with) certain equipment classes.

*Issue D.10:* DOE seeks input on any relevant cost adders necessary based on ballast and fixture type (*e.g.,* electronic or magnetic ballast, indoor or outdoor fixture). Specifically, DOE is interested in whether and how the incremental costs for electronically ballasted fixtures in the 2014 MHLF ECS final rule have changed since the time of that analysis.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. The 2014 MHLF ECS final rule used separate markups for ballast manufacturers (1.47) and fixture manufacturers (1.58). DOE also assumed that fixture manufacturers apply the 1.58 markup to the ballasts used in their fixtures rather than to only the empty fixtures. In aggregate, the markup also accounted for the different markets served by fixture manufacturers. The 1.47 markup for ballast manufacturers applied only to ballasts sold to fixture original equipment manufacturers (''OEMs'') directly impacted by this rulemaking. For the purpose of the life cycle cost (''LCC'') and national impact analysis (''NIA''), DOE assumed a higher markup of 1.60 for ballasts that are sold to distributors for the replacement market. See chapter 5 of the 2014 MHLF ECS final rule TSD for more information regarding manufacturer markups.

*Issue D.11:* DOE requests feedback on whether its assumptions regarding manufacturer markups and the values of the markups (1.47 and 1.58) are appropriate for ballast manufacturers and fixture manufacturers, respectively—with the 1.58 markup applying to fixtures with and without ballasts). If they are appropriate, why—and if not, why not? If they are not appropriate, what should they be and why? DOE also requests the same feedback on the higher markup of 1.60 assumed for ballasts sold to distributors for the replacement market.

*E. Markups Analysis*

By applying markups to the MSPs estimated in the engineering analysis, DOE estimates the amounts customers would pay for baseline and more-efficient equipment. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin. Identification of the appropriate markups and the determination of customer equipment price depend on the type of distribution channels through which the equipment move from manufacturer to customer. Table II.5 provides the portion of equipment passing through different distribution channels, and Table II.6 provides the associated markups used in the 2014 MHLF ECS final rule.

TABLE II.5—METAL HALIDE LAMP FIXTURE DISTRIBUTION CHANNELS

| Channel | Markups | Outdoor fixtures (%) | Indoor fixtures (%) |
|---|---|---|---|
| A | Wholesaler + Contractor + Sales Tax | 60 | 100 |
| B | Contractor + Sales Tax | 20 | 0 |
| C | Sales Tax | 20 | 0 |

TABLE II.6—SUMMARY OF FIXTURE DISTRIBUTION CHANNEL MARKUPS

| | Wholesaler distribution | | Utility distribution | | | |
|---|---|---|---|---|---|---|
| | | | Via wholesaler and contractor | | Direct to end user | |
| | Baseline | Incremental | Baseline | Incremental | Baseline | Incremental |
| Electrical Wholesaler (Distributor) | 1.23 | 1.05 | N/A | N/A | N/A | N/A |
| Utility | N/A | N/A | 1.00 | 1.00 | 1.00 | 1.00 |
| Contractor or Installer | 1.13 | 1.13 | 1.13 | 1.13 | N/A | N/A |

TABLE II.6—SUMMARY OF FIXTURE DISTRIBUTION CHANNEL MARKUPS—Continued

| | Wholesaler distribution | | Utility distribution | | | |
|---|---|---|---|---|---|---|
| | | | Via wholesaler and contractor | | Direct to end user | |
| | Baseline | Incremental | Baseline | Incremental | Baseline | Incremental |
| Sales Tax | 1.07 | | 1.07 | | 1.07 | |
| Overall | 1.49 | 1.27 | 1.21 | 1.21 | 1.07 | 1.07 |

*Issue E.1:* DOE requests data on the markups per distribution channel as well as the portion of equipment sold that pass through each distribution channel.

*F. Energy Use Analysis*

As part of the rulemaking process, DOE conducts an energy use analysis to identify how equipment is used by customers, and thereby determine the energy savings potential of energy efficiency improvements. To develop annual energy use estimates, DOE multiplies annual usage (in hours per year) by the lamp-and-ballast system input power (in watts). DOE characterizes representative lamp-and-ballast systems in the engineering analysis, which provide measured input power ratings.

In the 2014 MHLF ECS final rule, to characterize the country's average use of fixtures for a typical year, DOE developed annual operating hour distributions by sector, using data published in the 2010 U.S. Lighting Market Characterization (''LMC''), the Commercial Building Energy Consumption Survey (''CBECS''), and the Manufacturer Energy Consumption Survey (''MECS''). 79 FR 7784 (February 10, 2014). In addition, DOE assumed that MHLFs operate at full output (no dimming). Table II.7 provides the operating hours from the 2014 MHLF ECS final rule.

TABLE II.7—AVERAGE ANNUAL METAL HALIDE LAMP FIXTURE OPERATING HOURS BY SECTOR

| Sector | Average annual operating hours (h/yr) |
|---|---|
| Commercial | 3,615 |
| Industrial | 6,113 |
| Outdoor Stationary | 4,399 |
| Sports Lighting (>1,000 W) | 350 |

*Issue F.1:* DOE seeks data indicating whether its assumptions that MHLFs operate at full output and do not dim are reasonably accurate for estimating MHLF average annual operating hours.

*Issue F.2:* DOE seeks feedback on the average annual operating hours for MHLFs by sector, and whether the values in Table II.7 continue to be adequate for future potential analyses.

*G. Life-Cycle Cost and Payback Analysis*

DOE conducts the LCC and PBP analysis to evaluate the economic effects of potential energy conservation standards for MHLFs on individual customers. For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimated baseline level. The LCC is the total customer expense over the life of the equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). Inputs to the calculation of total installed cost include the cost of the equipment—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the year that compliance with new and amended standards is required.

In the 2014 MHLF ECS final rule, DOE defined equipment lifetime as the age (in hours in operation) when a fixture, ballast, or lamp is retired from service. 79 FR 7787 (February 10, 2014). Table II.8 to Table II.10 provide the operating life estimates for fixtures, ballasts, and lamps from the 2014 MHLF ECS final rule.

TABLE II.8—FIXTURE OPERATING LIFE

| Indoor | Outdoor |
|---|---|
| 20 years | 25 years. |

TABLE II.9—BALLAST OPERATING LIFE

| Magnetic | Electronic |
|---|---|
| 50,000 hours | 40,000 hours. |

TABLE II.10—LAMP OPERATING LIFE

| Lamp wattage | Rated life (hours) |
|---|---|
| 70 W | 12,841 |
| 150 W | 13,882 |
| 250 W | 16,785 |
| 400 W | 20,720 |
| 1,000 W | 11,714 |
| 1,500 W | 3,375 |

*Issue G.1:* DOE seeks feedback on whether the metal halide fixture, ballast, and lamp operating lifetime values in Table II.8, Table II.9, and Table II.10 are valid for use in additional analyses and if not, why not? If DOE's operating lifetime values are inadequate, what values should it use instead and why? Please provide relevant data in support of whatever alternative values that DOE should use in lieu of its values listed in these tables.

In the 2014 MHLF ECS final rule, DOE used a combination of *RS-Means*[7] and *Sweets*[8] labor rates to estimate the time to install a MHLF, ballast, or a lamp. Labor rates are the sum of the wage rate, employer-paid fringe benefits (*i.e.,* vacation pay, employer-paid health, and welfare costs), and any appropriate training and industry advancement funds costs. 79 FR 7785 (February 10, 2014). Table II.11 to Table II.13 provide the labor costs from the 2014 MHLF ECS final rule, expressed in *2012$,* as well as the labor costs updated to 2018$.[9]

[7] R.S. Means Company, Inc. *2010 RS Means Electrical Cost Data.* 2010.

[8] Sweets-McGraw Hill Construction. *Sweets Electrical Cost Guide 2013.* 2012.

[9] Labor costs were updated to 2018$ using a ratio of the median hourly wage for ''49–0000 Installation, Maintenance, and Repair Occupations'' in May 2018 compared to May 2012. See *https://www.bls.gov/oes/tables.htm.*

TABLE II.11—METAL HALIDE LAMP FIXTURE INSTALLATION/REPLACEMENT LABOR COSTS

| Equipment class | Indoor installation cost | | Outdoor installation cost | |
|---|---|---|---|---|
| | *2012$* | *2018$* | *2012$* | *2018$* |
| 70 W | $221.32 | $247.03 | $395.12 | $441.02 |
| 150 W | 230.42 | 257.19 | 371.94 | 415.15 |
| 250 W | 241.80 | 269.89 | 499.63 | 557.67 |
| 400 W | 281.32 | 314.00 | 542.80 | 605.86 |
| 1,000 W | 327.15 | 365.15 | 625.70 | 698.39 |
| 1,500 W | 384.04 | 428.65 | 637.40 | 711.45 |

TABLE II.12—METAL HALIDE BALLAST REPLACEMENT LABOR COSTS

| Equipment class | Indoor installation cost | | Outdoor installation cost | |
|---|---|---|---|---|
| | *2012$* | *2018$* | *2012$* | *2018$* |
| 70 W | $138.58 | $154.68 | $278.43 | $310.77 |
| 150 W | 139.65 | 155.87 | 279.33 | 311.78 |
| 250 W | 140.99 | 157.37 | 280.45 | 313.03 |
| 400 W | 143.00 | 159.61 | 282.14 | 314.92 |
| 1,000 W | 151.03 | 168.57 | 288.89 | 322.45 |
| 1,500 W | 157.72 | 176.04 | 294.51 | 328.72 |

TABLE II.13—METAL HALIDE LAMP REPLACEMENT LABOR COSTS

| Equipment class | Indoor installation cost | | Outdoor installation cost | |
|---|---|---|---|---|
| | *2012$* | *2018$* | *2012$* | *2018$* |
| 70 W | $90.96 | $101.53 | $238.41 | $266.11 |
| 150 W | 91.49 | 102.12 | 238.86 | 266.61 |
| 250 W | 92.16 | 102.87 | 239.42 | 267.23 |
| 400 W | 93.17 | 103.99 | 240.27 | 268.18 |
| 1,000 W | 97.18 | 108.47 | 243.64 | 271.94 |
| 1,500 W | 100.53 | 112.21 | 246.45 | 275.08 |

*Issue G.2:* DOE seeks feedback on the costs associated with installing a MHLF, replacing a metal halide lamp ballast, and replacing a metal halide lamp by equipment class as well as location (indoor versus outdoor).

*H. Shipments*

DOE develops shipments forecasts of MHLFs to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. Using a three-step process, the 2014 MHLF ECS final rule described DOE's development of the shipments portion of the NIA spreadsheet, a model that uses historical data as a basis for projecting future fixture shipments. First, DOE used U.S. Census Bureau fixture shipment data, National Electrical Manufacturers Association (''NEMA'') lamp shipment data, and NEMA ballast sales trends to estimate historical shipments of each fixture type analyzed. Second, DOE estimated an installed stock for each fixture in 2017 based on the average service lifetime of each fixture type. Third, DOE developed annual shipment projections for 2017–2046 by modeling fixture purchasing events, such as replacement and new construction, and applying growth rate, replacement rate, and alternative technologies penetration rate assumptions. 79 FR 7788 (February 10, 2014).

In the 2014 MHLF ECS final rule, DOE modeled two declining shipment scenarios (known as ''low'' and ''high'' scenarios) that started declining at different rates post-2015. DOE stated in the 2014 MHLF ECS final rule that DOE believed that shipments for MHLFs peaked somewhere between 2010 and 2015, as fixtures with other lighting technologies began to significantly displace the use of MHLFs. 79 FR 7789 (February 10, 2014). Table II.14 provides the shipment projections from the 2014 MHLF ECS final rule for the years 2017 and 2018.

TABLE II.14—PROJECTED SHIPMENTS FROM 2014 MHLF ECS FINAL RULE

| Equipment class | 2017 | | 2018 | |
|---|---|---|---|---|
| | *Low* | *High* | *Low* | *High* |
| 70 W | 630,977 | 645,961 | 603,506 | 629,500 |
| 150 W | 266,897 | 273,235 | 255,277 | 266,273 |
| 250 W | 572,608 | 581,854 | 550,906 | 567,026 |
| 400 W | 716,351 | 727,317 | 689,759 | 708,783 |
| 1,000 W | 218,347 | 222,806 | 208,841 | 217,836 |
| 1,500 W | 11,492 | 11,765 | 10,992 | 11,465 |

*Issue H.1:* DOE seeks shipment data on MHLF and metal halide lamp ballasts shipped over the last 5-year period, separated by wattage. DOE also seeks feedback on how the projected shipments in Table II.14 compare to actual shipments of MHLFs in these years.

NEMA periodically releases lamp indices. Although the indices do not contain ballast data, data related to lamp shipments are directly related to ballast shipments. Virtually all metal halide ballasts operate only one lamp; thus, changes in metal halide lamp shipments are indicative of trends related to metal halide ballast and fixture shipments. In a recent HID lamp index report, NEMA stated that shipments for metal halide lamps in the fourth quarter of 2017 decreased by 17.6 percent compared to the same period the previous year.[10] NEMA's data point to a continuing decline in metal halide lamp shipments—with 2016 shipments being roughly less than 60 percent of those in 2011.

*Issue H.2:* DOE seeks data on MHLF shipments, metal halide lamp ballast shipments, as well as any information relevant to the relationship between metal halide lamp shipments and ballast or fixture shipments.

*I. National Impact Analysis*

The purpose of the NIA is to estimate the aggregate economic impacts of potential efficiency standards at the national level. The NIA assesses the NES and the national NPV of total customer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.

In the 2014 MHLF ECS final rule, DOE evaluated the impacts of new and amended standards for MHLFs by comparing ''no new standards''-case projections with standards-case projections. The no new standards-case projections characterize energy use and customer costs for each equipment class in the absence of new or amended energy conservation standards. DOE compared these projections with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the trial standard levels (''TSLs'') or standards cases) for that class. In characterizing the no new standards and standards cases, DOE considered historical shipments, the mix of efficiencies sold in the absence of amended standards, and how that mix may change over time. 79 FR 7788 (February 10, 2014). In the 2014 MHLF ECS final rule, DOE assumed no rebound effect for lighting. *Id.* The rebound effect refers to the tendency of a customer to respond to the cost savings associated with more efficient equipment in a manner that leads to marginally greater equipment usage, thereby diminishing some portion of anticipated benefits related to improved efficiency.

*Issue I.1:* DOE seeks comment and information on whether a rebound rate of 0 percent is appropriate for MHLFs.

As stated earlier, DOE understands that the MHLF market is declining. For example, fluorescent and light-emitting diode (''LED'') light fixtures are displacing MHLFs in many applications. DOE understands that, as a result of an amended energy conservation standard, customers might opt to purchase LED light fixtures in place of MHLFs in greater numbers.

*Issue I.2:* DOE seeks information related to the potential variables that could cause customers to opt to purchase other technologies (such as LED or fluorescent light fixtures) instead of MHLFs. DOE specifically seeks input on the magnitude of the change in efficiency, first cost, payback, or other variables that could cause customers to opt for an alternate technology if energy conservation standards for MHLFs were amended.

*J. Manufacturer Impact Analysis*

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact of amended energy conservation standards on manufacturers of MHLFs, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model, an industry cash-flow model adapted for the equipment in this rulemaking, with the key output of industry net present value. The qualitative part of the MIA addresses the potential impacts of energy conservation standards on manufacturing capacity and industry competition, as well as factors such as equipment characteristics, impacts on particular subgroups of firms, and important market and equipment trends.

As part of the MIA, DOE intends to analyze impacts of amended energy conservation standards on subgroups of manufacturers of covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (''SBA's'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code.[11] Manufacturing of MHLFs is classified under NAICS 335122, ''Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing,'' and the SBA sets a threshold of 500 employees or less for a domestic entity to be considered as a small business. Manufacturing of metal halide ballasts is classified under NAICS 335311, ''Power, Distribution and Specialty Transformer Manufacturing,'' and the SBA sets a threshold of 750 employees or less for a domestic entity to be considered as a small business. The employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

*Issue J.1:* To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute MHLFs and metal halide ballasts in the United States.

*Issue J.2:* DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers, as defined by the SBA's

[10] HID Lamp Indexes Decline in Fourth Quarter 2017 Compared to Fourth Quarter 2016. See *https://www.nema.org/Intelligence/Indices/Pages/HID-Lamp-Indexes-Decline-in-Fourth-Quarter-2017-Compared-to-Fourth-Quarter-2016.aspx.*

[11] Available online at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

size thresholds, of MHLFs and metal halide ballasts that distribute equipment in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

*Issue J.3:* DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of MHLFs and metal halide ballasts associated with (1) other DOE standards applying to different equipment that these manufacturers may also make and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

### *K. Other Energy Conservation Standards Topics*

#### 1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for MHLFs.

#### 2. Market-Based Approaches to Energy Conservation Standards

As part of its regulatory reform efforts, DOE published a request for information discussing key issues and requesting feedback on market-based approaches to energy conservation standards. 82 FR 56181 (November 28, 2017). DOE requests comment on how market-based approaches to energy conservation standards might impact standards for these products, and specifically seeks comment on any considerations with respect to MHLFs.

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for MHLFs not already addressed by the specific areas identified in this document.

## III. Submission of Comments

DOE invites all interested parties to submit in writing by August 15, 2019, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended energy conservations standards for MHLFs. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via *http://www.regulations.gov*. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov*.

Signed in Washington, DC, on June 19, 2019.

**Alexander Fitzsimmons,**

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

[FR Doc. 2019–14004 Filed 6–28–19; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0497; Product Identifier 2019–NM–052–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 15, 2019.

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

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

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0497; Product Identifier 2019–NM–052–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0056, dated March 19, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> The airworthiness limitations for Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the A318, A319, A320 and A321 Airworthiness Limitations Section (ALS) document(s). The Safe Life Airworthiness Limitation Items are specified in ALS Part 1.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2017–0215 [which corresponds to FAA AD 2018–17–19, Amendment 39–19373 (83 FR 44460, August 31, 2018)] to require accomplishment of all maintenance tasks as described in ALS Part 1 at Revision 05.
>
> Since that [EASA] AD was issued, new A320 family models have been certified, and studies were conducted in the frame of in-service events or during life extension campaigns, the results of which prompted revision of the life limits of several components. Consequently, Airbus issued the ALS.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0215, which is superseded, and requires accomplishment of the actions specified in the ALS.

You may examine the MCAI in the AD docket on the internet at *http://*

*www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497.

**Relationship Between Proposed AD and AD 2018–17–19**

This NPRM does not propose to supersede AD 2018–17–19. Rather, the FAA has determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2018–17–19.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018. This service information describes new maintenance requirements and airworthiness limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new life limits. Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 1,497 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

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

2. Will not affect intrastate aviation in Alaska; and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus SAS:** Docket No. FAA–2019–0497; Product Identifier 2019–NM–052–AD.

**(a) Comments Due Date**

The FAA must receive comments by August 15, 2019.

**(b) Affected ADs**

This AD affects AD 2018–17–19, Amendment 39–19373 (83 FR 44460, August 31, 2018) (''AD 2018–17–19'').

**(c) Applicability**

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 30, 2018.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 06, Issue 02, dated November 30, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

**(h) No Alternative Actions, Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative life limits may be used unless approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

**(i) Terminating Action for AD 2018–17–19**

Accomplishing the actions required by this AD terminates all requirements of AD 2018–17–19.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0056, dated March 19, 2019; for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0497.

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

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 21, 2019.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–13885 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0499; Product Identifier 2019–NM–088–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Embraer S.A. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2017–06–08, which applies to certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes. AD 2017–06–08 requires revising the existing maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations. Since the FAA issued AD 2017–06–08, the agency determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also add airplanes to the applicability. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 15, 2019.

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

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

For service information identified in this NPRM, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0499; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0499; Product Identifier 2019–NM–088–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. The FAA will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

The FAA issued AD 2017–06–08, Amendment 39–18832 (82 FR 16725, April 6, 2017) (''AD 2017–06–08''), for certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes. AD 2017–06–08 requires revising the maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations. AD 2017–06–08 resulted from a determination that more restrictive airworthiness limitations are necessary. The FAA issued AD 2017–06–08 to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. In addition, the FAA issued AD 2017–06–08 to prevent safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA issued AD 2017–06–08 to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

## Actions Since AD 2017–06–08 Was Issued

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian AD 2019–05–01, effective May 2, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Embraer S.A. Model ERJ 170 airplanes. The MCAI states:

> This [Brazilian] AD was prompted by a new revision to the airworthiness limitations of the Maintenance Review Board Report. This [Brazilian] AD is being issued to ensure that fatigue cracking of principal structural elements is detected and corrected. Such fatigue cracking could adversely affect the structural integrity of these airplanes.

The required action is revising the existing maintenance or inspection program, as applicable, to incorporate the airworthiness limitations in Appendix A—Airworthiness Limitations to the EMBRAER 170/175 Maintenance Review Board Report, MRB–1621, Revision 14, dated September 27, 2018; and Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life-Limited Items, of Appendix A—Airworthiness Limitations; to the EMBRAER 170/175 Maintenance Review Board Report, MRB–1621, Revision 14, dated September 27, 2018.

Appendix A—Airworthiness Limitations, to the EMBRAER 170/175 Maintenance Review Board Report, MRB–1621, Revision 14, dated September 27, 2018, is divided into four parts: Part 1—Certification Maintenance Requirements (CMR), Part 2—Airworthiness Limitation Inspections (ALI)—Structures, Part 3—Fuel System Limitation Items (FSL), and Part 4—Life Limited Items (LLI).

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0499.

## Related Service Information Under 1 CFR Part 51

Embraer has issued Part 1—Certification Maintenance Requirements; Part 2—Airworthiness Limitation Inspections (ALI)—Structures; Part 3—Fuel System Limitation Items; and Part 4—Life Limited Items; of Appendix A—Airworthiness Limitations; to the EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018. This service information describes airworthiness limitations.

Embraer has also issued Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life-Limited Items, of Appendix A—Airworthiness Limitations; to the EMBRAER 170/175 MRBR, MRB–1621, Revision 14, dated September 27, 2018. This service information describes, in Table 1 of the life-limited items, a new part number associated with main landing gear (MLG) life-limited components.

This proposed AD would also require Part 1—CMR; Part 2—ALI—Structures; Part 3—FSL; and Part 4—LLI; of Appendix A—Airworthiness Limitations; of the EMBRAER 170/175 MRBR, MRB–1621, Revision 10, dated February 23, 2015, which the Director of the Federal Register approved for incorporation by reference on May 11, 2017 (82 FR 16725, April 6, 2017).

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

## FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

## Proposed Requirements of This NPRM

This proposed AD would retain all of the requirements of AD 2017–06–08. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also add Model ERJ 170–200 LL airplanes to the applicability.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 540 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

The actions that are required by AD 2017–06–08 and retained in this NPRM take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2017–06–08 is $85 per product.

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–06–08, Amendment 39–18832 (82 FR 16725, April 6, 2017), and adding the following new AD:

**Embraer S.A:** Docket No. FAA–2019–0499; Product Identifier 2019–NM–088–AD.

**(a) Comments Due Date**

The FAA must receive comments by August 15, 2019.

**(b) Affected ADs**

This AD replaces AD 2017–06–08, Amendment 39 18832 (82 FR 16725, April 6, 2017) (''AD 2017–06–08'').

**(c) Applicability**

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes; certificated in any category; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000761 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Codes 27, Flight controls; 28, Fuel; 52, Doors; 53, Fuselage; 54, Nacelles/pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Exhaust.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to prevent safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. The FAA is also issuing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**(f) Compliance**

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

**(g) Retained Revision of Maintenance or Inspection Program, With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2017–06–08, with no changes. For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000453 inclusive: Within 12 months after May 11, 2017 (the effective date of AD 2017–06–08), revise the maintenance or inspection program, as applicable, to incorporate the airworthiness limitations specified in Part 1—Certification Maintenance Requirements (CMR); Part 2—Airworthiness Limitation Inspections (ALI)—Structures; Part 3—Fuel System Limitation Items (FSL); and Part 4—Life Limited Items (LLI); of Appendix A—Airworthiness Limitations; of the EMBRAER 170/175 MRBR, MRB–1621, Revision 10, dated February 23, 2015. The initial compliance times and repetitive intervals are specified in the applicable part of the EMBRAER 170/175 MRBR, MRB–1621, Revision 10, dated February 23, 2015.

**(h) Retained No Alternative Actions Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs), With New Exception**

This paragraph restates the action required by paragraph (j) of AD 2017–06–08, with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revisions required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(i) New Requirement of This AD: Maintenance or Inspection Program Revision**

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Part 1—Certification Maintenance Requirements; Part 2—Airworthiness Limitation Inspections (ALI)—Structures; Part 3—Fuel System Limitation Items; and Part 4—Life Limited Items; of Appendix A—Airworthiness Limitations; to the EMBRAER 170/175 Maintenance Review Board Report, MRB–1621, Revision 14, dated September 27, 2018 (''EMBRAER MRB–1621, Revision 14''); and EMBRAER Temporary Revision (TR) 14–1, dated November 13, 2018, to EMBRAER MRB–1621, Revision 14. The initial compliance time for doing the tasks are at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Accomplishing the revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(1) Within the applicable times specified in EMBRAER MRB–1621, Revision 14. For the purposes of this AD, the initial compliance times identified as ''Threshold'' or ''T'' in EMBRAER MRB–1621, Revision 14 are expressed in ''total flight cycles.''

(2) Within 90 days or 600 flight cycles after the effective date of this AD, whichever occurs later.

**(j) No Alternative Actions, Intervals, or CDCCLs**

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(k) Other FAA AD Provisions**

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

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2019–05–01, effective May 2, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0499.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 21, 2019.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–13884 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0500; Product Identifier 2019–NM–078–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 15, 2019.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South

216th St., Des Moines, WA 98198; phone and fax: 206–231–3225.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0500; Product Identifier 2019–NM–078–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0091, dated April 26, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A310 series airplanes. The MCAI states:

> The airworthiness limitations for Airbus A310 aeroplanes, which are approved by EASA, are currently defined and published in the A310 [Airworthiness Limitations Section] ALS document(s). The Damage Tolerant Airworthiness Limitation Items (DT ALI) are published in ALS Part 2.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2017–0206 [which corresponds to FAA AD 2018–19–31, Amendment 39–19432 (83 FR 48930, September 28, 2018) (''AD 2018–19–31'')] to require accomplishment of all DT ALI maintenance tasks as described in the Airbus A310 ALS Part 2 at Revision 02.
>
> Since that [EASA] AD was issued, Airbus published the ALS, including new and/or more restrictive requirements.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0206, which is superseded, and requires accomplishment of the actions specified in the ALS.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500.

## Relationship Between Proposed AD and AD 2018–19–31

This NPRM does not propose to supersede AD 2018–19–31. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2018–19–31.

## Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A310 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018 (''Airbus A310 ALS Part 2, DT–ALI, Revision 03''), as supplemented by Airbus A310 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 3.1, Issue 01, dated December 20, 2018 (''Airbus A310 ALS Part 2, DT–ALI, Variation 3.1, Issue 01''). Airbus A310 ALS Part 2, DT–ALI, Revision 03, describes mandatory maintenance tasks that operators must perform at specified intervals. Airbus A310 ALS Part 2, DT–ALI, Variation 3.1, Issue 01, describes additional mandatory maintenance tasks related to wide-spread fatigue damage that operators must perform at specified intervals. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## FAA's Determination

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

## Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

## Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that, if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. The FAA considers those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

## Costs of Compliance

The FAA estimates that this proposed AD affects 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

## Authority for This Rulemaking

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

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

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

## Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska; and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus SAS:** Docket No. FAA–2019–0500; Product Identifier 2019–NM–078–AD.

**(a) Comments Due Date**

The FAA must receive comments by August 15, 2019.

**(b) Affected ADs**

This AD affects AD 2017–21–08, Amendment 39–19079 (82 FR 48904, October 23, 2017) (''AD 2017–21–08''); and AD 2018–19–31, Amendment 39–19432 (83 FR 48930, September 28, 2018) (''AD 2018–19–31'').

**(c) Applicability**

This AD applies to Airbus SAS Model A310–203, -204, -221, -222, -304, -322, -324, and -325 airplanes, certificated in any category, all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018 (''Airbus A310 ALS Part 2, DT–ALI, Revision 03''), as supplemented by Airbus A310 Airworthiness ALS, Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 3.1, Issue 01, dated December 20, 2018 (''Airbus A310 ALS Part 2, DT–ALI, Variation 3.1, Issue 01''). The initial compliance time for doing the tasks is at the time specified in Airbus A310 ALS Part 2, DT–ALI, Revision 03, as supplemented by Airbus A310 ALS Part 2, DT–ALI, Variation 3.1, Issue 01; or within 90 days after the effective date of this AD; whichever occurs later.

**(h) No Alternative Actions or Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

**(i) Terminating Action for AD 2017–21–08 and AD 2018–19–31**

Accomplishing the actions required by this AD terminates all requirements of AD 2017–21–08 and AD 2018–19–31.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0091, dated April 26, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 21, 2019.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–13887 Filed 6–28–19; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0501; Product Identifier 2019–NM–077–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 15, 2019.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworteas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0501; Product Identifier 2019–NM–077–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0090, dated April 26, 2019; (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300–600 series airplanes. The MCAI states:

> The airworthiness limitations for the Airbus A300–600 aeroplanes, which are approved by EASA, are currently defined and published in the A300–600 [Airworthiness Limitations Section] ALS document(s). The Damage Tolerant Airworthiness Limitation Items (DT ALI) are published in ALS Part 2.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2017–0205 [which corresponds to FAA AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018) (''AD 2018–19–33'')] to require accomplishment of all DT ALI maintenance tasks as described in the Airbus A300–600 ALS Part 2 at Revision 02.
>
> Since that [EASA] AD was issued, Airbus published the ALS, including new and/or more restrictive requirements.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0205, which is superseded, and requires accomplishment of the actions specified in the ALS.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501.

### Relationship Between Proposed AD and AD 2018–19–33

This NPRM does not propose to supersede AD 2018–19–33. Rather, the FAA has determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2018–19–33.

### Related Service Information Under 1 CFR Part 51

Airbus SAS has issued A300–600 Airworthiness Limitations Section

(ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018. This service information describes airworthiness limitations for certification maintenance requirements applicable to the DT–ALI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

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

### Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would also require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

### Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. The FAA considers those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

### Costs of Compliance

The FAA estimates that this proposed AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

### Authority for This Rulemaking

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

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

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

### Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Will not affect intrastate aviation in Alaska; and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus SAS:** Docket No. FAA–2019–0501; Product Identifier 2019–NM–077–AD.

#### (a) Comments Due Date

The FAA must receive comments by August 15, 2019.

#### (b) Affected ADs

This AD affects AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07''); and AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018) (''AD 2018–19–33'').

#### (c) Applicability

This AD applies to Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

#### (d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

#### (e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

**(h) No Alternative Actions or Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

**(i) Terminating Action for AD 2018–01–07 and AD 2018–19–33**

Accomplishing the actions required by this AD terminates all requirements of AD 2018–01–07 and AD 2018–19–33.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2018–19–33 are approved as AMOCs for the corresponding provisions of this AD.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0090, dated April 26, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 21, 2019.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–13886 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0495; Product Identifier 2019–NM–029–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2019–05–09, which applies to certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes. AD 2019–05–09 requires repetitive detailed inspections of certain electrical harnesses for discrepancies and corrective actions, if necessary. AD 2019–05–09 also provides an optional terminating modification for the repetitive detailed inspections. Since we issued AD 2019–05–09, the FAA has determined that it is necessary to require the terminating modification. This proposed AD would retain the actions of AD 2019–05–09 and add a requirement for a terminating modification for the repetitive inspections, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 15, 2019.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0495; Product Identifier 2019–NM–029–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

**Discussion**

The FAA issued AD 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019) (''AD 2019–05–09''), for certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes. AD 2019–05–09 requires repetitive detailed inspections of certain electrical harnesses for discrepancies and corrective actions, if necessary. AD 2019–05–09 also provides an optional terminating modification for the repetitive detailed inspections. AD 2019–05–09 resulted from reports of low clearance between the electrical harness and nearby hydraulic pipes in the inboard trailing edge of the wing. The FAA issued AD 2019–05–09 to address this condition, which, if not detected and corrected, could lead to chafing of electrical harnesses in the vicinity of hydraulic pipes and could result in a potential source of ignition in the flammable fluid leakage zone, and possibly result in a fire or explosion and loss of the airplane.

**Actions Since AD 2019–05–09 Was Issued**

As previously mentioned, AD 2019–05–09 allows for an optional terminating modification of the airplane, which the EASA AD required but the FAA excepted. The preamble to AD 2019–05–09 specifies that the FAA was considering requiring modification of the adaptation damper bulkhead fitting for left hand and right hand wings to recover correct clearance between the electrical harness brackets and the damper. That AD explains that the planned compliance time for the modification would allow enough time to provide notice and opportunity for prior public comment on the merits of the modification, and this proposed AD follows from that determination.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0035, dated February 15, 2019 (''EASA AD 2019–0035'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes. The MCAI states:

> Low clearance between electrical harness and nearby hydraulic pipes has been detected in the inboard trailing edge of some aeroplanes.
>
> This condition, if not detected and corrected, could lead to chafing of electrical harnesses on hydraulic pipes, eventually creating an ignition source in the flammable fluid leakage zone area, possibly resulting in fire or an explosion and loss of the aeroplane.
>
> To address this potential unsafe condition, Airbus issued the AOT [alert operators transmission], providing instructions to accomplish a detailed inspection (DET) for clearance and damage, and published the modification SB [Airbus Service Bulletin A320–29–1176], providing instructions to modify the electrical harness routing, increasing the clearance between electrical harness and hydraulic pipes.
>
> For the reasons described above, this [EASA] AD requires repetitive DET of the electrical harness and modification of the aeroplane.

**Explanation of Retained Requirements**

Although this proposed AD does not explicitly restate the requirements of AD 2019–05–09, this proposed AD would retain all of the requirements of AD 2019–05–09. Those requirements are referenced in EASA AD 2019–0035, which, in turn, is referenced in paragraph (g) of this proposed AD.

**Related IBR Material Under 1 CFR Part 51**

This AD requires compliance with EASA AD 2019–0035, which the Director of the Federal Register approved for incorporation by reference as of April 4, 2019 (84 FR 10259, March 20, 2019). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination and Requirements of This Proposed AD**

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

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0035 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0035 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0035, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019–0035 that is required for compliance with EASA AD 2019–0035 will be available on the internet *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 14 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained actions from AD 2019–05–09 | 6 work-hours × $85 per hour = $510 | $0 | $510 | $7,140 |
| New proposed actions | 16 work-hours × $85 per hour = $1,360 | 8,900 | 10,260 | 143,640 |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| Up to 8 work-hours × $85 per hour = $680 | * | Up to $680 * |

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Will not affect intrastate aviation in Alaska; and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019), and adding the following new AD:

**Airbus SAS:** Docket No. FAA–2019–0495; Product Identifier 2019–NM–029–AD.

**(a) Comments Due Date**

The FAA must receive comments by August 15, 2019.

**(b) Affected ADs**

This AD replaces AD 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019) (''AD 2019–05–09'').

**(c) Applicability**

This AD applies to Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0035, dated February 15, 2019 (''EASA AD 2019–0035'').

**(d) Subject**

Air Transport Association (ATA) of America Code 92, Electrical system installation.

**(e) Reason**

This AD was prompted by reports of low clearance between the electrical harness and nearby hydraulic pipes in the inboard trailing edge of the wing. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could lead to chafing of electrical harnesses in the vicinity of hydraulic pipes and could result in a potential source of ignition in the flammable fluid leakage zone, and possibly result in a fire or explosion and loss of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0035.

**(h) Exceptions to EASA AD 2019–0035**

(1) For purposes of determining compliance with the requirements of this AD: Where Paragraphs (1) and (3) of EASA AD 2019–0035 refer to its effective date, this AD requires using April 4, 2019 (the effective date of AD 2019–05–09).

(2) For purposes of determining compliance with the requirements of this AD: Where Paragraph (4) of EASA AD 2019–0035 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2019–0035 does not apply to this AD.

**(i) No Reporting Requirement**

Although certain service information referenced in EASA AD 2019–0035 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0035 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

(1) For information about EASA AD 2019–0035, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0035 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495.

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

Issued in Des Moines, Washington, on June 21, 2019.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–13888 Filed 6–28–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 4

**[Docket No. TTB–2019–0004; Notice No. 182]**

**RIN 1513–AB56**

## Elimination of Certain Standards of Fill for Wine

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) addresses numerous petitions requesting that TTB amend the regulations that govern wine containers to provide for additional authorized standards of fill. TTB is proposing to eliminate all but a minimum standard of fill for wine containers and thus eliminate unnecessary regulatory requirements and provide consumers broader purchasing options. TTB welcomes comments on this proposed deregulation, and it also seeks comments on the relative merits of alternatives, such as adding new authorized standards of fill and developing an expedited process for adding additional standards in the future. All of these approaches would eliminate restrictions that inhibit competition and the movement of goods in domestic and international commerce.

**DATES:** Comments must be received on or before August 30, 2019.

**ADDRESSES:** Please send your comments on this proposed rule to one of the following addresses:

- *Internet: https://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2019–0004 at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400E, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this proposed rule and any comments TTB receives about this proposal at *https://www.regulations.gov* within Docket No. TTB–2019–0004. A link to that docket is posted on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 182. You also may view copies of this proposed rule and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. Please call 202–453–2135 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

**SUPPLEMENTARY INFORMATION:**

## Background

*TTB Authority*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers regulations setting forth bottle size and related standards of fill for containers of wine products distributed within the United States. The authority to establish these standards is based on section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), which authorizes the Secretary of the Treasury to prescribe regulations relating to the ''packaging, marking, branding, and labeling and size and fill'' of alcohol beverage containers ''as will prohibit deception of the consumer with respect to such products or the quantity thereof . . . .'' TTB administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain FAA Act administrative and enforcement authorities to TTB through Treasury Order 120–01, dated January 24, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

*Current Standards of Fill for Wine*

The standards of fill for wine are contained in subpart H of part 4 of the TTB regulations (27 CFR part 4). The term ''standard of fill'' is used in the TTB regulations and in this document to refer to the authorized amount of liquid in the container, rather than the size or capacity of the container itself. For better readability, however, this document sometimes uses the terms ''size'' or ''container size'' and ''standards of fill'' interchangeably. Within subpart H, paragraph (a) of § 4.72 (27 CFR 4.72(a)) authorizes the use of the following metric standards of fill for containers other than those described in paragraph (b) of that section:

- 3 liters;
- 1.5 liters;
- 1 liter;
- 750 milliliters;
- 500 milliliters;
- 375 milliliters;
- 187 milliliters;
- 100 milliliters; and
- 50 milliliters.

Paragraph (b) of § 4.72 states that wine may be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

*Current Headspace Requirements for Wine*

Requirements for headspace, the empty space between the top of the wine and the top of the container, are also contained in subpart H of 27 CFR part 4. Within subpart H, paragraph (a)(3) of § 4.71 (27 CFR 4.71(a)(3)) states that a standard wine container must be made and filled so as to have a headspace not in excess of 6 percent of the total capacity of the container after closure if the net content of the container is 187 milliliters or more and, in the case of all other wine containers, a headspace not in excess of 10 percent of such capacity.

*Current Standards of Fill for Distilled Spirits and Malt Beverages*

The standards of fill for distilled spirits are contained in subpart E of part 5 of the TTB regulations (27 CFR part 5). In a separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, TTB is also proposing to eliminate most of the standards of fill for distilled spirits.

Unlike wine and distilled spirits, there are no standards of fill prescribed for malt beverages under the FAA Act. However, in the case of malt beverages, § 7.22(a)(4) of the TTB regulations (27 CFR 7.22(a)(4)) requires the display of net contents on the brand label as mandatory label information.

*History of Standards of Fill for Wine*

Standards of fill for wine were first established in October 1941 by T.D. 5093 (6 FR 5465, October 25, 1941), which became effective in October 1943. Those standards were as follows:

- 4.9 gallons;
- 3 gallons;
- 1 gallon;
- ½ gallon;
- 1 quart;
- ⅘ quart;
- ⅘ pint;
- ⅖ pint;
- ounces;
- 3 ounces; and
- 2 ounces.

Over the years, a number of changes were made to these standards. The most significant change took place in 1974 when TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), adopted metric standards of fill for wine containers. These metric standards were adopted in T.D. ATF–12 (39 FR 45216, December 31, 1974). ATF provided a phase-in period for the new metric sizes that lasted until January 1, 1979, at which time metric sizes became mandatory. The metric standards of fill originally adopted for wine were as follows:

- 3 liters;
- 1.5 liters;
- 1 liter;
- 750 milliliters;
- 375 milliliters;
- 187 milliliters; and
- 100 milliliters.

Later amendments to the metric standards for wine containers included:

- T.D. ATF–49 (43 FR 19846, May 9, 1978), which allowed whole liter sizes larger than 3 liters;
- T.D. ATF–76 (46 FR 1725, January 7, 1981), which added the 50- milliliter miniature size; and
- T.D. ATF–303 (55 FR 42710, October 23, 1990), which allowed the 500-milliliter size in interstate commerce. Prior to the Treasury decision, it could only be used for intrastate commerce or export.

**Prior Notices Seeking Comments on Changes to Standards**

In addition to the rulemakings cited above that adopted or amended standards of fill for wine, ATF twice solicited comments on whether the standards of fill should be retained, revised, or eliminated.

In 1987, ATF published an advance notice of proposed rulemaking (ANPRM), Notice No. 633 (52 FR 23685, June 24, 1987), which solicited comments on whether the standards of fill requirements for distilled spirits and wine should be retained either in general or as metric standards. The Washington State Liquor Control Board (WSLCB) had petitioned ATF to amend the regulations to allow for the importation of distilled spirits not bottled in authorized metric standards of fill if the bottles were labeled with certain additional information.

In its petition, the WSLCB stated that many foreign manufacturers bottle their spirits in standards of fill that are not authorized in the United States (for example, 740 milliliters and 800 milliliters). Consequently, while these products could be shipped to other countries, they could not be imported into the United States. The WSLCB argued that the existing standards of fill stifled price competition on imported distilled spirits, resulting in an artificial price increase for U.S. consumers. Although the petition requested an amendment of the standards of fill requirements for distilled spirits only, the ANPRM requested comments on retaining or eliminating the standards of fill for distilled spirits and wine. On February 6, 1990, ATF published Notice No. 696 (55 FR 3980) and stated that it found no basis to eliminate the existing standards of fill for wine and distilled spirits.

In 1993, ATF published another ANPRM, Notice No. 773 (58 FR 35908, July 2, 1993), in response to three petitions requesting the reinstatement or addition of four sizes to the standards of fill for distilled spirits. The petitioners requested that the regulations be amended to include four sizes used in other countries: A 296-milliliter can, a 500-milliliter bottle, a 680-milliliter bottle, and a 946-milliliter bottle. The petitioners also made many of the same arguments for retaining the existing standards that were noted in Notice No. 696. Although these petitions only involved an amendment to the existing standards for distilled spirits, ATF believed it was also appropriate to address the larger issue of retaining or eliminating the standards of fill requirements for distilled spirits and wine. A common theme in the three petitions was that the current standards of fill were hindering international trade between the United States and countries with different standard container sizes.

As a result, ATF sought comment in Notice No. 773 on whether the existing standards of fill should be revised, retained, or eliminated. ATF did not undertake further rulemaking on this issue.

**Petitions and Inquiries Regarding Changes to Standards**

In the past several years, TTB has received a number of petitions and inquiries regarding changes to the standards of fill requirements for wine.

Several of these petitions and inquiries were from producers, bottlers, and importers interested in distributing wine in cans. Generally speaking, these industry members assert that the standards of fill they propose (200, 250, and 355-milliliters) are standard can sizes prevalent in the United States and would therefore be more cost efficient for them to use than the sizes currently authorized in § 4.72. These petitions and inquiries addressing can sizes include the following:

1. A U.S. wine bottler submitted a petition requesting that § 4.72 be revised to allow wine to be packaged in 200-milliliter cans. The bottler stated that 200-milliters is a standard can size, while the 187-milliter size authorized in § 4.72 is difficult to obtain.

2. A California winery that packages its wine in 187-milliliter cans also petitioned for the addition of the 200-milliliters size to § 4.72 for metal containers having the general shape and size of a can. The petitioner stated that it must have its 187-milliliter cans custom manufactured, which is costly and inefficient. Additionally, the petitioner noted that 200-milliliters is listed in 27 CFR 5.47a as an approved standard of fill for distilled spirits packaged in metal containers. According to the petitioner, approving that size for wine would bring the wine standards of fill in line with can industry standards and the standards of fill for distilled spirits and non-alcoholic beverages.

3. An Argentine winery petitioned for the addition of 355-milliter and 250-milliliter sizes to § 4.72. The winery packages its products in 12-ounce (355-milliliter) and 8.4-ounce (250-milliliter) aluminum cans, but is unable to sell its product in the U.S. marketplace since these sizes are not authorized in § 4.72.

4. An importer of Australian wine inquired about selling 250-milliliter cans of wine to concert and sporting arenas, but was unable to do so since 250- milliliter is not an authorized standard of fill as prescribed in § 4.72.

5. A U.S. producer of wine and distilled spirits filed a petition requesting that TTB authorize a 355-milliliter standard of fill, or 12 ounces, for wine sold in cans. Currently, the petitioner sells wine packed in a 12 ounce cans only in Puerto Rico, and would like to use the same size cans for wine sold in the rest of the United States.

6. A Colorado-based winery that packages its wine in cans petitioned TTB to approve 250-milliliters as an authorized standard of fill. The petition noted that the 250-milliliter size has become standard in the U.S. for various beverages, including wines that contain less than 7 percent alcohol by volume and are thus not regulated under the FAA Act. It argues that this creates an unfair playing field for many wineries and that the current rules restrict sales, growth, and job creation.

In addition to the petitions discussed above that addressed the packaging of wine in cans, TTB also received a petition from an importer of boxed wine requesting that the agency authorize a standard of fill of 2.25 liters for wine containers. The importer states that such a container would significantly reduce environmental impact because it holds as much as three 750-milliliter wine bottles at half the weight of such bottles.

Additionally, TTB has received several inquiries over the years regarding the importation of the French product known as ''vin jaune'' (''yellow wine'' in English). Vin jaune is made in the Jura region of France, using a technique similar to that used for making Sherry. In accordance with French and European Union regulations, it must be sold in a 620-milliliter bottle. Since 620-milliters is not an authorized size in § 4.72, vin jaune cannot be imported into the United States.

Finally, foreign governments have contacted TTB regarding the wine standards of fill regulations. Among these was a 2007 request from the Government of Moldova asking that TTB waive the standards of fill requirements for importations of Moldovan wine. At the time, Moldova reported that it had over a million bottles of aged wine in its National Treasury of Wine that could not be sold in the United States due to the U.S. bottle size limitations. Also in 2007, the Government of Georgia requested that TTB add the 700-milliliter bottle to the authorized standards of fill. It stated that the 700-milliliter bottle was a standard size in the former Soviet Union, and the addition of the 700-milliliter standard of fill in the TTB regulations would eliminate a restriction on the sale of Georgian wines in the United States.

**Petition Regarding Bottle Headspace**

TTB has also received a petition from a company that imports individually sealed glasses of wine from France and markets them in North America. These individually sealed 100 milliliter size glasses of wine were designed to enable consumers to drink a glass of wine without having to open a full bottle. However, the product must comply with 27 CFR 4.71(a)(3), which requires a headspace not in excess of 10 percent for containers smaller than 187 milliliters. The petitioner stated that these containers require more than the maximum 10 percent headspace allowance for the following reasons:

- A minimum of 25 to 30 percent headspace is required to keep wine away from the edge of the glass during the manufacturing process, thus ensuring the glass container is sealed correctly.
- If the headspace were the required 10 percent, consumers would likely spill the contents when peeling off the aluminum foil due to the strength of the seal.

The petitioner also noted in support of its petition that, since the glass container will be clear, the purchaser will clearly see the actual content and the actual net content will be clearly identified on the label.

**TTB Proposal**

In view of the points made in the petitions and inquiries discussed above, TTB believes that it is appropriate to revisit the wine standards of fill issue. TTB is proposing to eliminate the existing standards of fill for wine, except that the regulations would maintain a minimum standard of 50 milliliters. The minimum container size is needed to ensure sufficient space on the container for required labeling. TTB also welcomes comments on merely adding some or all of the standards of fill requested in the petitions, or adding some or all of those standards and also adopting an expedited approach for adding new sizes in the future. TTB is considering eliminating the standards of fill for the following reasons:

1. Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' and Executive Order 13777, titled ''Enforcing the Regulatory Reform Agenda,'' task Federal agencies with identifying and eliminating regulations to reduce regulatory burdens and costs for industry. TTB believes that this proposal is aligned with these Executive Orders as explained below.

2. Elimination of the existing standards of fill would address the recent petitions on this issue, would

eliminate the need for industry members to petition for additional authorizations if marketplace conditions favor different standards in the future, and would eliminate requirements that restrict competition and the movement of goods in domestic and international commerce.

3. It would address concerns that the current standards of fill unnecessarily limit manufacturing options and consumer purchasing options, particularly where consumers may seek smaller containers to target a specific amount of consumption.

4. TTB believes that current and proposed labeling requirements regarding net contents (see 27 CFR 4.32(b)(2) and 4.37) and those regarding the design and fill of containers (see 27 CFR 4.71) provide consumers with adequate information about container contents.

TTB is not aware of consumer deception issues related to container sizes of malt beverages, for which there is no standard of fill requirement. In addition to eliminating the current standards of fill for wine containers, TTB proposes to amend the current headspace requirements for wine in 27 CFR 4.71(a)(3).

Specifically, TTB is proposing to allow wine bottled in a clear, 100-milliliter or smaller container to contain a headspace of not more than 30 percent of the total capacity of the container. The proposed revision would allow more wine products to be bottled in individually sealed glasses such as those described above. This would be permitted only for wine bottled in a clear container so that the consumer would be able to see the actual contents of the container, thus reducing the possibility of consumer deception.

*Discussion of the Proposed Changes*

Regarding the specific regulatory amendments proposed in this document, TTB notes the following:

- In § 4.32, which concerns mandatory label information for wine, paragraph (b)(2) is amended by removing the second sentence, which would no longer be relevant if the referenced standards of fill are removed.
- In § 4.37, which concerns net contents, the introductory text of paragraph (a) is revised to remove the several references to ''standard of fill'' and to replace the words ''prescribed in § 4.72'' with a reference to § 4.71, which is revised as discussed below. In addition, the introductory text of paragraph (b) is revised, and current paragraph (b)(1) is removed and paragraphs (b)(2) and (3) are redesignated as (b)(1) and (2) respectively, to reflect the removal of the standards of fill.
- Section 4.70, which concerns the application of standard wine container requirements (*i.e.,* design, fill, and headspace) and the standards of fill requirements, is amended by removing references to § 4.72.
- Section 4.71, which concerns standard wine containers, is revised to remove a reference to § 4.72, to include tolerances (discrepancies between actual and stated fill), in the paragraph concerning fill, to require a minimum fill of 50 milliliters, and to add the 30 percent headspace allowance for 100-milliliter or smaller containers as discussed above.
- Finally, § 4.72, which specifies the metric standards of fill for wine, is removed because it would no longer serve any purpose.

*Alternatives to the Proposal*

TTB is also considering maintaining the standards of fill but liberalizing the existing regulatory scheme. It simply could add some or all of the petitioned-for standards (200, 250, 355, 620, and 700 milliliters and 2.25 liters) to § 4.72(a). It also could institute an expedited process for considering future petitions to add additional standards of fill and help ensure § 4.72 is non-discriminatory and does not create unnecessary obstacles to competition, trade, or investment. For example, TTB could amend its regulations in § 4.72 to provide for administrative approvals of standards of fill. Under such an expedited system, the Administrator could authorize new standards of fill in response to a petition if the petition shows good cause for approval (such as commercial viability), barring the Administrator determining that the proposed standard would cause confusion. Administratively approved standards of fill then would be published on the TTB website so that other industry members are aware of the additional authorized sizes.

## Public Participation

*Comments Sought*

TTB requests comments on the proposals to eliminate the standards of fill for wine (with the exception of a minimum 50-milliliter specification) and to add a new headspace specification for wine bottled in a clear, 100-milliliter or smaller container. TTB also requests comments on alternative approaches, such as maintaining the standards of fill but adding some or all of the petitioned-for standards (200, 250, 355, 620, 700 milliliters and 2.25 liters) to § 4.72(a)—including comments on the alternative of developing an expedited process for adding new standards of fill in the future and the criteria for approval of specific standards under an expedited process. Additionally, TTB understands that some state regulations on standards of fill for wine may incorporate TTB regulations by reference. TTB requests comments from state regulators on whether this proposal will present a regulatory issue at the state level. TTB invites any other suggestions or alternatives related to the issue of standards of fill, including headspace requirements, for wine. Given the absence of standards of fill for malt beverages, TTB would be particularly interested in comments that address the merits of continuing to apply different rules to wine and spirits.

Any person submitting comments may present such data, views, or arguments as he or she desires. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

*Submitting Comments*

You may submit comments on this notice of proposed rulemaking by one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2019–0004 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 182 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, click on the site's ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 182 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality*

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

*Public Disclosure*

TTB will post, and you may view, copies of this proposed rule and any online or mailed comments received about this proposal within Docket No. TTB–2019–0004 on the Federal e-rulemaking portal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 182. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of this proposed rule and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. You may also obtain copies for 20 cents per 8.5 x 11-inch page. Contact TTB's *Regulations.gov* administrator at the above address or by telephone at 202–453–2135 to schedule an appointment or to request copies of comments or other materials.

**Regulatory Analysis and Notices**

*Analysis of Impacts*

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule, pursuant to section 3(f) of Executive Order (E.O.) 12866. The impacts of this proposed rule have been examined in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule is anticipated to be designated under Executive Order 13771 as a deregulatory action.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would increase regulatory flexibility by expanding the options available to small entities, we propose to certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of costs and benefits before proposing a rule with mandates that ''may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' This proposed rule would impose no new mandates.

*Purpose of the Rule*

Several regulatory requirements are intended to decrease the risk that consumers will misjudge the quantities of wine in containers available for sale. These include:

• A requirement that quantities of wine conform to values on a list of standard quantities, with each of the standard quantities separated by at least 50 milliliters (27 CFR 4.71(a)(2)); and

• A limitation on the amount of unfilled headspace at the top of the container (27 CFR 4.71(a)(3)).

The standard quantities are called ''standards of fill.'' A requirement that, with few exceptions, a quantity available for sale match a standard of fill may decrease the risk of consumer confusion, but, under some circumstances, the limitation also decreases economic efficiency by preventing production at the lowest possible cost. Limiting the amount of headspace in containers may decrease the risk of consumer confusion, but, under some circumstances, that limitation may decrease economic efficiency by preventing desirable products from entering the market.

This proposed rule would eliminate the requirement that quantities correspond to standards of fill, allowing wine to be sold in any quantity of 50 milliliters or more. The proposed rule would also increase permitted headspace for individually sealed glasses of wine in clear containers. These changes are expected to increase economic efficiency by allowing manufacturers to produce at lower costs and introduce products that would otherwise be prohibitively costly or explicitly forbidden.

*Background*

Businesses are categorized by type using the North American Industry Classification System (NAICS). Establishments primarily engaged in manufacturing wines and brandies are classified under NAICS code 312130. Establishments primarily engaged in the wholesale distribution of wine and distilled spirits are classified under NAICS code 424820. Establishments primarily engaged in retailing alcoholic beverages, including wine, are classified under NAICS code 445310.

Total establishments, employees, and payroll for each category are reported by the Census Bureau in the County Business Patterns (CBP) data series. The most recent year for which CBP data were available at the time of this analysis was 2016. Total receipts for establishments in each category are reported by the Census Bureau in the Statistics of U.S. Businesses (SUSB) data series. The most recent year for which SUSB receipt data were available at the time of this analysis was 2012. Table 1 reports total establishments, employees, payroll, and receipts for each category.

TABLE 1—INDUSTRY INFORMATION

| Industry | NAICS Code | Establishments | Employees | Payroll ($millions) | Receipts ($millions) |
|---|---|---|---|---|---|
| Wineries | 312130 | 3,604 | 51,107 | 2,520 | 15,525 |
| Wholesalers specializing in wine and distilled spirits | 424820 | 2,599 | 87,026 | 6,462 | 76,170 |
| Retailers specializing in wine & other alcoholic beverages | 445310 | 33,958 | 167,286 | 3,795 | 43,085 |

Sources: Establishment counts, employee counts, and payroll are from 2016 County Business Patterns data published by the Census Bureau. Receipts are from 2012 Statistics of U.S. Businesses data published by the Census Bureau.

Although wine is typically sold in glass bottles, wine is also available in other types of containers, including aluminum cans. Sales of canned wine have grown rapidly in recent years, reaching $28 million in 2017, up from $14.5 million in 2016 and $6.4 million in 2015.[1] However, canned wine still accounts for only about 0.2 percent of all wine sales.[2]

*Costs*

This proposed deregulation would, if implemented, impose no new mandates. However, the rule could create some costs for both consumers and producers. We are unable to quantify the costs, but welcome public comment with relevant information.

Consumers who know that quantities conform to the standards of fill can misjudge a quantity only by mistaking one standard quantity for another. The difference between the smallest standard, 50 milliliters, and the next standard, 100 milliliters, is 50 milliliters, or 100 percent of the smaller standard. The absolute differences between adjacent standards are typically larger for larger quantities, and, for quantities below 3 liters, never fall below 33 percent of the smaller standard. Large differences between standards decrease the risk that one quantity on the list of standards will be mistaken for another.

The rule would create costs for consumers if eliminating the standards of fill increased confusion about the quantities available for sale. However, confusion about quantities available for sale would continue to be limited by other regulations, including a requirement that net contents appear on a label affixed to the container (27 CFR 4.32(b)(2)), a prohibition against containers designed in such a way as to mislead consumers about the quantities contained (27 CFR (a)(1)), and the limitation on headspace (27 CFR 4.71 (a)(3)).

The limitation on headspace reduces the risk of consumer confusion by causing the quantity contained to correspond closely to the volume of the container. Headspace is limited to 6 percent of capacity after closure for containers with net contents of 187 milliliters or more and 10 percent for other containers. The proposed rule would, if implemented, allow headspace that does not exceed 30 percent for clear containers with net contents of 100 milliliters or less.

Increasing the limit on headspace would create costs for consumers if it increased confusion about the quantities available for sale. However, the exception is limited to containers with contents clearly visible. Confusion about quantity contained would be less likely with clear containers than with opaque containers, because the quantity contained could be observed directly and consumers would be less likely to use container size as a proxy for quantity.

Standards of fill also may have created secondary benefits that would be foregone with their elimination. For example, standard sizes may facilitate price comparison by consumers. When the net contents of bottles are equal, the relative prices of the bottles correspond to the relative prices per unit of wine they contain. When container sizes differ, the relative prices of bottles may differ from the relative prices per unit, so the elimination of fill standards could make the comparison of prices per unit more difficult. Price per unit labeling by retailers would decrease an impact of eliminating fill standards on the ease of comparison. Although price per unit labeling by retailers is common, it is not mandatory in most states, and, where it is mandatory, wine is typically excluded.[3] [4]

The introduction of products that do not correspond to the standards of fill could also create some costs for wine manufacturers, wholesalers, and retailers. Potential costs include those related to the renovation of production facilities, the distribution of containers that do not conform to current standards, and the reconfiguration of retail spaces. However, new products would only be introduced if profits from introducing them were, in expectation, positive.

Therefore the expected value to consumers of the new products would generally exceed the expected cost of their production, including any costs created by deviation from the standards of fill, so that the benefits of introduction would be at least as large as the costs.

*Benefits*

This proposed deregulation could, if implemented, create a range of benefits. These include increasing economic efficiency by allowing producers to harness economies of scale, increasing the variety of products available to consumers, and increasing the competitiveness of the market for wine. We are unable to quantify the benefits, but we welcome public comment with relevant information.

The market for canned wine has grown rapidly in recent years. However, according to petitions from industry, the most common sizes of aluminum cans, like 200 milliliters, differ from the standards of fill.

Can makers must reconfigure equipment to change the size of the cans produced. This reconfiguration creates a fixed cost for each size produced. Producing more cans of a given size lowers the average cost per can because it spreads the fixed cost across a larger number of cans. The standard of fill closest to 200 milliliters is 187 milliliters. Petitions from industry

[1] Martha C. White, ''Canned wine is the drink of summer 2017. Here are our top picks.'' Money. June 14, 2017, *available at http://time.com/money/4816413/canned-wine-can-juice-box-rose-sparkling/*.

[2] Nielsen, ''Heard it through the grapevine: Wine trends to watch for in 2018.'' Jan. 16, 2018, *available at http://www.nielsen.com/us/en/insights/news/2018/heard-it-through-the-grapevine-wine-trends-to-watch-for-in-2018.html.*

[3] National Institute of Standards and Technology, ''Unit Pricing Guide: A Best Practice Approach to Unit Pricing.'' NIST Special Publication 1181 (2015), *available at https://www.nist.gov/sites/default/files/documents/2017/04/28/SP1181-Unit-Pricing-Guide.pdf.*

[4] National Institute of Standards and Technology, ''U.S. Retail Pricing Laws and Regulations by State.'' *available at https://www.nist.gov/pml/weights-and-measures/us-retail-pricing-laws-and-regulations-state.*

indicate that the fixed costs associated with the production of 187 milliliter cans rather than 200 milliliter cans are substantial. Eliminating the standards of fill would allow wine makers to harness economies of scale and achieve lower costs by using the common 200 milliliter cans.

In some other countries, wine is produced in standard quantities that do not match the standards of fill in the United States. Reconfiguring those wine production facilities to produce bottles specifically for the United States creates a fixed cost. If the cost of reconfiguration is sufficiently high, no bottles may be produced for the United States, despite positive demand for those products at prices that correspond to production at scale.

Eliminating the standards of fill would allow more manufacturers producing primarily for foreign markets to sell their wines in the United States. The entry of those firms would increase competition in the wine market. More competitive markets allocate resources more efficiently by matching prices more closely to costs, so an increase in the competitiveness of the wine market would create economic benefits.

The introduction of those products would also increase consumer choice by providing them with options they may prefer to those currently available. Wines made primarily for foreign markets may not be the only new products introduced. Wine makers currently producing for the United States could also choose to introduce products that deviate from the current standards of fill.

Bottles that deviate from the current standards may allow consumers to more closely match the quantities they purchase to the quantities they desire to consume. Furthermore, some limited evidence suggests that consumers value novelty in bottle sizes, and novel bottle sizes may be of value to producers in differentiating their brands.[5 6]

Increasing the limitation on headspace for clear containers of 100 milliliters or less could also improve consumer welfare by increasing the options available. Comment from industry indicates that current headspace restrictions are problematic for individually sealed glasses of wine, since filling the glasses to the top creates difficulties for both manufacturing and consumption. Increasing the limitation on headspace could decrease manufacturing costs and improve consumer experiences with individually sealed glasses of wine.

*Alternatives*

The requirement that net contents conform to standards of fill reduces the risk of consumer confusion about quantity at the cost of restrictions on producers that decrease market efficiency. Consumer information about net contents is also a concern for other types of beverages, and the regulatory approaches taken for those beverages present some alternatives to the proposed deregulation.

One alternative would be to add new standards of fill to the current list. For example, a 200 milliliter standard could be added to accommodate the use of aluminum cans. One problem with that approach is that the new standard would be only 13 milliliters above the current standard of 187 milliliters, a difference of slightly less than 7 percent of the smaller standard. Standards separated by such small amounts would be expected to do little to reduce consumer confusion. That problem could be addressed by providing separate lists of standards for cans and other containers, as have been provided for distilled spirits (27 CFR 5.47a), so that a significant difference between standards of fill was maintained for each category of container.

However, the piecemeal addition of new standards as circumstances change involves costs that are avoided by eliminating the standards of fill entirely. The addition of new standards through rulemaking would continue to involve the burden on industry of petitioning for new standards and awaiting the outcomes and the burden on the government of responding to the petitions and promulgating new rules.

Standards of fill are not the only tool available for reducing the risk of consumer confusion about quantities available for sale. The appearance of net contents on the label is another tool, and more prominent net contents labeling may achieve the same reduction in the risk of confusion without incurring the costs associated with the standards of fill. Currently, wine must generally conform to standards of fill, and net contents can appear on any label affixed to the container. Malt beverages need not conform to standards of fill, but net contents must generally appear on the brand label (27 CFR 7.22). Similarly, beverages like carbonated soft drinks need not conform to standards of fill, but net quantity of contents must appear on the principal display panel (21 CFR 101.7).

A second alternative to this proposed rule would be to eliminate the standards of fill but require that net contents appear on the brand label, analogous to the requirements for malt beverages and soft drinks. However, the requirement that net contents appear on the brand label would constitute a new mandate on wine makers. Changing labels would involve administrative costs as well as the costs of redesigning labels and replacing printing equipment like engraving plates or cylinders. The proposed rule avoids those costs by avoiding changes to the labeling requirements. In addition, introducing a new requirement to include net contents on the brand label could potentially lead to a conflict with the World Wine Trade Group Agreement on Requirements for Wine Labelling (''WWTG Labelling Agreement''), which provides that certain common wine mandatory labeling information (country of origin, product name, net contents and alcohol content) be permitted to appear in any ''single field of vision.'' The WWTG Labelling Agreement sought to reduce regulatory burden on businesses in countries that are parties to the Agreement.

Currently, some wine products are not subject to the requirement that net contents conform to a standard of fill (27 CFR 4.70). However, when net contents do not conform to a standard of fill, net contents must appear on a label affixed to the front of the bottle (27 CFR 4.32(b)(2)). A third alternative is to eliminate the requirement that net contents conform to a standard of fill, but keep the standards of fill and keep the requirement that net contents be stated on a label affixed to the front of the bottle when the net contents do not conform to a standard of fill.

This alternative would impose no new mandate, although it would create some costs not created by the proposed rule. This alternative could also incur problems similar to the alternative above with regard to potentially conflicting with the WWTG Labelling Agreement. Additionally, some foreign producers that do not conform to the standards of fill may need to change their labeling to satisfy the labeling requirement for the U.S. market. However, wine makers would only be expected to undertake those changes if doing so maximized profits.

Therefore changes to labeling would only be expected if making them were less costly than conforming to the standards of fill. Furthermore, making such changes would only maximize

[5] Henrich Brunke, Franziska Thiemann & Rolf Mueller, ''Odd Prices for Odd Bottles at VDP Auctions.'' Paper presented at Enometrics XVI conference of the Vineyard Data Quantification Society in Namur, Belgium (2009).

[6] J. François Outreville, ''Does the Bottle Size Matter? An Investigation into Differences between Posted and Market Price.'' American Association of Wine Economists Working Paper No. 86 (2011).

profits if, in expectation, the value to consumers exceeded the cost of production, including the cost of any labeling changes.

We welcome comment on these and other alternatives, including information that will aid us in quantifying their costs and benefits.

**Paperwork Reduction Act**

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ''Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,'' and assigned control number 1513–0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

**Drafting Information**

Jennifer Berry of the Regulations and Rulings Division drafted this document, along with other Department of the Treasury personnel.

**List of Subjects in 27 CFR Part 4**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

**Amendment to the Regulations**

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4 as follows:

## PART 4—LABELING AND ADVERTISING OF WINE

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

**Authority:** 27 U.S.C. 205, unless otherwise noted.

**§ 4.32 [Amended]**

■ 2. In § 4.32(b)(2), the second sentence is removed.

■ 3. In § 4.37:

■ a. Paragraph (a) introductory text is revised;

■ b. Paragraph (b) subject heading and introductory text are revised;

■ c. Paragraph (b)(1) is removed; and

■ d. Paragraphs (b)(2) and (3) are redesignated as paragraphs (b)(1) and (2), respectively.

The revisions read as follows:

**§ 4.37 Net contents.**

(a) *Statement of net contents.* The net contents of wine shall be stated in the metric system of measure in accordance with § 4.71 and as follows:

* * * * *

(b) *Optional statement of U.S. equivalent contents.* Net contents in U.S. equivalents may appear on the label together with the required metric net contents statement if shown as follows:

* * * * *

**§ 4.70 [Amended]**

■ 4. Amend § 4.70 by:

■ a. In paragraph (a), the words ''herein prescribed'' are removed and the phrase ''as prescribed in § 4.71'' is added in its place;

■ b. In paragraph (b) introductory text, the phrase ''Sections 4.71 and 4.72 of this part do'' is removed and the phrase ''Section 4.71 of this part does'' is added in its place; and

■ c. In paragraph (c), the phrase ''Section 4.72'' is removed and the phrase ''Section 4.71.'' is added in its place.

■ 5. Section 4.71 is revised to read as follows:

**§ 4.71 Standard wine containers.**

(a) A standard wine container must be made, formed, and filled to meet the following specifications:

(1) *Design.* It must be so made and formed as not to mislead the purchaser. Wine containers must (irrespective of the correctness of the net contents specified on the label) be so made and formed as not to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use;

(2) *Fill and tolerances.* It must be so filled as to reflect the quantity, including tolerances, specified for wine in the net contents provisions of § 4.37 but may not have a fill of less than 50 milliliters; and

(3) *Headspace.* It must be designed and filled so that the headspace, or empty space between the top of the wine and the top of the container, meets the following specifications:

(i) Except as provided in paragraph (a)(3)(iii) of this section, if the net contents stated on the label are 187 milliliters or more, the headspace must not exceed 6 percent of the container's total capacity after closure.

(ii) In the case of all other containers, except as described in paragraph (a)(3)(iii) of this section, the headspace must not exceed 10 percent of the container's total capacity after closure.

(iii) *Exception.* Wine bottled in clear containers, with the contents clearly visible, that are 100-milliliters or less may have a headspace that does not exceed 30 percent of the container's total capacity after closure.

(b) [Reserved]

**§ 4.72 [Removed and Reserved]**

■ 6. Section 4.72 is removed and reserved.

Signed: June 18, 2019.

**Mary G. Ryan,**

*Acting Administrator.*

Approved: June 20, 2019.

**Timothy E. Skud,**

*Deputy Assistant Secretary Tax, Trade, and Tariff Policy.*

[FR Doc. 2019–13768 Filed 6–28–19; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Parts 5, 7, 26, and 27

**[Docket No. TTB–2019–0005; Notice No. 183]**

**RIN 1513–AC45**

## Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) addresses numerous petitions requesting that TTB amend the regulations that govern distilled spirits containers to provide for additional authorized standards of fill. TTB is proposing to eliminate all but minimum and maximum standards of fill for distilled spirits containers and thus eliminate unnecessary regulatory requirements and provide consumers broader purchasing options. TTB welcomes comments on this proposed deregulation, and it also seeks comments on the relative merits of alternatives, such as adding new authorized standards of fill and developing an expedited process for adding additional standards in the future. All of these approaches would eliminate restrictions that inhibit competition and the movement of goods in domestic and international commerce.

TTB is also proposing to amend the labeling regulations for distilled spirits and malt beverages to specifically provide that distilled spirits may be labeled with the equivalent standard United States (U.S.) measure in addition to the mandatory metric measure, and that malt beverages may be labeled with the equivalent metric measure in

addition to the mandatory U.S. measure. Such labeling is currently allowed, but that is not explicitly stated in current regulations. This revision will align the distilled spirits and malt beverage labeling regulations with current policy and also with the wine labeling regulations. The wine labeling regulations state that wine may be labeled with the equivalent standard U.S. measure in addition to the mandatory metric measure.

**DATES:** Comments must be received on or before August 30, 2019.

**ADDRESSES:** Please send your comments on this proposed rule to one of the following addresses:

- *Internet: https://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2019–0005 at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400E, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this proposed rule and any comments TTB receives about this proposal at *https://www.regulations.gov* within Docket No. TTB–2019–0005. A link to that docket is posted on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 183. You also may view copies of this proposed rule and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. Please call 202–453–2135 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

**SUPPLEMENTARY INFORMATION:**

## Background

### *TTB Authority*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers regulations setting forth bottle size and related standards of fill for containers of distilled spirits distributed within the United States. The authority to establish these standards is based on two provisions of law: (1) Section 5301(a) of the Internal Revenue Code of 1986 (IRC), codified at 26 U.S.C. 5301(a), and (2) section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e). Section 5301(a) of the IRC authorizes the Secretary of the Treasury to prescribe regulations ''to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits . . .'' when the Secretary determines that such action is necessary to protect the revenue. Section 105(e) of the FAA Act authorizes the Secretary of the Treasury to prescribe regulations relating to the ''size and fill'' of alcohol beverage containers ''as will prohibit deception of the consumer with respect to such products or the quantity thereof . . . .'' TTB administers these IRC and FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01, dated January 24, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

### *Current Standards of Fill for Distilled Spirits*

The standards of fill for distilled spirits are contained in subpart E of part 5 of the TTB regulations (27 CFR part 5). The term ''standard of fill'' is used in the TTB regulations and in this document to refer to the authorized amount of liquid in the container, rather than the size or capacity of the container itself. For better readability, however, this document sometimes uses the terms ''size'' or ''container size'' and ''standards of fill'' interchangeably.

Within subpart E, paragraph (a)(1) of § 5.47a (27 CFR 5.47a(a)(1)) specifies the following metric standards of fill for containers other than those described in paragraph (a)(2) of that section:

- 1.75 liters;
- 1 liter;
- 750 milliliters;
- 500 milliliters (authorized only until June 30, 1989);
- 375 milliliters;
- 200 milliliters;
- 100 milliliters; and
- 50 milliliters.

In the case of distilled spirits in metal containers that have the general shape and design of a can, that have a closure which is an integral part of the container, and that cannot be readily reclosed after opening, paragraph (a)(2) of § 5.47a authorizes the use of the following metric standards of fill:

- 355 milliliters;
- 200 milliliters;
- 100 milliliters; and
- 50 milliliters.

In addition to the metric standards specified above, § 5.47a contains provisions regarding tolerances (discrepancies between actual and stated fill), unreasonable shortages in fill, and distilled spirits bottled or imported before January 1, 1980, and marketed or released from customs custody on or after that date (the date on which the U.S. volumetric standards were replaced by the § 5.47a metric standards, as discussed in more detail below).

### *Current Standards of Fill for Wine*

The standards of fill for wine are contained in subpart H of part 4 of the TTB regulations (27 CFR part 4). In a separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, TTB is also proposing to eliminate most of the standards of fill for wine.

### *Malt Beverages*

Unlike wine and distilled spirits, there are no standards of fill prescribed for malt beverages under the FAA Act. However, in the case of malt beverages, § 7.22(a)(4) of the TTB regulations (27 CFR 7.22(a)(4)) requires the display of net contents on the brand label as mandatory label information.

### *History of Standards of Fill for Distilled Spirits*

Following the repeal of Prohibition, the standards of fill for distilled spirits were established in 1934 within Regulations 13, issued pursuant to the internal revenue laws. Similar standards were established in 1936 within Regulations 5, issued pursuant to the FAA Act. The standards of fill in Regulations 5 were as follows:

- For domestically manufactured, domestically bottled, or imported distilled spirits—
  - 1 gallon,
  - ½ gallon,
  - 1 quart,
  - ⅘ quart,
  - 1 pint,
  - ½ pint,
  - ⅛ pint, and
  - ⅒ pint;
- For domestically manufactured, domestically bottled, or imported brandy—1⁄16 pint; and
- For Scotch and Irish whisky and Scotch and Irish type whisky, and for brandy and rum—⅘ pint.

Over the years, a number of changes were made to these standards. The most significant change took place in 1976 when TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), adopted metric standards of fill for distilled spirits containers. These metric standards were adopted in T.D. ATF–25 (41 FR 10217, March 10, 1976 and 41 FR 11022, March 16, 1976).

ATF provided a phase-in period for the new metric sizes that lasted until January 1, 1980, at which time metric sizes became mandatory. The original metric standards of fill specified for distilled spirits containers were as follows:

- 1.75 liters;
- 1 liter;
- 750 milliliters;
- 500 milliliters;
- 200 milliliters; and
- 50 milliliters.

Later amendments to the metric standards for distilled spirits containers included:

- T.D. ATF–146 (48 FR 43319, September 23, 1983), which added 100 milliliters and 375 milliliters to the list of authorized sizes;
- T.D. ATF–228 (51 FR 16167, May 1, 1986), which began a phase-out of the 500-milliliter size; and
- T.D. ATF–326 (57 FR 31126, July 14, 1992), which authorized the 355-milliliter can and removed the 375-milliliter and larger sizes for cans.

As noted above, TTB also regulates the standards of fill for distilled spirits under section 5301(a) of the IRC, in order to protect the revenue. Historically, standardized sizes made it easier to conduct inventories of cased goods at distilleries and warehouses, thus facilitating tax assessment. Within the TTB regulations promulgated under the IRC to govern the establishment and operation of distilled spirits plants, § 19.511 (27 CFR 19.511) provides that liquor bottles for domestic use shall conform to the standards of fill provided in subpart E of 27 CFR part 5.

**Prior Notices Seeking Comments on Changes to Standards**

In addition to the rulemakings cited above that adopted or amended standards of fill for wine and distilled spirits, ATF twice solicited comments on whether the standards of fill should be retained, revised, or eliminated.

In 1987, ATF published an advance notice of proposed rulemaking (ANPRM), Notice No. 633 (52 FR 23685, June 24, 1987), which solicited comments on whether the standards of fill requirements for distilled spirits and wine should be retained either in general or as metric standards. The Washington State Liquor Control Board (WSLCB) had petitioned ATF to amend the regulations to allow for the importation of distilled spirits not bottled in authorized metric standards of fill if the bottles were labeled with certain additional information.

In its petition, the WSLCB stated that many foreign manufacturers bottle their spirits in standards of fill that are not authorized in the United States (for example, 740 milliliters and 800 milliliters). Consequently, while these products could be shipped to other countries, they could not be imported into the United States. The WSLCB argued that the existing standards of fill stifled price competition on imported distilled spirits, resulting in an artificial price increase for U.S. consumers. Although the petition requested an amendment of the standards of fill requirements for distilled spirits only, the ANPRM requested comments on retaining or eliminating the standards of fill for distilled spirits and wine. On February 6, 1990, ATF published Notice No. 696 (55 FR 3980) and stated that it found no basis to eliminate the existing standards of fill for wine and distilled spirits.

In 1993, ATF published another ANPRM, Notice No. 773 (58 FR 35908, July 2, 1993), in response to three petitions requesting the reinstatement or addition of four sizes to the standards of fill for distilled spirits. The petitioners requested that the regulations be amended to include four sizes used in other countries: A 296-milliliter can, a 500-milliliter bottle, a 680-milliliter bottle, and a 946-milliliter bottle. The petitioners also made many of the same arguments for retaining the existing standards that were noted in Notice No. 696. Although these petitions only involved an amendment to the existing standards for distilled spirits, ATF believed it was also appropriate to address the larger issue of retaining or eliminating the standards of fill requirements for distilled spirits and wine. A common theme in the three petitions was that the current standards of fill were hindering international trade between the United States and countries with different standard container sizes. As a result, ATF sought comment in Notice No. 773 on whether the existing standards of fill should be revised, retained, or eliminated. ATF did not undertake further rulemaking on this issue.

**Petitions and Inquiries Regarding Changes to Standards**

As noted above, in a separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, TTB is proposing to eliminate most of the standards of fill for wine. The agency is taking that deregulatory action in response to a number of petitions from domestic and foreign wine producers requesting additional authorized sizes. TTB believes that the reasons cited by wine industry members for revisions to the standards of fill regulations also apply to the distilled spirits industry. As evidence of this, we note that TTB has received the following petitions and inquiry regarding changes to the standards of fill requirements for distilled spirits:

1. In 2012, the Japan Sake and Shochu Makers Association and the Nippon Distillers Association petitioned TTB to revise § 5.47a(a)(1) to include 720-milliters, 900-milliliters, and 1.80 liters sizes for shochu, a type of distilled spirit commonly produced in Japan. The two trade associations state that shochu is bottled in these sizes and it would be prohibitively expensive for their members to produce special sizes for the U.S. market. They argue that U.S. consumers will not be misled by the addition of new standards of fill, noting that various sizes of different but similar fill are available for other consumer goods in the United States, citing the example of an over-the-counter medicine that is available in containers of either 240-milliliters or 260-milliters. Finally, the petitioners contend that not permitting these standards of fill is a technical barrier to trade and, as such, a violation of Article 2 of the Agreement on Technical Barriers to Trade, which is one of the World Trade Organization (WTO) agreements.

2. The National Tax Agency of Japan, part of Japan's Ministry of Finance, wrote to TTB in 2013 expressing support for the 2012 petition submitted by the Japan Sake and Shochu Makers Association and the Nippon Distillers Association. They noted that Japan does not have regulatory limitations on distilled spirits standards of fill, and opined that relaxing our regulations would benefit U.S. consumers.

3. In 2015, TTB received a petition from the Japan Sake and Shochu Makers Association, the Nippon Distillers Association, and the Japan Spirits and Liqueurs Makers Association. The three trade associations requested that TTB add the following distilled spirits container sizes to § 5.47a(a)(1): 700-milliters, 720-milliters, 900-milliliters, and 1.80 liters. Noting that Japanese shochu and whiskey are bottled in these sizes, the petitioners stated that allowing their importation into the United States will benefit American consumers. They also maintained that the United States is obliged under the WTO agreement on technical barriers to

trade to not enforce rules such as the current standards of fill that constitute unnecessary obstacles to international trade.

4. In 2017, an American company requested that TTB consider revising the distilled spirits standards of fill to include a 2-milliliter size. It stated it has a concept for a 2-millililter sample size that could be given to consumers for free along with a mini brochure describing the product. According to the company, this packaging would allow the consumer to sample a product before purchase, and would be a good way for companies to promote products.

**TTB Proposal**

In view of the points made in the petitions and inquiries discussed above, TTB believes that it is appropriate to revisit the standards of fill issue. TTB is proposing to eliminate the existing standards of fill for distilled spirits, except that the regulations would maintain a minimum standard of 50 milliliters and a maximum standard of 3.785 liters. The minimum container size is needed to insure sufficient space on the container for required labeling. The maximum container size is needed to maintain the distinction between bottled and bulk products. TTB also welcomes comments on merely adding some or all of the standards of fill requested in the petitions, or adding some or all of those standards and also adopting an expedited approach for adding new sizes in the future. TTB is considering eliminating the standards of fill for the following reasons:

1. Elimination of the existing standards of fill would address the petitions on this issue, would eliminate the need for industry members to petition for additional authorizations if marketplace conditions favor different standards in the future, and would eliminate restrictions on competition and the movement of goods in domestic and international commerce.

2. It would address concerns that the current standards of fill unnecessarily limit manufacturing options and consumer purchasing options, particularly where consumers may seek smaller containers to target a specific amount of consumption.

3. TTB believes that the proposed labeling requirements regarding net contents (see 27 CFR 5.32(b)(3) and 5.38) and those regarding the design and fill of containers (see 27 CFR 5.46) provide consumers with adequate information about container contents.

4. Limiting standards of fill is no longer necessary to ensure accurate calculation of tax liabilities or to protect the revenue. TTB verifies tax liability on the basis of a producer's production and removal records, and allowing additional standards of fill would not undermine TTB's efforts in this regard. ATF and TTB previously took the position that limiting the number of bottle sizes protected the revenue by facilitating accurate tax computations. This position was successfully litigated in *Goldstein* v. *Miller,* 488 F.Supp. 156 (D. Md. 1980), aff'd without opinion 649 F.2d 863 (4th Cir. 1981), *cert. denied* as *Goldstein* v. *Regan,* 454 U.S. 828 (1981). The litigation arose shortly after the enactment of the all-in-bond system of tax payment for distilled spirits under the Distilled Spirits Tax Revision Act of 1979, Title VIII of Public Law 96–39, 96th Cong., 1st Sess. Under this system, the tax was calculated at the time of the removal of the bottled distilled spirits from the distilled spirits plant rather than at the early bulk stages before bottling. Due to the implementation of the system, ATF was especially concerned about standards of fill at that time. The all-in-bond system has now been in place for over 30 years. Audit experience since implementation of the all-in-bond system and since the *Goldstein* litigation leads TTB to conclude that the limitations on standards of fill are no longer necessary for revenue protection purposes.

5. TTB's current experience with malt beverages, for which there is no standard of fill requirement, shows no disproportionate level of revenue compliance or consumer deception issues related to bottle sizes.

In addition, we are proposing to amend the labeling regulations for distilled spirits and malt beverages to specifically state that distilled spirits may be labeled with the equivalent standard U.S. measure in addition to the mandatory metric measure, and to specifically state that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory standard U.S. measure. This revision will formalize TTB's current policy and align the distilled spirits and malt beverage labeling regulations with the wine labeling regulations, which currently allow wine to be labeled with the equivalent U.S. measure in addition to the mandatory metric measure.

*Discussion of the Proposed Changes*

The specific regulatory amendments proposed in this document are as follows:

- In § 5.32, which concerns mandatory label information for distilled spirits, paragraph (a)(4) regarding net content information on ''containers for which no standard of fill is prescribed'' is removed because it would no longer be needed once all but a minimum and maximum standard of fill are eliminated. In addition, paragraph (b)(3) of § 5.32, which currently requires that net content information on ''containers conforming to the standards of fill'' appear on the brand label or back label, is amended to remove the reference to the standards of fill and to refer to § 5.38, which provides detailed requirements concerning the statement of net contents on distilled spirits labels.
- In § 5.38, entitled ''Net contents,'' the current texts of paragraphs (a) and (b) are removed because they distinguish between the requirements for labeling bottles that conform to the standards of fill requirements and those that do not, which would no longer be needed. (Containers that did not conform to the standards of fill requirements were those bottled before January 1, 1980, under a different regulatory requirement.) Proposed new paragraph (a) provides that the net contents of distilled spirits must be stated in metric measure, but may also be stated in the equivalent standard U.S. measure. Proposed paragraph (a) also provides a cross reference to the regulations in § 5.47, which address tolerances and the treatment of unreasonable shortages. Paragraphs (c) and (d) are redesignated as (b) and (c) respectively.
- In § 5.45, which concerns the applicability of §§ 5.46 through 5.47a (standard liquor bottle requirements, the standards of fill for containers bottled before January 1, 1980, and the standards of fill for containers bottled after December 31, 1979), paragraph (a) is revised to change the reference ''§ 5.47a'' to ''§ 5.47'' and paragraph (b) is removed. These revisions are necessary due to the removal of the current § 5.47, the standards of fill for distilled spirits bottled before January 1, 1980, discussed below. In addition, with the removal of paragraph (b), § 5.45 will not contain any information collection requirement, and, as such, TTB is removing the parenthetical reference at the end of the section to the information collection approved under Office of Management and Budget control number 1513–0064.
- Section 5.47, standards of fill for distilled spirits bottled before January 1, 1980, is removed. Since TTB is removing most standards of fill for distilled spirits bottled on or after December 21, 1979, there is no reason to retain separate standards for distilled spirits bottled before that date.
- Section 5.47a is renumbered as § 5.47, and paragraph (a) is revised to set forth only maximum and minimum

metric standards and to specifically allow the optional addition of the equivalent standard U.S. measurement. The maximum metric standard (3.785 liters) corresponds to one wine gallon (see the definition of ''in bulk'' in 27 CFR 5.11). The minimum metric standard (50 milliliters) reflects what is prescribed in present § 5.47a. We believe the revised paragraph (a) text should apply to all types of containers, including cans, and therefore the revised text does not maintain the distinction between cans and other containers that is in present § 5.47a(a)(2). In addition, paragraph (d) is removed to correspond to the removal of § 5.47 discussed above. We have retained the term ''standards of fill'' in the regulatory text to cover the maximum and minimum standards, as well as related factors, such as design, tolerance, and headspace, which have been traditionally associated with the term.

- In § 7.27, which concerns net contents, the introductory text of paragraph (a) is revised to specifically provide for the inclusion of an equivalent metric measure in addition to the specified U.S. measure.
- Finally, references to ''§ 5.47a'' are removed and replaced with ''§ 5.47'' in §§ 26.40(c), 26.206(c), 26.312, and 27.202.

*Alternatives to the Proposal*

TTB is also considering maintaining the standards of fill but liberalizing the existing regulatory scheme. It simply could add some or all of the petitioned-for standards of 700, 720, and 900 milliliters, and 1.8 liters, to § 5.47a(a). It also could institute an expedited process for considering future petitions to add additional standards of fill and help ensure § 5.47a is non-discriminatory and does not create unnecessary obstacles to competition, trade, or investment. For example, TTB could amend its regulations in § 5.47a to provide for administrative approvals of standards of fill. Under such an expedited system, the Administrator could authorize new standards of fill in response to a petition if the petition shows good cause for approval (such as commercial viability), barring the Administrator determining that the proposed standard would cause confusion. Administratively approved standards of fill would then be published on the TTB website so that other industry members are aware of the additional authorized sizes.

**Public Participation**

*Comments Sought*

TTB requests comments on the proposals to eliminate the standards of fill for distilled spirits (with the exception of a minimum 50-milliliter standard and a maximum 3.785-liter standard), and to specifically provide for the optional addition of U.S. equivalents for distilled spirits and metric equivalents for malt beverages. TTB also requests comments on alternative approaches, such as maintaining the standards of fill but adding some or all of the petitioned-for standards (*e.g.,* 700, 720 and 900 milliliters and 1.8 liters) to § 5.47a—including comments on the alternative of developing an expedited process for adding new standards of fill in the future and the criteria for approval of specific standards under an expedited process. TTB also requests comments on whether the proposal to allow the net contents statement on either the brand label or back label on a distilled spirits container is sufficient to inform the consumer about the net contents once standards of fill are eliminated, or whether TTB should require that the net contents be stated on the brand label. Currently, for distilled spirits bottled in containers conforming to the standards of fill, the net contents may be placed on either the brand label or a back label. Additionally, TTB understands that some state regulations on standards of fill for distilled spirits may incorporate TTB regulations by reference. TTB requests comments from state regulators on whether this proposal will present a regulatory issue at the state level. TTB invites any other suggestions or alternatives related to the issue of standards of fill, including headspace requirements, for distilled spirits. Given the absence of standards of fill for malt beverages, TTB would be particularly interested in comments that address the merits of continuing to apply different rules to wine and spirits.

Any person submitting comments may present such data, views, or arguments that he or she believes necessary. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

*Submitting Comments*

You may submit comments on this proposed rule by one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2019–0005 on ''*Regulations.gov,*'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 183 on the TTB website at *https://www.ttb.gov/spirits/spirits-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* click on the site's ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 183 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality*

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

*Public Disclosure*

TTB will post, and you may view, copies of this proposed rule and any online or mailed comments received about this proposal within Docket No. TTB–2019–0005 on the Federal e-rulemaking portal. A direct link to that docket is available on the TTB website at *https://ttb.gov/spirits/spirits-rulemaking.shtml* under Notice No. 183. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of this proposed rule and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. You may also obtain copies for 20 cents per 8.5 x 11-inch page. Contact TTB's *Regulations.gov* administrator at the above address or by telephone at 202–453–2135 to schedule an appointment or to request copies of comments or other materials.

**Regulatory Analysis and Notices**

TTB certifies that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities.

*Analysis of Impacts*

The impacts of this proposed rule have been examined in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Executive Order 13771 designation for any final rule resulting from the proposed regulation will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is deregulatory.

The proposed regulation has been designated by the Office of Information and Regulatory Affairs (OIRA) as significant under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposal, if adopted, would reduce the regulatory burden on distilled spirits producers and importers by providing greater flexibility in the choice of product container sizes. Moreover, the proposed amendments would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of costs and benefits before proposing a rule with mandates that ''may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' This proposed rule would impose no new mandates.

*Purpose of the Rule*

Several regulatory requirements are intended to decrease the risk that consumers will misjudge the quantities of distilled spirits in containers available for sale and to protect the revenue. These include:

- A requirement that quantities of spirits conform to values on a list of standard quantities, with each of the standard quantities separated by at least 50 milliliters (27 CFR 5.47a(a)(1)); and
- Provisions stating tolerances (discrepancies between actual and stated fill), unreasonable shortages in fill, headspace, and distilled spirits bottled or imported before January 1, 1980, and marketed or released from customs custody on or after that date (the date the U.S. volumetric standards were replaced by the metric standards).

The standard quantities are called ''standards of fill.'' Although originally these standard quantities were implemented to facilitate, at least in part, accurate tax collection (but are no longer needed for purposes of administering Federal taxes), these requirements may decrease the risk of consumer confusion, but, under some circumstances, the limitation also may impose additional costs without a corresponding benefit.

This proposed rule would eliminate the requirement that quantities correspond to standards of fill, allowing spirits to be sold in any quantity between a minimum standard of 50 milliliters and a maximum standard of 3.785 liters. The proposed rule would also amend the labeling regulations for distilled spirits and malt beverages to state expressly that distilled spirits may be labeled with the equivalent standard U.S. measure in addition to the mandatory metric measure, and specifically to state that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory standard U.S. measure. The changes to the standards of fill are expected to increase competition and economic efficiency by allowing manufacturers to produce at lower costs and introduce products that would otherwise be prohibitively costly or explicitly forbidden.

*Background*

Businesses are categorized by type using the North American Industry Classification System (NAICS). Establishments primarily engaged in distilling are classified under NAICS code 312140. Establishments primarily engaged in the wholesale distribution of distilled spirits and wine are classified under NAICS code 424820. Establishments primarily engaged in retailing alcoholic beverages, including wine, are classified under NAICS code 445310.

Total establishments, employees, and payroll for each category are reported by the Census Bureau in the County Business Patterns (CBP) data series. The most recent year for which CBP data were available at the time of this analysis was 2016. Total receipts for establishments in each category are reported by the Census Bureau in the Statistics of U.S. Businesses (SUSB) data series. The most recent year for which SUSB receipt data were available at the time of this analysis was 2012. Table 1 reports total establishments, employees, payroll, and receipts for each category.

TABLE 1—INDUSTRY INFORMATION

| Industry | NAICS code | Establishments | Employees | Payroll ($millions) | Receipts ($millions) |
|---|---|---|---|---|---|
| Distilleries | 312140 | 716 | 11,038 | $652 | $9,139 |
| Wholesalers specializing in wine and distilled spirits | 424820 | 2,599 | 87,026 | 6,462 | 76,170 |
| Retailers specializing in wine and other alcoholic beverages | 445310 | 33,958 | 167,286 | 3,795 | 43,085 |

Sources: Establishment counts, employee counts, and payroll are from 2016 County Business Patterns data published by the Census Bureau. Receipts are from 2012 Statistics of U.S. Businesses data published by the Census Bureau.

*Costs*

This proposed deregulation would, if implemented, impose no new mandates. However, the rule could create some costs for both consumers and producers. We are unable to quantify the costs, but welcome public comment with relevant information.

Under the current standards of fill, consumers can misjudge a quantity only by mistaking one standard quantity for another. The difference between the smallest standard, 50 milliliters, and the next standard, 100 milliliters, is 50 milliliters, or 100 percent of the smaller standard. The absolute differences between adjacent standards are typically larger for larger quantities, and, for quantities below 1.75 liters, never fall below 33 percent of the smaller standard. Large differences between standards decrease the risk that one quantity on the list of standards will be mistaken for another.

The rule would create costs for consumers if eliminating the standards of fill increased confusion about the quantities available for sale. However, other regulations would mitigate confusion about quantities available for sale. *See, e.g.,* 27 CFR 5.32, 5.38, 5.46(a), 5.46(b), 5.47a(b), and 5.47a(c).

Under current regulations, net contents labeling rules require that the label or marking on the bottle itself accurately and legibly state the quantity of the volume of contents in containers. The limitation on headspace reduces the risk of consumer confusion by assuring the quantity contained corresponds closely to the volume of the container. Headspace is limited to 8 percent of capacity after closure for containers with net contents of 200 milliliters or more. Rules on tolerances limit discrepancies in fill amounts to measuring errors occurring under good commercial practice, to differences in bottle capacities, and to discrepancies due to variation in atmospheric conditions. Provisions related to unreasonable shortages state that such shortages shall not be compensated by overages in other bottles of the same shipment.

Standards of fill may also have created secondary benefits that would be foregone with their elimination. For example, standard sizes may facilitate price comparison by consumers. When the net contents of bottles are equal, the relative prices of the bottles correspond to the relative prices per unit of spirits they contain. When container sizes differ, the relative prices of bottles may differ from the relative prices per unit, so the elimination of standards of fill could make the comparison of prices per unit more difficult. Price per unit labeling by retailers would decrease this potential impact of eliminating standards of fill on the ease of comparison. Although price per unit labeling by retailers is common, it is mandatory in just nine states, and, where it is mandatory, alcohol is typically excluded.[1] If a proliferation in container sizes occurs under this proposal to largely deregulate standards of fill, in the absence of unit price labeling at retail establishments, consumers may not make the most cost-effective purchasing choices, which would reduce economic efficiency.

The introduction of products that do not correspond to the standards of fill could also create some costs for distilled spirits manufacturers, wholesalers, and retailers. Potential costs include those related to the renovation of production facilities to accommodate new container sizes, the distribution of containers that do not conform to current standards, and the reconfiguration of retail spaces.

Many of the potential costs may be fixed costs—one-time initial adjustments—which may be more onerous for smaller producers who have lower production volumes across which to spread the fixed costs. However, new products would only be introduced if the expected profits from introducing them were positive. Therefore the expected value to consumers of the new products would generally exceed the expected cost of their production, including any costs created by deviation from the standards of fill, so that the benefits of introduction would be at least as large as the costs.

*Benefits*

This proposed deregulation could, if implemented, create a range of benefits. These include increasing economic efficiency by allowing producers to harness economies of scale, increasing the variety of products available to consumers, and increasing the competitiveness of the market for distilled spirits. These efficiency gains could lead to an increase in consumer surplus. We are unable to quantify the benefits, but we welcome public comment with relevant information.

In some other countries, distilled spirits are bottled in standard quantities that do not match the standards of fill in the United States. Reconfiguring those spirits production facilities to produce bottles specifically for the United States creates a fixed cost for each new size produced. If the cost of reconfiguration is sufficiently high, no bottles may be produced for the United States, despite positive demand for those products at prices that correspond to production at scale.

This proposal to eliminate all but the minimum and maximum standards of fill would allow more manufacturers producing primarily for foreign markets to sell their distilled spirits in the United States. The entry of those firms would increase competition in the spirits market. More competitive markets allocate resources more efficiently by matching prices more closely to costs, so an increase in the competitiveness of the spirits market would generate economic benefits.

The introduction of those products would also increase consumer choice by providing consumers with options they may prefer to those currently available. Distilled spirits made primarily for foreign markets may not be the only new products introduced. Spirits makers currently producing for the

[1] See National Institute of Standards and Technology, ''Unit pricing guide: A best practice approach to unit pricing.'' NIST Special Publication 1181 (2015), available at *http://dx.doi.org/10.6028/NIST.SP.1181;* National Institute of Standards and Technology, ''U.S. Retail Pricing Laws and Regulations by State,'' Sept. 17, 2018, available at *https://www.nist.gov/pml/weights-and-measures/us-retail-pricing-laws-and-regulations-state.*

United States could also choose to introduce products that deviate from the current standards of fill. Bottles that deviate from the current standards may allow consumers to more closely match the quantities they purchase to the quantities they desire to consume. Furthermore, some limited evidence suggests that consumers value novelty in wine bottle sizes, and novel bottle sizes may be of value to producers in differentiating their brands.[2] Possibly, consumer willingness to pay premiums for novel bottle sizes in wine production may also apply to spirits, although we do not find any studies directly analyzing this notion for bottled spirits.

Deviation of containers from current standards of fill may also enhance productive efficiency among U.S. producers through economies of scale. For example, under current rules, a U.S. spirits producer who both sells domestically and exports to the European Union (EU) must use different containers conforming to the standards of fill of each respective market. The standard bottle size of distilled spirits is 750 milliliters in the U.S. and 700 milliliters in the EU. The proposed rule would allow domestic producers to use a single 700 milliliter bottle size to serve both markets, if they so choose.

*Alternatives*

The requirement that net contents conform to standards of fill reduces the risk of consumer confusion about quantity at the cost of restrictions on producers that decrease market efficiency. Consumer information about net contents is also a concern for other types of beverages, and the regulatory approaches taken for those beverages suggest some alternatives to the proposed deregulation.

(1) *Add new standards of fill.* One alternative would be to add new standards of fill to the current list. For example, standards of 720 milliliters, 900 milliliters, and 1800 milliliters could be added to accommodate a foreign petition seeking access to the U.S. market without incurring the fixed costs of changing its current bottle sizes. One problem with that approach is that the proposed 720 milliliter standard would be only 30 milliliters below the current standard of 750 milliliters, a difference of just 4 percent of the current standard. Similarly, the 900 milliliter proposed standard is close to the 1000 milliliter current standard, and the 1800 milliliter proposed standard would be virtually indistinguishable visually from the 1750 milliliter current standard. Standards separated by such small amounts might contribute to consumer confusion.

However, the piecemeal addition of new standards as circumstances change involves costs that would be avoided by eliminating the standards of fill entirely. The addition of new standards through rulemaking would continue to involve the burden on industry of petitioning for new standards and awaiting the outcomes and the burden on the government of responding to the petitions and promulgating new rules.

Standards of fill are not the only tool available for reducing the risk of consumer confusion about quantities available for sale. The appearance of net contents on the label is another tool, and more prominent net contents labeling may achieve the same reduction in the risk of confusion without incurring the costs associated with the standards of fill. Currently, distilled spirits must generally conform to standards of fill, and net contents can appear on the brand label or back label affixed to the container (spirits bottled before 1980 must show net contents on the front of the container), or be blown or etched onto the front, back, or side of the bottle itself. Malt beverages need not conform to standards of fill, but net contents must generally appear on the brand label (27 CFR 7.22). Similarly, beverages like carbonated soft drinks need not conform to standards of fill, but net quantity of contents must appear on the principal display panel (21 CFR 101.7).

(2) *Eliminate standards of fill but require net contents on brand label for all containers.* An alternative to the proposed rule would be to eliminate the standards of fill but require that net contents appear on the front label, analogous to the requirements for soft drinks. The front label is more visible to consumers and would decrease the risk of confusion about net contents relative to the appearance of net contents on some other label. Relative to the proposed rule, this alternative would create new costs associated with changing labeling for spirits producers who do not currently state net contents on the front label.

(3) *Eliminate standards of fill but require net contents on the brand label only for non-standard container sizes.* A third alternative is to eliminate the requirement that net contents conform to a standard of fill, but require that net contents be stated on a label affixed to the front of the bottle only when the net contents do not conform to a currently existing U.S. standard of fill (otherwise, the net contents label may be affixed to either the front or back of the bottle, as usual). This alternative would avoid creating new costs for production that continues to conform to current standards of fill, but it could create some potential costs for spirits sold in non-standard bottle sizes, including domestic producers selling to foreign markets. Such potential costs would not be incurred under the proposed rule. However, in two cases, sales of spirits in new bottle sizes may avoid additional labeling costs under this alternative. First, when the producer's current practice already states net contents on the front label for its distilled spirits products, this alternative requirement would be business-as-usual and incurs no additional costs if applied to new bottle sizes. The second case applies to a foreign producer who uses non-standard size bottles and initiates new exports to the United States as a result of the issuance of this alternative. The producer would already be required to design and apply new conforming labels to their bottled spirits destined for the U.S. market, so an obligation to place net contents labels on the front of the bottle would not impose an additional burden.

(4) *Eliminate the standards of fill but enlarge the minimum type size of the net contents statements for all containers.* Another alternative to the proposed rule would be to eliminate the standards of fill but require the net contents appear in a larger than currently mandated minimum type size on either the front or back label for all containers. By making the net contents statements more visible to consumers, the likelihood of potential confusion should be reduced. Larger net contents statements may also help the aging population to read them more easily. Current standards require the net contents statement be made in type size of at least 2 millimeters for containers larger than 200 milliliters, or at least 1 millimeter for containers of 200 milliliters or less (27 CFR 5.33(b)(6)). This requirement would likely impose new costs on all producers except those who may already state net contents in larger than minimum type sizes that would conform to new minimum type size standards.

(5) *Eliminate the standards of fill but enlarge the minimum type size of the net contents statements only for non-standard container sizes.* A variation of the preceding alternative would be to eliminate the standards of fill but

[2] See Henrich Brunke, Franziska Thiemann & Rolf Mueller, ''Odd Prices for Odd Bottles at VDP Auctions,'' paper presented at Enometrics XVI conference of the Vineyard Data Quantification Society in Namur, Belgium (2009); J. François Outreville, ''Does the Bottle Size Matter? An Investigation into Differences between Posted and Market Price,'' American Association of Wine Economists Working Paper Number 86 (2011).

require the net contents to appear in a larger than currently mandated minimum type size on either the front or back label only for containers not conforming to a current standard of fill size. The distinction in type size requirements of the net contents statements between new container sizes (larger minimum type) and the current standard container sizes (smaller minimum type) would help draw special attention to the net contents of the former, and reduce consumer confusion about the new container sizes. This requirement would impose costs only on producers using non-standard container sizes.

(6) *Eliminate the standards of fill but enlarge the minimum type size of the net contents statements initially only for non-standard container sizes, then for all containers.* This alternative would eliminate the standards of fill but require the net contents to appear in a larger than currently mandated minimum type size on either the front or back label initially only for containers not conforming to a current standard of fill size, then phase-in the same larger minimum type size for all containers. This variant would have the advantage of drawing consumers' particular attention to the net contents of the new container sizes for an initial three year period, before requiring all containers to print net contents in the larger minimum type size. The net contents statements for the new bottle sizes would ''stand out'' during the three year period because few of the standard sized bottles would use the larger type size. This temporary distinction would help consumers to understand the contents of the new bottle sizes appearing in the market, and reduce the chances of confusion. Larger net contents statements may also help the aging population to read them more easily. This requirement would initially impose costs associated with modifying the labels only on producers using non-standard container sizes, then impose costs on all producers after three years.

Alternatives (2) through (6) intend to increase the likelihood that consumers would see and understand the net contents of spirits at a glance in a retail space potentially stocked with many different (and sometimes similarly) sized containers. We have no reason to question whether the net contents statements under current labeling rules adequately inform consumers. However, if the proposed deregulation results in a larger number of container sizes (sometimes similarly sized), then consumers may need to rely more upon net contents information on the labels, so improving their visibility may help to constrain potential confusion.

A requirement that net contents appear on the brand label, or that net contents be written in larger print type size would constitute a new mandate on producers. Changing labels would involve administrative costs as well as the costs of redesigning labels and replacing printing equipment like engraving plates or cylinders. The proposed degregulation avoids those costs by avoiding changes to the labeling requirements.

Alternatives (3) and (5) apply only to non-standard container sizes, and therefore impose no new mandates on producers complying with current standards of fill. Distilled spirits producers electing to use alternative container sizes may face costs associated with changing their labels. However, producers would only be expected to undertake those changes if doing so maximized profits. Therefore changes to labeling would only be expected if making them were less costly than conforming to the standards of fill. Furthermore, making such changes would only maximize profits if the expected value to consumers exceeded the cost of production, including the cost of any labeling changes.

As mentioned previously, a related matter is the ease of price comparison by consumers. Under current standards of fill rules, it is relatively simple to understand price differences per volume unit of spirits because one may readily compare a range of spirits in the same standard size containers. If the proposed deregulation results in more container sizes that do not match a current U.S. standard, then unit price comparison would become more difficult. When consumers are not well-informed about relative unit pricing, they are less likely to make cost-effective purchasing decisions, resulting in reduced economic efficiency and potential welfare losses.

We welcome comment on these and other alternatives, including information that will aid us in quantifying their costs and benefits.

*Paperwork Reduction Act*

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ''Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,'' and assigned control number 1513–0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

**Drafting Information**

Jennifer Berry of the Regulations and Rulings Division drafted this document, along with other Department of the Treasury personnel.

**List of Subjects**

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

*27 CFR Part 7*

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt beverages, Reporting and recordkeeping requirements, Trade practices.

*27 CFR Part 26*

Alcohol and alcoholic beverages, Caribbean basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

*27 CFR Part 27*

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

**Amendment to the Regulations**

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 5, 7, 26, and 27 as follows:

## PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 2. In § 5.32, paragraph (a)(4) is removed and reserved and paragraph (b)(3) is revised to read as follows:

**§ 5.32 Mandatory label information.**

* * * * *

(b) * * *

(3) Net contents in accordance with § 5.38.

* * * * *

■ 3. Section 5.38 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

The revision reads as follows:

**§ 5.38 Net Contents.**

(a) *Standards of fill.* The net contents of distilled spirits shall be stated in metric measure. The equivalent standard U.S. measure may also be stated on the container in addition to the metric measure. See § 5.47 of this part for tolerances and for regulations pertaining to unreasonable shortages.

* * * * *

■ 4. Section 5.45 is amended by:

■ a. Revising paragraph (a);

■ b. Removing and reserving paragraph (b); and

■ c. Removing the parenthetical phrase at the end of the section containing the reference OMB control number 1513–0064.

The revision reads as follows:

**§ 5.45 Application.**

(a) No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 and 5.47.

* * * * *

**§ 5.47 [Removed]**

■ 5. Section 5.47 is removed.

**§ 5.47a [Redesignated as § 5.47]**

■ 6. Section 5.47a is redesignated as § 5.47.

■ 7. In newly redesignated § 5.47, the section heading and paragraph (a) is revised and paragraph (d) is removed.

The revisions read as follows:

**§ 5.47 Standards of fill.**

(a) *Authorized standards of fill.* Subject to the tolerances allowed under paragraph (b) of this section and the headspace prescribed in § 5.46(b), distilled spirits containers, other than bulk, may not contain more than 3.785 liters or less than 50 milliliters.

* * * * *

## PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 8. The authority citation for part 7 continues to read as follows:

**Authority:** 27 U.S.C. 205.

■ 9. In § 7.27, paragraph (a) introductory text is revised to read as follows:

**§ 7.27 Net contents.**

(a) Net contents shall be stated in standard U.S. measure as follows, and the equivalent metric measure may also be stated:

* * * * *

## PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

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

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 26.40 [Amended]**

■ 11. In § 26.40, paragraph (c) is amended by removing the phrase ''§ 5.47a,'' and adding, in its place, the phrase ''§ 5.47''.

**§ 26.206 [Amended]**

■ 12. In § 26.206, paragraph (c) is amended by removing the phrase ''§ 5.47a,'' and adding, in its place, the phrase ''§ 5.47''.

**§ 26.312 [Amended]**

■ 13. In § 26.312, the first sentence is amended by removing the phrase ''or § 5.47a''.

## PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 14. The authority citation for part 27 continues to read as follows:

**Authority:** 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

**§ 27.202 [Amended]**

■ 15. In § 27.202, the first sentence is amended by removing the phrase ''§ 5.47a'' and adding, in its place, the phrase ''§ 5.47''.

Signed: June 18, 2019.

**Mary G. Ryan,**

*Acting Administrator.*

Approved: June 20, 2019.

**Timothy E. Skud,**

*Deputy Assistant Secretary Tax, Trade, and Tariff Policy.*

[FR Doc. 2019–13767 Filed 6–28–19; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2019–0118]**

**RIN 1625–AA11**

## Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a regulated navigation area for certain waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. This action is necessary to provide for the safety of persons, vessels, and the marine environment on these navigable waters due to the high volume of vessels navigating the area. This proposed rulemaking would prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It would also prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marine, or fleeting area unless authorized. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 31, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG–2019–0118 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 LT Shawn Simeral, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Shawn.C.Simeral@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Pittsburgh

DHS Department of Homeland Security
FR Federal Register
MSU Marine Safety Unit
NPRM Notice of proposed rulemaking
§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code
RNA Regulated Navigation Area

## II. Background, Purpose, and Legal Basis

The Coast Guard proposes to establish a Regulated Navigation Area (RNA) for certain waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. The confluence of these three rivers is a high traffic area for both commercial and recreational vessels. It is also a destination for recreational vessels to anchor and loiter during the summer months due to the proximity of multiple entertainment venues. The Coast Guard is concerned about the potential for collisions between commercial and recreational vessels and the impact of vessel congestion on maritime commerce in this area. A Map/Chartlet depicting the area, as well as images depicting the severe vessel congestion in this area, are included where indicated in the docket under **ADDRESSES**.

### *A. The Point of Pittsburgh*

The Point of Pittsburgh is located at the confluence of the Allegheny, Monongahela, and Ohio Rivers, and is surrounded by the city of Pittsburgh, PA. The city of Pittsburgh is located in the Emsworth pool, often referred to as the ''Pitt Pool,'' which forms the 24-mile pool around the city.[1] The Emsworth pool is the water area from upriver of the Emsworth Locks and Dam on the Ohio River, to Lock 2 on the Allegheny River and to the Braddock Locks and Dam on the Monongahela River. In 2016, the U.S. Army Corps of Engineers (USACE) ranked the Port of Pittsburgh fourth among inland waterway ports and 31st among ports in the United States for tonnage traffic. The area around the Point of Pittsburgh also includes eight highway bridges. These bridges create navigation limitations for tows and passenger vessels due to piers and overhead clearance.

In addition, the Port of Pittsburgh contains 27 marinas and has 21 public boat landings, and the Pitt Pool contains 12 marinas and three public boat launches. Over the past three years, an average of 7,860 recreational boats transited through the three locks of the Pitt Pool annually. The Point of Pittsburgh area contains multiple entertainment venues near the riverfront that include: A National Football League stadium, Major League Baseball stadium, casino, United Soccer League stadium, amphitheater, state park, science center, museums, convention center, and various memorials, monuments, trails, and restaurants.

### *B. The Marine Community Concerns*

A wide variety of both commercial and recreational traffic transit the rivers around the Point, including: Barges and tow boats in transit up bound on the Allegheny and Monongahela rivers, and down bound on the Ohio River, ferries to the North Shore of the Ohio River for events, passenger vessel cruises, and recreational craft. Due to the heavy concentration of entertainment activities, the Point of Pittsburgh is a destination for recreational craft to moor, anchor, or drift in the area. Recreational vessels will often raft off to one another from the shore or from an anchored vessel, creating congestion and hazardous conditions for less maneuverable vessels transiting the river current.

During a Passenger Vessel Association Rivers Region Meeting in November of 2016, participants notified Coast Guard Marine Safety Unit (MSU) Pittsburgh of navigation and safety issues involving vessel congestion near the Point of Pittsburgh during the summer months. As a result, MSU Pittsburgh formed a Congested Waterways Committee that meets monthly to investigate the congestion issue and discuss concerns regarding use of the waterway. The committee includes: Tow boat operators, commercial passenger vessel operators, port executives, safe boating council members, industry representatives, and members from local recreational boat associations, along with representatives of the Coast Guard Auxiliary, USACE, and city and state law enforcement officials.

MSU Pittsburgh learned that during summer months, especially on weekends, large numbers of recreational vessels anchor or drift in the vicinity of the Point of Pittsburgh, which created an unsafe navigation situation for the larger commercial vessels utilizing the waterway. Some of the participants discussed several near misses between commercial and recreational vessels, but currently there is no standard definition of a near miss as it pertains to this issue, nor has it been tracked. MSU Pittsburgh received comments about the dangers of recreational vessels anchoring or drifting near the sailing line,[2] and conversely, about the dangers of commercial vessels that seem to expect vessels to give way as a matter of course. The local ferries also expressed concerns regarding vessels blocking the approaches to their loading areas.

Several commercial vessel representatives were frustrated that recreational vessel users are not all required to have knowledge of navigation rules prior to operating a vessel.[3] They also stated that during times of congestion, commercial vessels will often halt transit of vessels or limit passenger vessel cruise areas rather than proceed into potentially unsafe transit conditions. These events have a negative impact on their businesses. Industry representatives discussed their vessel size, stopping limitations, limited maneuverability, and proximity to bridges as reasons they consider transit during congestion as unsafe. They stated that recreational vessels often maneuver very close to their vessels or cross in front as they transit. Everyone agreed that the three rivers of Pittsburgh should be able to be used by both commercial and recreational vessels, and that the safety of the waterways users should be the top priority.

### *C. Special Local Regulations*

During the summer of 2018, MSU Pittsburgh was notified of two outdoor concerts at Heinz Field. Due to the proximity of the stadium to the Ohio River, large concentrations of recreational vessels were anticipated throughout concert weekends. To mitigate the navigational impact, MSU Pittsburgh permitted these concerts as marine events and established temporary Special Local Regulations to maintain a safe and clear navigation area during the concert weekends.

On April 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Monongahela (MM 0.22), Allegheny (MM 0.8), and Ohio Rivers (0.8), Pittsburgh, PA (83 FR 16808) for the Luke Bryan concert. There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the concert. During the comment period that ended on May 2, 2018, we received no comments. On May 18, 2018, the Coast Guard published a temporary final rule

[1] ''Pool'' is a term used to describe the area between navigation dams of the rivers.

[2] The phrase ''sailing line'' is defined as the middle of the river as marked on the USACE river charts.

[3] Pennsylvania law states any person born on or after January 1, 1982, shall not operate, on the waters of this Commonwealth, a motorboat without first obtaining a certificate of boating safety education.

establishing the Special Local Regulation (83 FR 23218).

On April 19, 2018, the Coast Guard published an NPRM titled Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh PA (83 FR 17333) for the Kenny Chesney concert. There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the concert. During the comment period that ended May 4, 2018, we received no comments. On May 18, 2018, the Coast Guard published a temporary final rule establishing the Special Local Regulation (83 FR 23224).

Both temporary Special Local Regulations prohibited persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. In advance of the concert weekends, MSU Pittsburgh conducted outreach/education. MSU Pittsburgh provided flyers to the three locks and dams of the Pitt Pool to be given to boaters entering the pool throughout the concert weekends. Coast Guard and Coast Guard Auxiliary patrols also provided flyers to boaters in the Pitt Pool during the concerts. MSU Pittsburgh personnel participated in news media interviews with two local TV stations and one local newspaper. According to the USACE, 529 recreational and 133 commercial vessels transited through the locks of the Pitt Pool throughout the concert weekends. Additionally, 316 passenger vessel trips were conducted in close proximity to Heinz Field. Despite the concentration of vessels, both recreational and commercial vessels were able to transit safely throughout the weekend, and positive feedback was received from industry, other government agencies, and recreational representatives.

This NPRM proposes to establish an RNA using the same waterway controls as were used in the previous Special Local Regulations. While these Special Local Regulations were effective in mitigating the hazards of heavy congestion in and around the Pitt Pool during said events, a more permanent solution is required to handle the consistently heavy traffic throughout peak boating season. The heavy congestion conditions addressed by the Special Local Regulations are present throughout the summer months, and it would be exceptionally laborious for MSU Pittsburgh personnel to establish individual Special Local Regulations to mitigate every instance. The Coast Guard feels that a permanent RNA is the most effective solution for mitigating the dangers of heavy congestion, using proven methods, with minimal impacts to vessel traffic operating under normal waterway conditions.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. The Commander of the Eighth Coast Guard District has determined that potential hazards associated with the risk of collision in this area would be a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231).

## III. Discussion of Proposed Rule

The District Commander proposes to establish a regulated navigation area for all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 of the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 of the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 of the Ohio River. This proposed rule would apply to any vessel operating within the area, including a naval or public vessel, except a vessel engaged in law enforcement, servicing aids to navigation, or surveying, maintaining, or improving waters within the regulated area. No vessel would be permitted to loiter, anchor, stop, moor, remain or drift in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the COTP or a designated representative. In addition, no vessel or person would be permitted to loiter, anchor, stop, remain, or drift more than 100 feet from any riverbank unless authorized by the COTP or a designated representative. They may be contacted on VHF–FM Channel 16.

On the other hand, this rule allows vessels and people to loiter, anchor, stop, remain, or drift within the regulated area so long as they are within 100 feet of the shore or riverbank. By requiring all vessels to loiter, anchor, stop, remain, or drift only within 100 feet of the riverbanks, the center of the rivers are less likely to be obstructed for navigating vessels. 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 impact of the regulated navigation area. The regulated navigation area uses minimally intrusive guidelines for vessel operation designed to improve the safety of navigation on the waters of the area. This regulated navigation area does not meet any of the criteria for a significant regulatory action under Executive Order 12866.

### *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 regulated navigation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see

**ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area that prohibits loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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 *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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

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

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

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

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

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

■ 2. Add § 165.823 to read as follows:

**§ 165.823 Allegheny River, Monongahela River, and Ohio River, Pittsburgh, Pennsylvania; Regulated Navigation Area**

(a) *Location.* The following is a regulated navigation area (RNA): The waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 on the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 on the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 on the Ohio River.

(b) *Applicability.* This section applies to any vessel operating within the RNA, including a naval or public vessel, except a vessel engaged in:

(1) Law enforcement;

(2) Servicing aids to navigation; or

(3) Surveying, maintaining, or improving waters within the RNA.

(c) *Regulations.* (1) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any river bank within the RNA without permission of the Captain of the Port (COTP), or any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area.

Dated: June 11, 2019.

**Paul F. Thomas,**

*RADM, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2019–13932 Filed 6–28–19; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3050

**[Docket No. RM2019–6; Order No. 5133]**

## Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal One). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 20, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Introduction

On June 21, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal One.

### II. Proposal One

*Background.* Proposal One relates to the methodology used to calculate attributable Special Purpose Route (SPR) city carrier costs. Carriers on SPRs ''deliver packages to addresses across a designated geographic area and collect mail from specified collection points.'' Petition, Proposal One at 1. The SPR carriers ''perform some or all of a number of different activities: Organize their mail in the office, load their vehicles, drive to the first delivery or collection spot, drive between delivery and collection spots, effect delivery or collection while out of the office, return to the office from the last delivery or collection spot, and unload their vehicles. These activities take place within three operations[:] regular Monday through Saturday delivery, Sunday delivery, and collection.'' *Id.* The specific activities performed by each carrier depend on the operation. *Id.*

The current methodology used to attribute the SPR city carrier costs is based on a study that was presented by the Postal Service in Docket No. R97–1. *Id.* The Postal Service contends that the Docket No. R97–1 study should be updated because there have been ''substantial changes'' in the activities performed by SPR carriers. *Id.*

Specifically, the Postal Service states that ''[a]s package volume has grown, the focus on SPR activities has shifted toward delivery and away from collection.'' *Id.* at 1–2. The Postal Service comments that the ''development of Sunday package delivery has also shifted SPR activities toward delivery.'' *Id.* at 2. The Postal Service contends that these changes provide ''motivation for an update and refinement'' of the Docket No. R97–1 study. *Id.* at 1.

*Proposal.* The Postal Service's proposal seeks to revise the methodology used to attribute SPR city carrier costs by replacing the study currently used by the Postal Service's model with a proposed study that the Postal Service believes more accurately reflects SPR carrier activities and cost drivers.[2]

The Postal Service's proposed study estimates separate variability models for regular delivery, Sunday delivery, and collection. Petition, Proposal One at 3. It uses the total hours involved in each activity as the dependent variables in these regressions to ensure that ''any connection [of these associated times] to volume [is] incorporated into the estimated variability.'' *Id.*

The explanatory variables in the proposed models include the cost drivers and characteristic variables that control for non-volume variations in hours. *Id.* The Postal Service states that a ''number of different functional forms are estimated, and a variety of different econometric techniques are investigated.'' *Id.* at 3–4.

The proposed study calculates separate cost pools for regular delivery, Sunday delivery, and collection. *Id.* at 4. The Postal Service states that ''[e]ach cost pool is based upon the hours required to complete the included activities and the wages associated with the types of carrier accruing the hours''. *Id.*

*Rationale and impact.* The Postal Service states that the ''objective of this proposal is to update and improve the methodology for calculating attributable Special Purpose Route (SPR) city carrier costs.'' *Id.* at 1. The Postal Service contends that Proposal One would improve the analysis of SPR costs ''in a number of ways.'' *Id.* at 3.

First, the Postal Service avers that the proposed study's structure ''reflects current operational practice and management.'' *Id.* Second, the Postal Service states that it ''makes use of ongoing operational databases'' to gather data from every SPR location, ''greatly expanding the scope of the analysis.'' *Id.* Third, the Postal Service claims that the proposed study ''explicitly accounts for the December peak in package volumes in determining product costs and allows for other seasonal variation throughout the year.'' *Id.* Fourth, the Postal Service states that the proposed study ''incorporates the differences in wages for different types of SPR carriers when forming cost pools.'' *Id.* Fifth, the Postal Service asserts that the proposed study ''explicitly models Sunday package delivery costs based upon the actual packages delivered.'' *Id.*

In terms of impact, the Postal Service's proposed study produces a higher overall variability than the existing study. *Id.* at 4. The Postal Service calculates the FY 2018 variability for SPRs as 56.3 percent. *Id.* Under the proposed study, the overall variability would rise to 61.4 percent. *Id.* The Postal Service explains that this increase is a result of a ''higher regular delivery variability offsetting a slightly lower collection variability and the estimation of an actual Sunday variability in place of the assumption of 100 percent variability.'' *Id.*

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal One), June 21, 2019 (Petition).

[2] A New Study of Special Purpose Route Carrier Costs, Professor Michael D. Bradley, June, 21, 2019 (Proposed Study).

The Postal Service has observed two major cost shifts under the proposed study: (1) A shift from letter and flat shaped mail to packages; and (2) a shift from market dominant products to competitive products. *Id.* at 5. The Postal Service asserts that these effects result from ''the updated data that underlie the new study capture the shift in SPR activities from collection to delivery that has taken place as package volumes have increased.'' *Id.* The Postal Service notes that ''SPR delivery is a package-related cost, whereas collection includes both letters and flats.'' *Id.* The Postal Service concludes that ''[t]he activity shift toward delivery also underlies the cost shift from market dominant to competitive products.'' *Id.*

## III. Notice and Comment

The Commission establishes Docket No. RM2019–6 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov*. Interested persons may submit comments on the Petition and Proposal One no later than August 20, 2019. Pursuant to 39 U.S.C. 505, Lawrence Fenster is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2019–6 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal One), filed June 21, 2019.

2. Comments by interested persons in this proceeding are due no later than August 20, 2019.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lawrence Fenster to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2019–13930 Filed 6–28–19; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[EPA–R03–OAR–2019–0187; FRL–9995–88–Region 3]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Municipal Solid Waste Landfills

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d) plan submitted by the West Virginia Department of Environmental Protection (WVDEP). This plan was submitted to fulfill the requirements of the CAA and in response to the EPA's promulgation of Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The West Virginia plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

**DATES:** Written comments must be received on or before July 31, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0187 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2039. Mr. Gordon can also be reached via electronic mail at *gordon.mike@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On August 29, 2016, the EPA finalized Standards of Performance for MSW landfills and Emission Guidelines and Compliance Times for MSW Landfills in 40 CFR part 60 subpart XXX and Cf. 81 FR 59332 and 81 FR 59313, respectively. These actions were taken under section 111 of the CAA.

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA which establishes standards of performance for any air pollutant: (1) For which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 but; (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. The EPA established these requirements for state plan submittal in 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A.

On September 13, 2018, the West Virginia Department of Environmental Protection (WVDEP) submitted to the EPA a formal section 111(d) for existing municipal solid waste landfills. The submitted section 111(d) was in response to the August 29, 2016 promulgation of Federal New Source Performance Standards (NSPS) and emission guidelines requirements for MSW landfills, 40 CFR part 60, subparts XXX and Cf, respectively (76 FR 15372).

## II. Summary of SIP Revision and EPA Analysis

The EPA has reviewed the West Virginia section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, the EPA is proposing to determine that the submitted section 111(d) plan meets the above-cited requirements. Included within the section 111(d) plan are regulations under the West Virginia

Code, specifically, West Virginia legislative rule 45 C.S.R. 23, entitled ''Control of Air Pollution from Municipal Solid Waste Landfills.'' In this action the EPA is proposing to incorporate by reference (IBR) West Virginia legislative rule 45 C.S.R. 23, which became effective in the State of West Virginia on June 1, 2018. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

**III. Proposed Action**

The EPA is proposing to approve the West Virginia section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart XX to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c), as well as section 4.8.b, ''Implementation of Emission Guidelines for Existing MSW Landfills,'' of West Virginia's 111(d) plan submittal.

**IV. Incorporation by Reference**

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference WVDEP rules regarding MSW landfills discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA–R03–OAR–2019–0187, at *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**V. Statutory and Executive Order Reviews**

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed approval of West Virginia's state plan submittal for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state plan is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 20, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2019–13906 Filed 6–28–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[EPA–R03–OAR–2019–0160; FRL–9995–87–Region 3]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Municipal Solid Waste Landfills

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This plan was submitted to fulfill the requirements of the CAA and in response to EPA's promulgation of Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The Delaware plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

**DATES:** Written comments must be received on or before July 31, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0160 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2039. Mr. Gordon can also be reached via electronic mail at *gordon.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On August 29, 2016, the EPA finalized Standards of Performance for MSW landfills and Emission Guidelines and Compliance Times for MSW landfills in 40 CFR part 60 subpart XXX and Cf. 81 FR 59332 and 81 FR 59313, respectively. These actions were taken under section 111 of the CAA. Section 111(d) of the CAA requires EPA to establish a procedure for a state to submit a plan to EPA which establishes standards of performance for any air pollutant: (1) For which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 but (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. EPA established these requirements for state plan submittal in 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. On October 10, 2017, DNREC submitted to EPA a formal section 111(d) plan for existing municipal solid waste landfills. The submitted section 111(d) was in response to the August 29, 2016 promulgation of Federal New Source Performance Standards and Emission Guidelines requirements for MSW landfills, 40 CFR part 60, subparts XXX and Cf, respectively (76 FR 15372).

## II. Summary of the Plan and EPA Analysis

EPA has reviewed the Delaware section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, EPA is proposing to determine that the submitted section 111(d) plan meets the above-cited requirements. Included within the section 111(d) plan are regulations under the Delaware Administrative Code, specifically DE Admin. Code 1120 (Section 30), entitled ''Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017.'' Section 30 of DE Admin. Code 1120, which is included in the Plan, applies to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste. While Delaware has chosen to regulate new and existing landfills under the same state regulation, for purposes of this action, the Plan applies to any Delaware ''designated facility,'' which in the context of the Emissions Guideline means each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014, which is consistent with the requirements of 40 CFR part 60, subpart Cf. In this action, EPA is proposing to incorporate by reference (IBR) DE Admin. Code 1120 (Section 30), which became effective in the State of Delaware on July 11, 2017. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

## III. Proposed Action

EPA is proposing to approve the Delaware section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, EPA is proposing to amend 40 CFR part 62, subpart I to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf. The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c), as well as 7 DE Admin. Code 1120 Section 30.1.

## IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference DNREC rules regarding MSW landfills discussed in section II of this preamble. EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA–R03–OAR–2019–0160, at *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of Delaware's state plan submittal for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 20, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2019–13902 Filed 6–28–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1994–0009; FRL–9995–91–Region 1]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the U.S. Coast Guard (USCG) Buoy Depot of the South Weymouth Naval Air Station Superfund Site

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

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 1 is publishing a Notice of Intent for Partial Deletion of the U.S. Coast Guard (USCG) Buoy Depot, the South Weymouth Naval Air Station (NAS) Superfund Site (the Site) (MA2170022022) in Weymouth, Massachusetts, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion is being published by EPA with the concurrence of the Commonwealth of Massachusetts, through the Massachusetts Department of Environmental Protection (MassDEP), because EPA has determined that all appropriate response actions at the identified parcel under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the USCG Buoy Depot, Operable Unit 10, located at 65 Trotter Road, South Weymouth, Massachusetts. The remaining Operable Units of the South Weymouth NAS will remain on the NPL and are not being considered for deletion as part of this action.

**DATES:** Comments must be received by July 31, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1994–0009, by one of the following methods:

• *http://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit.

• *Email: lim.robert@epa.gov.*

• *Mail:* Robert Lim, U.S. EPA Remedial Project Manager, 5 Post Office Square, Suite 100 (Mail code: 07–3), Boston, MA 02109–3912.

• *Hand delivery:* Robert Lim, U.S. EPA Remedial Project Manager, 5 Post Office Square, Suite 100 (Mail code 07–3), Boston, MA 02109–3912. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA–HQ–SFUND–1994–0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov.* or email. The *http://www.regulations.gov.* Website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or on disk or physical copy at:

EPA Region 1 Records Center, 5 Post Office Square, Suite 100, 1st Floor, Boston, MA 02109, Phone: 1–617–918–1440. Hours: Mon–Fri 8 a.m. to 5 p.m., excluding federal holidays

Navy Caretaker Site Office, 223 Shea Memorial Drive, South Weymouth, MA 02190 (Records may be viewed by appointment only. Contact Mr. David Barney at 781–626–0105 or *David.a.barney@navy.mil* to schedule an appointment)

Tufts Library, 46 Broad Street, Weymouth, MA 02188

**FOR FURTHER INFORMATION CONTACT:**

Robert Lim, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100 (Mail code 07–3), Boston, MA 02109–3912, (617) 918–1392, email: *lim.robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Introduction

EPA Region 1 is publishing this Notice of Intent for Partial Deletion of the USCG Buoy Depot, designated Operable Unit 10 (OU10) within the South Weymouth Naval Air Station (NAS) Superfund Site (see Figure 1), from the NPL. This partial deletion pertains to all site media, including soil and groundwater associated with USCG Buoy Depot, which consists of approximately five acres and includes the following properties:

4.77 acres of property owned by the United States of America (United States Coast Guard) described in Quitclaim Deed dated October 30, 1941 and recorded in book 6561, Page 513, also identified as Lot 650–1 in Tax Map 58. Approximately 0.20 acres of property owned by the United States of America (United States Navy) described in Quitclaim Deed dated January 1, 1900, also identified as Plat 597–152 in Tax Map 58. Approximately 0.04 acres of property owned by LSTAR Southfield, LLC, described in Quitclaim Deed dated July 2, 2015 and recorded in book 33279, Page 51, also identified as Plat 597–138 in Tax Map 58. Approximately 0.11 acres of property owned by LSTAR Southfield, LLC, described in Quitclaim Deed dated July 2, 2015 and recorded in book 33279, Page 51, also identified as Plat 597–137 in Tax Map 58.

The properties are further depicted on Figure 2 of the ''*Remedial Action Completion Report for the U.S. Coast Guard Industrial Production Detachment, South Weymouth, MA*'' dated October 16, 2017 and will be referred to hereafter as ''the property proposed for deletion''. All tax map references are based on the Town of Weymouth 2015 Tax Maps.

The NPL constitutes Appendix B of the NCP (40 CFR part 300), which EPA promulgated pursuant to Section 105 of the CERCLA. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the USCG Buoy Depot within the Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the ''*Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List*'' 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the property proposed for deletion and demonstrates how it meets the deletion criteria. Section V discusses EPA's proposal to delete the Site parcel from the NPL.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

## III. Partial Deletion Procedures

The following procedures apply to the partial deletion of the USCG Buoy Depot from the Site:

(1) EPA has consulted with the Commonwealth of Massachusetts prior to developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the Commonwealth 30 working days for review of this notice prior to its publication.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The Commonwealth, through MassDEP by a letter dated April 19, 2019 has concurred on the proposal for partial deletion of the USCG Buoy Depot from the Site.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice of the availability of the Notice of Intent for Partial Deletion is being published in the Patriot Ledger, a major local newspaper. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the USCG Buoy Depot from the NPL.

(6) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this partial deletion action, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the USCG Buoy Depot. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the USCG Buoy Depot of the South Weymouth Naval Air Station (NAS) Superfund Site, the EPA Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

## IV. Basis for Site Partial Deletion

The following information provides EPA's rationale for deleting the USCG Buoy Depot of the South Weymouth NAS Site from the NPL:

*Site Location*

The USCG Buoy Depot is located on the South Weymouth NAS which operated from 1942 to 1997, and is located approximately 15 miles southeast of Boston, Massachusetts, in Norfolk County in the Town of Weymouth. As of the 2010 census, Weymouth has a population of 55,643.

*Site Description*

The USCG Buoy Depot, now currently operating as the USCG Industrial Production Detachment South Weymouth (IPDSW), is the USCG's principal facility in the northeast for storing, cleaning, repairing, and painting navigational buoys. The facility is owned and operated by the USCG.[1] Within the IPDSW there is a two-story, steel and concrete block building occupying approximately 20,000 square feet on the northwestern portion of the property. Asphalt and concrete paved driveways surround the building. Most of the property is a dirt and gravel-covered buoy storage area to the south and east of the building. A drainage swale exists along the southern fence line of the property. The swale and a portion of a wetland on an adjacent property were impacted by past operations and are considered part of the site.

*Operational History*

On March 1, 1972, the USCG leased the property from the Navy which contains the Buoy Depot. Prior to development, the property was an undeveloped property of the South Weymouth NAS which closed in 1997 under the Defense Base Realignment and Closure Act of 1990 (BRAC). In October 2000, the Buoy Depot property was transferred to the USCG from the Navy through a Federal Agency to Federal Agency Transfer. Upon transfer of the property from the Navy, the USCG also assumed responsibility for the CERCLA investigation of Buoy Depot.

The USCG Buoy Depot was constructed in 1973 and is the USCG's principal facility in the northeast for the storing, cleaning, repairing, and painting navigational buoys. Its operations have included buoy rehabilitation (*e.g.,* shot blasting to remove old paint, welding, painting, electrical wiring); minor vehicle and equipment maintenance; waste generation (steel shot blast residue, waste oils, paint-related waste) and fuel storage; warehousing; outdoor scrap metal storage; and administrative use.

**BILLING CODE 6560–50–P**

[1] OU10 does include some limited areas of Navy and private property immediately adjacent to the USCG facility where contamination had historically migrated off the USCG facility as previously noted.

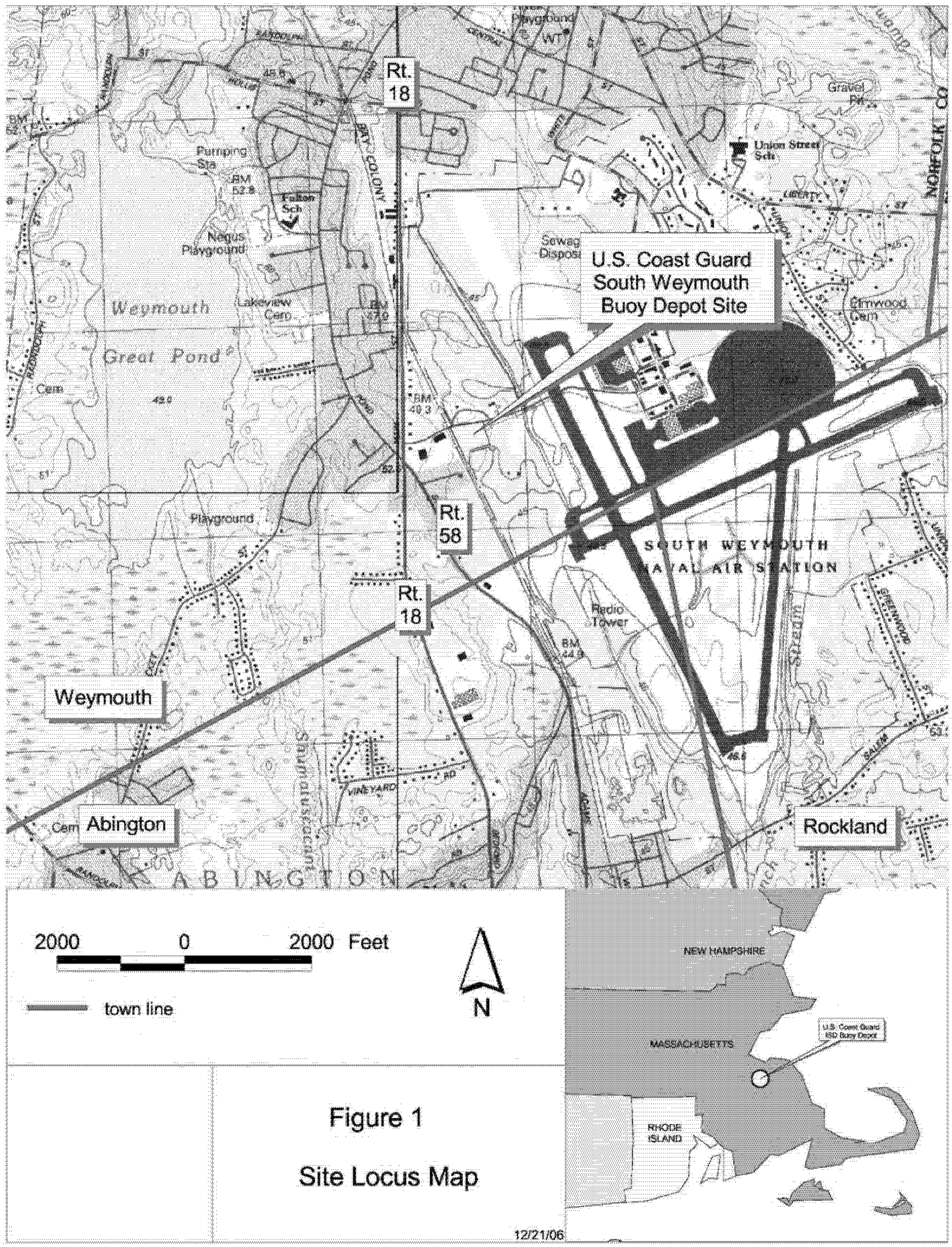


Figure 1
Site Locus Map

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The USCG stopped buying lead-based paint and primers for buoys in 1986. Because buoys are refurbished every six-to-eight years, all the USCG buoys have been cycled through the system and repainted with non-lead based paint.

*Conditions That Led to Placement on National Priorities List (NPL)*

In March 1988, the Navy conducted a Preliminary Assessment (PA) under the Installation Restoration Program. The PA consisted of a records search, site visit, and interviews. The PA Report identified five potential hazardous waste sites based on past practices: Site 1, the West Gate Landfill; Site 2, the RDA Site; Site 3, the Small Landfill (SL); Site 4, the Former Fire Training Area (FFTA); and Site 5, the Tile Leach Field (TLF).

The Navy completed a Site Inspection (SI) in December 1991. The SI investigated the five potential sites identified in the PA as well as three additional sites the Navy added to the program: Site 6, the Fuel Farm; Site 7, the former Sewer Treatment Plant (STP); and Site 8, the Abandoned Bladder Tank Fuel Storage Area. The SI included site walkovers; geophysical surveys; installation of monitoring wells; and analysis of soil, sediment, surface water, and groundwater samples.

The USCG Buoy Depot was part of the NPL listing for South Weymouth NAS due to contamination from facility operations that was present in the surface soil of the storage area and in an adjacent drainage swale and wetland.

*National Priorities List Designation*

The Site was proposed to the NPL on 6/23/1993 (58 FR 34018) and added to the NPL on 5/31/1994 (59 FR 27989). The listing included the USCG Buoy Depot. The CERCLIS ID for South Weymouth NAS is MA2170022022, and for USCG Buoy Depot is MA0690330758.

*Ongoing Redevelopment*

While the former South Weymouth NAS (currently referred to as ''Union Point'') undergoes redevelopment due to Base Realignment and Closure process with the Southfield Redevelopment Authority *implementing* plans for commercial, residential, and mixed uses, along with recreational areas and open space, the USCG Buoy Depot, currently named the USCG Industrial Production Detachment South Weymouth (IPDSW), continues to operate as the USCG's principal facility in the northeast for storing, cleaning, repairing, and painting navigational buoys.

*Operable Units at the Site*

Beginning in 1995, remedial investigations at South Weymouth NAS have identified 27 operable units. The USCG Buoy Depot has been designated as Operable Unit 10 (OU10) and is described as follows:

*OU10—Former U.S. Coast Guard Buoy Depot*

Beginning in 1972, former Buoy Depot operations have included buoy rehabilitation (*e.g.,* ''shot blasting'' to remove old paint, welding, painting, and electrical wiring), minor vehicle and equipment maintenance, waste generation (steel shot blast residue, waste oils, paint-related waste) and fuel storage, warehousing, outdoor scrap metal storage, and administrative use. Most of the buoys are constructed of steel and range in size from three feet (ft) to greater than 30 ft in length and can weigh up to 20,000 pounds. Old or damaged buoys that are beyond repair are stored at the current IPDSW pending sale as scrap metal.

As a result of prior facility operations (*i.e.,* buoy storage, refurbishment, and scrapping), lead and paint chips were present in the surface soil of the buoy storage area. Due to stormwater runoff, surface soils in the downgradient and off-site drainage swale and wetland area were impacted with metals, primarily lead, from the former Buoy Depot. The USCG ceased purchasing lead-based paint (LBP) and primers for buoys in 1986. The USCG was required to deplete this existing paint inventory by 1988. Buoys are refurbished every six-to-eight years. Therefore, most of the USCG's buoys that are now received at the current IPDSW have been cycled through the system and repainted with non-LBP multiple times.

*Remedial Investigation and Feasibility Study (RI/FS)*

The RI investigated three areas of concern at USCG Buoy Depot in 2001. It concluded that no further action was required for areas related to the septic system tank, piping, and leach field. The two other areas were addressed through removal actions in 1999, 2003, and from 2004 to 2005.

In 1999, a time-critical removal action addressed lead-contaminated soil near a former dust collection system by removing 26 cubic yards of soil. In 2003, a non-time critical removal action addressed a floor drain system by removing 100 cubic yards of sludge piping and impacted soil. From 2004 to 2005, also as part of the non-time critical removal action beginning in 2003, the USCG excavated approximately 165 cubic yards of metals-contaminated soil from the offsite drainage swale and wetland area.

The Human Health and Ecological Risk Assessments determined that lead in soil and sediment was the only contaminant of concern (COC) for which significant risks were identified in both adult and child lead modelling, and in ecological receptors. Groundwater quality was consistent with background conditions and, therefore, no groundwater risks were identified.

*Selected Remedy*

A Record of Decision (ROD) was finalized in September 2006 and selected land use controls (institutional and engineering controls), long-term monitoring, and five-year reviews. This decision also took into consideration the completion of removal actions prior to finalization of the ROD.

The Response Action Objectives in the ROD included both Removal Action Objectives and Remedial Action Objectives (RAO). The following goals were developed during the EE/CA for the non-time critical removal action completed in 2005:

- Prevention, to the extent practicable, of direct contact with and ingestion of surficial soil that presents unacceptable risks to human health and/or ecological receptors (*i.e.,* the soil of the swale and wetlands)
- Prevention of potential future impacts to groundwater beneath the site through removal of impacted soil and sludge-associated with existing floor drains beneath the site building
- Prevent ongoing migration of metals (primarily lead) from the buoy storage area to the adjacent drainage ~wale and the downstream wetland, and prevention of future migration to the extent possible.

The Feasibility Study presented the following response action objectives for the buoy storage area:

- Prevent future human (residential) exposure to lead and potential LBP chips in soil of the buoy storage area
- Prevent COCs in on-site soil from migrating off the Buoy Depot property

The ROD consisted of the following elements:

- No Further Action for Area of Concern (AOC) 1 (*i.e.,* building and adjacent areas to the south);
- No Action for AOC 2 (*i.e.,* septic system tank, piping, and leach field);
- Implement LUCs for AOC 3 (area where buoy, equipment and scrap metal were stored) of the current USCG IPDSW property that include (1) Institutional Controls to prohibit current and future non-commercial/industrial uses of the current IPDSW property, and (2) Engineering Controls to prevent the migration of contaminated soil from the buoy storage area.;
- Conduct Long-Term Monitoring of the surface soil in the stormwater drainage swale and downstream wetland area on adjacent property controlled by LSTAR Management, LLC and the Navy to ensure the long-term effectiveness of the remedy for protecting human health and the environment; and
- Five-Year Reviews for AOC 3 (*i.e.,* buoy, equipment, and scrap metal storage area).

The USCG attempted to reduce the potential for recontamination of the swale and wetland through the construction of a stormwater management system, which reduced the transport of soil particles and paint chips from the buoy storage area. The surface soil was not remediated under the ROD because it did not pose an unacceptable risk for commercial/industrial use. After finalization of the ROD, the results of the long-term monitoring program determined a need for additional action which is discussed below.

The USCG completed the first statutory Five-Year Review of the USCG Buoy Depot property in December 2011 which identified increasing concentrations of metals in the swale and wetland area downstream of the stormwater management system. The increasing trend in metals concentrations suggested that the stormwater management system was not containing the contaminants known to exist in surface soils in the buoy storage area. The Five-Year Review recommended continued O&M activities associated with the stormwater management system and continued monitoring to further evaluate contaminant concentration trends.

Based on the increasing concentration trends found in the Five-Year Review, the USCG conducted a study to evaluate the effectiveness of the stormwater management system and to develop alternatives to enhance the control of contaminant discharge to the swale and wetland area. The report titled *Evaluation of Alternatives for Minimizing Off-Site Transport of Contaminated Sediment from the Stormwater Management System* (Watermark, 2014) included evaluation of the following five alternatives to effectively control contaminant discharge from the buoy storage area:

1. Remove contaminated soil from the buoy storage area and replace with clean fill;
2. Pave the remaining unpaved areas of the buoy storage area;
3. Expand the upstream detention system;
4. Install upstream filtration; and
5. Install downstream filtration.

Upon consideration of each alternative, the USCG determined that removal of contaminated soil in the buoy storage area and replacement with clean fill represented a permanent solution to the contaminant migration issue. The decision to conduct a soil removal action for the buoy storage area and drainage swale was based on an increasing trend in metals concentrations in a swale and wetland area which suggested that the stormwater management system was not containing the contaminants known to exist in surface soils in the buoy storage area. This study which was published in 2013 also contained alternatives to control the contaminant discharge to the swale and wetland area.

The USCG produced an updated Engineering Evaluation/Cost Analysis (EE/CA) in February 2016 which provided a comparative analysis of the actions detailed in the 2014 Report. The EE/CA recommended Alternative 1, the removal of contaminated soil from the buoy storage area and replacement with clean fill. A Removal Action Memorandum was prepared in April 2016 to support this determination.

From December 2016 to February 2017, USCG performed a removal action to excavate subsurface soils from with the current IPDSW fence line, drainage swale, and wetland. Over 4,125 cubic yards of soil was excavated and disposed of at a licensed facility. No contaminated soil with metals exceeding the following clean-up criteria remain on the current IPDSW following this removal effort.

The cleanup goals for the soil remediation project were:

- Arsenic 20 milligrams per kilogram (mg/kg)
- Chromium 16 mg/kg
- Copper 1,020 mg/kg
- Lead 200 mg/kg
- Nickel 230 mg/kg
- Zinc 738 mg/kg

The Final Remedial Action Completion Report documented the post-excavation soil sampling and analysis and that the soil remaining at the site meets the site cleanup criteria.

An Explanation of Significant Differences (ESD) for the USCG Buoy Depot was finalized on September 27, 2017. The ESD documented no further action for the buoy storage area (AOC 3) of the USCG Buoy Depot because soil removal actions conducted from December 2016 to February 2017 achieved cleanup levels allowing for unlimited use and unrestricted exposure. In addition, the ESD eliminated the future need of land use controls, performing long-term monitoring, and conducting five-year reviews.

*Community Involvement*

USCG and EPA have kept the community and other interested parties informed throughout cleanup of the site. Notice of this proposal will be placed in the local newspaper, the Patriot Ledger. While the levels of community concern and involvement have been high for the South Weymouth Naval Air Station as a whole, especially with regard to redevelopment, levels of community concern have been low for Buoy Depot.

*Determination That the Criteria for Deletion Have Been Met*

The NCP specifies that EPA may delete a site from the NPL if: All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; as required by 40 CFR 300.425(e)(1)(ii). This criteria was met, as described, for the partial deletion proposed at the USCG Buoy Depot Operable Unit from the South Weymouth NAS Superfund Site. A Remedial Action Completion Report was issued on October 16, 2017 to document the completion of the Remedial Action activities for the area subject to this partial de-listing. EPA, with the concurrence of the Commonwealth of Massachusetts through MassDEP by a letter dated April 19, 2019, believes these criteria for deletion have been satisfied. Therefore, EPA is proposing the deletion of USCG Buoy Depot operable unit (OU10) from the South Weymouth NAS Superfund Site. All of the completion requirements for the property proposed for deletion at the site have been met.

- The implemented remedies achieve the degree of cleanup or protection specified in the ROD and ESD for the area proposed for deletion.
- The selected remedial and removal action objectives and associated cleanup levels for the areas proposed for deletion are consistent with agency policy and guidance.
- No further Superfund response in the areas proposed for deletion are needed to protect human health and the environment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 18, 2019.

**Deborah A. Szaro,**

*Acting Regional Administrator, Region 1.*

[FR Doc. 2019–14018 Filed 6–28–19; 8:45 am]

**BILLING CODE 6560–50–P**

Federal Register
Vol. 84, No. 126
Monday, July 1, 2019

# Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 26, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments are requested regarding: 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 31, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* Summer Food Site Locations for State Agencies.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* Section 13 of the Richard B. Russell National School Lunch Act (NSLA) authorizes the Summer Food Service Program (SFSP) to provide low-income children with access to nutritious meals when school is not in session. Meals meeting Federal nutrition guidelines are served at no cost to all children 18 years old and under at approved SFSP sites in areas in which at least 50 percent of children are eligible for free and reduced price school meals during the school year. SFSP sites operate, by design, for a short period during the summer and their locations, hours and days of operations may not be well known to those children who depend on school lunch during the school year. The proposed FNS–905 will collect this information and make it available to the public.

*Need and Use of the Information:* FNS will use the information to update the USDA National Hunger Clearinghouse. The National Hunger Clearinghouse collects, develops, and distributes information and resources to help build the capacity of emergency food providers to address the immediate needs of struggling families and individuals while promoting self-reliance and access to healthy food.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Reporting: 8 responses annually.

*Total Burden Hours:* 53.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2019–13971 Filed 6–28–19; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, and the Agriculture Improvement Act of 2018, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

**DATES:** The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet July 17–19, 2019. The public may file written comments up to two weeks after the meeting with the contact person, August 2, 2019.

**ADDRESSES:** The meeting will take place at The Darcy Hotel, 1515 Rhode Island Avenue NW, Washington, DC 20005. Written comments may be sent to: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 332A, Whitten Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue SW, Washington, DC 20250–0321.

**FOR FURTHER INFORMATION CONTACT:** Michele Esch, Executive Director/Designated Federal Official, or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202)720–6199; or email: *nareee@ars.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the meeting:* The Board will meet to provide advice and recommendations on the top priorities and policies for food and agricultural research, education, extension, and economics. The main focus of this meeting will be to reconvene and reestablish the Board after the reauthorization of the Farm Bill. The Board will discuss priority setting for the Research, Education, and Economics (REE) mission area, including reviewing the draft USDA Science Plan and strategic programmatic themes. The Board will also receive updates from the REE Deputy Under Secretary and the leadership from the REE agencies. A detailed agenda may be received from the contact person identified in this notice or at *https://*

*nareeeab.ree.usda.gov/meetings/general-meetings.*

On Wednesday, July 17, 2019, the Advisory Board will convene from 8:00 a.m.–5:00 p.m. EDT. On Thursday, July 18, 2017, the Advisory Board will reconvene from 8:00 a.m.–5:00 p.m. And on Friday, July 19, 2019, the Board will begin at 8:00 a.m. EDT and adjourn by 12:00 p.m. (noon) EDT.

*Public Participation:* This meeting is open to the public and any interested individuals wishing to attend. Opportunity for public comment will be offered each day of the meeting. To attend the meeting and/or make oral statements regarding any items on the agenda, you must contact Michele Esch or Shirley Morgan-Jordan at 202–720–3684; email: *nareee@ars.usda.gov* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (or by close of business Friday, August 2, 2019). All written statements must be sent to Michele Esch, Designated Federal Officer and Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, U.S. Department of Agriculture, Room 332A, Jamie L. Whitten Building, Mail Stop 0321,1400 Independence Avenue SW, Washington, DC 20250–0321; or email: *nareee@ars.usda.gov.* All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

**Steve Censky,**

*Deputy Secretary, U.S. Department of Agriculture.*

[FR Doc. 2019–14013 Filed 6–28–19; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tongass National Forest; Ketchikan Misty Fjords Ranger District; Alaska; South Revillagigedo Integrated Resource Project Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice of Intent to prepare an Environmental Impact Statement; reopening of public scoping period.

**SUMMARY:** The Forest Service is issuing this notice to update information included in the original Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the South Revillagigedo Integrated Resource Project (South Revilla IRP) and to reopen the public scoping period. The original NOI was published in the **Federal Register** on August 8, 2018 (83 FR 39050). This revised NOI modifies the Proposed Action, including replacing timber volume projections with proposed harvest acres to evaluate harvest potential; adds a young-growth component; revises road requirements for access; and modifies the anticipated publication dates of the Draft and Final EIS.

**DATES:** Comments concerning the scope of the analysis must be received by July 31, 2019. The Draft EIS is expected to be published in September 2019 and the Final EIS is expected in September 2020.

**ADDRESSES:** Send or hand-deliver specific written comments to the Ketchikan Misty Fjords Ranger District, Attn: South Revilla IRP, 3031 Tongass Avenue, Ketchikan, Alaska 99901; telephone (907) 225–2148; fax (907) 225–8738. Comments may be emailed to: *comments-alaska-tongass-ketchikan-mistyfiord@fs.fed.us* with South Revilla IRP in the subject line. In all correspondence, include your name, address, and organization name if you are commenting as a representative of an organization.

**FOR FURTHER INFORMATION CONTACT:** Damien Zona, Interdisciplinary Team Leader, Ketchikan Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901 or by phone at (907) 228–4126. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** This EIS will tier to and incorporate by reference the 2016 Tongass Land and Resource Management Plan (Forest Plan) Final EIS. The project area is located on Revillagigedo Island, approximately 17 miles northeast of Ketchikan, Alaska, within the Ketchikan Misty Fjords Ranger District, Tongass National Forest and encompasses about 56,282 acres of National Forest System lands.

#### Purpose and Need for Action

The purpose of the South Revilla IRP is to implement the 2016 Forest Plan direction to move the project area toward the desired future conditions described in that plan. More specifically, the purpose is to manage the timber resource for production of sawtimber and other wood products, improve ecosystem and watershed health, and provide a range of recreation opportunities to meet public and tourism business demand through an integrated approach to meet multiple resource objectives. Maintaining existing and expanding future opportunities for the recreation and tourism sector would contribute to the local economy.

There is a need to provide a sustainable level of forest products to contribute to the economic sustainability of the region. Providing old-growth timber and currently merchantable young-growth timber would preserve a viable timber industry by providing timber volume in an economically efficient manner while providing jobs and opportunities for Southeast Alaska residents. Past management activities have affected watershed function in the project area. There is a need to improve and restore the natural range of habitat conditions in the project area to support viable wildlife, fish, and plant populations and to sustain diversity and production which would contribute to traditional, cultural, and subsistence uses by residents of Southeast Alaska.

There is also a need to provide sustainable recreation opportunities to a diverse and growing group of forest users. A sustainable recreation program in terms of operations and maintenance is needed to maintain infrastructure at an acceptable level.

#### Proposed Action

The Forest Service proposes to harvest timber, construct and reconstruct roads, restore watershed function, enhance or restore fish and wildlife habitat, and develop recreation opportunities in the Shelter Cove, Shoal Cove and Thorne Arm areas within the Ketchikan Misty Fjords Ranger District. The project area includes the following land use designations (LUDs): Wilderness, Semi-remote Recreation, Old-growth Habitat, Special Interest Area, Scenic River, Modified Landscape, and Timber Production (Forest Plan, Chapter 3). Maps and information on the 2018 Shelter Cove Recreation Area Master Plan are provided on the project web page at:

*https://www.fs.usda.gov/project/?project=53477.*

*Forest and Transportation Management*

The Forest Service proposes to harvest timber from up to 5,500 acres of old-growth forested land and about 1,000 acres of young-growth in the Modified Landscape and Timber Production LUDs using one or more timber sales that would be implemented over the course of 15 years. About 5,700 acres of even-aged management and about 800 acres of uneven-aged management are proposed. The Proposed Action would construct about 10 miles of new National Forest System road and recondition about 65 miles of existing roads. Temporary road construction would include about 45 miles of new temporary road, and about 8 miles of temporary road on an existing road prism. Existing rock quarries would be used as available or new quarries would be developed as necessary to provide materials for road construction. Existing log transfer facilities at Shelter Cove and Shoal Cove could be used.

*Watershed and Wildlife Habitat Management*

Watershed enhancement and restoration activities include instream and floodplain wood placement, riparian thinning, blasting of a partial fish barrier, invasive plant management and culvert replacement/removal. Wildlife treatments will be planned based on project design and identified needs.

*Recreation Management*

Recreation opportunities will be developed using the 2018 Shelter Cove Recreation Area Master Plan and ongoing public input. The Proposed Action will be refined through internal and external involvement. The 2008 Access and Travel Management Plan and current Motor Vehicle Use Map would be reviewed and updated as needed.

*Proposed Forest Plan Amendments*

The 2012 Planning Rule (36 CFR 219.13(b)(2)) requires the Responsible Official to identify which substantive requirements of the 2012 Planning Rule are likely to be directly related to a proposed land management plan amendment (36 CFR 219.13(b)(5) and 36 CFR 219.8 through 219.11) in the initial notice for the amendment (36 CFR 219.16(a)(1)). At this time, the Responsible Official believes that changes to plan components are needed for modification of a small old-growth reserve (Forest Plan, Appendix K), and modification of Scenic Integrity Objectives (Forest Plan, p. 4–54 to 4–56). These plan amendments are needed to meet the purpose and need; specifically, by providing timber volume in an economically efficient manner while providing jobs and opportunities for Southeast Alaska residents. These amendments would apply to the commercial timber sales undertaken as part of this specific project only; therefore, the notification requirements and objection procedures of 36 CFR 218, subparts A and B, apply rather than the notification requirements of 36 CFR 219.

**Possible Alternatives**

Scoping comments will be used to develop a range of alternatives to the Proposed Action in response to significant issues that are identified. A No Action Alternative will be analyzed as the baseline for comparison of action alternatives.

**Lead and Cooperating Agencies**

The Forest Service is the lead agency for this project. Invited cooperating agencies include: Ketchikan Indian Community, Organized Village of Saxman, Metlakatla Indian Community, State of Alaska Department of Fish and Game, State of Alaska Department of Forestry, and Ketchikan Gateway Borough.

**Responsible Official**

The Responsible Official for this project is M. Earl Stewart, Forest Supervisor, Tongass National Forest.

**Nature of Decision To Be Made**

Given the purpose and need of the project, the Forest Supervisor will review alternatives, and consider the environmental consequences to make decisions including: (1) Whether to select the proposed action or another alternative; (2) the locations and design of restoration activities and habitat improvements; (3) road construction and reconstruction; (4) recreation development; (5) mitigation measures and monitoring; (6) whether there may be a significant restriction to subsistence resources; and (7) project-specific Forest Plan amendments.

**Preliminary Issues**

Preliminary concerns identified by the interdisciplinary team include: (1) Designing an economical timber sale(s) that meets market demand; (2) effects of Forest Plan scenery direction on the ability to design an economical timber sale; (3) effects of timber harvest and road construction on wildlife habitat and travel corridors; (4) effects of timber harvest and road construction on watershed condition; and (5) the effects of herbicide use to other resources.

**Permits or Licenses Required**

All necessary permits will be obtained prior to project implementation.

**Scoping Process**

This revised NOI re-opens the scoping process. The Forest Service is soliciting internal and external input on the issues, impacts, and alternatives that will be addressed in the EIS. Comments previously submitted on the original NOI published on August 8, 2018 (83 FR 39050) will be considered and resubmission is not required. Scoping information has been updated and will be distributed to interested parties who have subscribed through an electronic mailing list to receive project information. Individuals and organizations wishing to subscribe may do so at: *https://public.govdelivery.com/accounts/USDAFS/subscriber/new?preferences=true.*

Additionally, there will be in-person opportunities for involvement including open houses and subsistence hearings held in Ketchikan, Alaska. Project information, meeting announcements, notices, and documents will be provided on the project web page at: *https://www.fs.usda.gov/project/?project=53477.*

Forest Service regulations at 36 CFR part 218, subparts A and B (78 FR 18481–18504) regarding the project-level predecisional administrative review process applies to projects and activities implementing land management plans that are not authorized under the Healthy Forest Restoration Act. The South Revilla IRP is an activity implementing the Forest Plan and is subject to 36 CFR 218.

Only individuals or entities who submit timely and specific written comments concerning this project during this or other public comment periods established by the Responsible Official will be eligible to file an objection. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered. Anonymous commenters will not gain standing to object as defined in 36 CFR 218.2.

Dated: March 14, 2019.

**Allen Rowley,**

*Acting Associate Deputy Chief, National Forest System.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on June 25, 2019.

[FR Doc. 2019–13915 Filed 6–28–19; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Kootenai National Forest; Montana; Forest-Wide Young Growth Project—Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Withdrawal of notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Kootenai National Forest is withdrawing its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Forest-wide Young Growth Project. The original NOI was published in the **Federal Register** on July 21, 2015 (80 FR 43056) and the Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on August 25, 2017 (82 FR 40577). The Kootenai National Forest (KNF) decision to withdraw the Forest-wide Young Growth DEIS is based on several factors including: Recent wildfires, post-fire salvage planning areas that already incorporate young growth stands, economic feasibility of treating young growth stands, and new authorities provided in the 2018 Farm Bill. Upon further evaluation, the Kootenai National Forest has decided to withdraw the EIS.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be directed to Craig Kendall at *craig.kendall@usda.gov* or 406–758–6485. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: June 6, 2019.

**Frank R. Beum,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2019–13999 Filed 6–28–19; 8:45 am]

**BILLING CODE 3411–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Pennsylvania Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, July, 16, 2019. The purpose of the meeting is to discuss plans for the briefing meeting on the Committee's project titled, Disparate Discipline of Students of Color, Students with Disabilities, and LGBTQ Students and to announce the members to the Planning Workgroup.

**DATES:** Tuesday, July 16, 2019, at 11:30 a.m. (EDT).

*Public call-in information:* Conference call-in number: 800–949–2175 and conference call ID number: 8426059.

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The statements must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

**Agenda**

*Tuesday, July 16, 2019*

I. Rollcall
II. Welcome
III. Project Planning
—Announce members of the Planning Workgroup
—Discuss Plans for the Briefing Meeting on the Committee's Civil Rights Project
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Dated: June 25, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–13917 Filed 6–28–19; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the West Virginia Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 12 p.m. (EST) on Friday, July 12, 2019. The purpose of the meeting is to discuss the status of the Committee's draft report on its civil rights project that examined the collateral consequences of a felony record on West

Virginians' access to employment, housing, professional licenses and public benefits.

**DATES:** Friday, July 12, 2019 at 12 p.m. (EST).

*Public call-in information:*

Conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218. Please be advised that before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

## Agenda

*July 12, 2019 at 12 p.m. (EST)*

I. Rollcall
II. Welcome
III. Project Planning Discussion
IV. Other Business
V. Next Meeting
VI. Open Comments
VII. Adjourn

Dated: June 25, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–13918 Filed 6–28–19; 8:45 am]

**BILLING CODE P**

# COMMISSION ON CIVIL RIGHTS

## Notice of Public Meeting of the Wyoming 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 (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (MDT) Thursday, July 18, 2019. The purpose of this meeting is for the Committee to continue planning for their hearing on hate crimes.

**DATES:** Thursday, July 18, 2019 at 1:00 p.m. MDT.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:**

*Public Call Information:* Dial: 800–353–6461; Conference ID: 7780058.

This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 7780058. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free 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 entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit 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 Ana Victoria Fortes at *afortes@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 meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA.*

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

## Agenda

I. Welcome and Roll Call
II. Approval of Minutes From June 20, 2019 Meeting
III. Continue Planning Discussion and Update Regarding Potential Speakers
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: June 25, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–13940 Filed 6–28–19; 8:45 am]

**BILLING CODE P**

# DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket Number 190606489–9489–01]**

## Current Mandatory Business Surveys

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** The Bureau of the Census (U.S. Census Bureau) will conduct the

following current mandatory business surveys in 2019: Annual Business Survey (ABS), Annual Survey of Manufactures (ASM), Annual Retail Trade Survey (ARTS), Annual Wholesale Trade Survey (AWTS), Service Annual Survey (SAS), Report of Organization (formerly Company Organization Survey), Manufacturers' Unfilled Orders Survey, Annual Capital Expenditures Survey (ACES), Business Research and Development (R&D) Survey (BRDS), and the Business and Professional Classification Report. We have determined that data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

**ADDRESSES:** The Census Bureau will make available the reporting instructions to the organizations included in the surveys. Additional copies are available upon written request to the Director, 4600 Silver Hill Road, U.S. Census Bureau, Washington, DC 20233–0101.

**FOR FURTHER INFORMATION CONTACT:** Nick Orsini, Associate Director for Economic Programs, U.S. Census Bureau, 4600 Silver Hill Road, 8H132, Washington, DC 20233, Telephone: 301–763–1858; Email: *Nick.Orsini@census.gov.*

**SUPPLEMENTARY INFORMATION:** The surveys described herein are authorized by Title 13, United States Code (U.S.C.), Sections 131, 182 and 193 and are necessary to furnish current data on the subjects covered by the major censuses. These surveys are made mandatory under the provisions of Sections 224 and 225 of Title 13, U.S.C. These surveys will provide continuing and timely national statistical data for the period between economic censuses. The data collected in the surveys will be within the general scope and nature of those inquiries covered in the economic census. The most recent economic census was conducted in 2018 for the reference year 2017. The next economic census will occur in 2023 for the reference year 2022.

**Annual Business Survey**

The ABS provides information on selected economic and demographic characteristics for businesses and business owners by sex, ethnicity, race, and veteran status. Further, the survey measures research and development for microbusinesses, new business topics, such as innovation and technology, as well as other business characteristics. The ABS is designed to incorporate new content each survey year based on topics of relevance. The topics included on the 2019 ABS collection will be: Company Information; Owner Characteristics; Innovation; Research & Development; and Technology and Intellectual Property. The ABS is sponsored by the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and conducted by the Census Bureau for five years (2018–2022).

**Annual Survey of Manufactures**

The ASM collects annual industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey is conducted on a sample basis, and covers all manufacturing industries, including data on plants under construction but not yet in operation. The ASM data are used to benchmark and reconcile monthly data on manufacturing production and inventories. In 2019, the ASM will begin collecting information about the use of robotics in manufacturing.

**Annual Retail Trade Survey**

The ARTS collects data on annual sales, sales tax, e-commerce sales, year-end inventories, total operating expenses, purchases, and accounts receivable from a sample of employer firms with establishments classified in retail trade as defined by the North American Industry Classification System (NAICS). These data serve as a benchmark for the more frequent estimates compiled from the Monthly Retail Trade Survey.

**Annual Wholesale Trade Survey**

The AWTS collects data on annual sales, e-commerce sales, year-end inventories held both inside and outside of the United States, method of inventory valuation, total operating expenses, purchases, gross selling value, and commissions from a sample of employer firms with establishments classified in wholesale trade as defined by the NAICS. These data serve as a benchmark for the more frequent estimates compiled from the Monthly Wholesale Trade Survey.

**Service Annual Survey**

The SAS collects annual data on total revenue, select detailed revenue, total and detailed expenses, and e-commerce revenue for a sample of businesses in the service industries. These industries include Utilities; Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administration and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services as defined by the NAICS. These data serve as a benchmark for the more frequent estimates compiled from the Quarterly Services Survey.

**Report of Organization**

The Report of Organization collects annual data on ownership or control by a domestic or foreign parent and ownership of foreign affiliates. This includes research and development, company activities such as employees from a professional employer organization, operational status, mid-March employment, first-quarter payroll, and annual payroll of establishments from a sample of multi-establishment enterprises in order to update and maintain a centralized, multipurpose Business Register.

**Manufacturers' Unfilled Orders Survey**

The Manufacturers' Unfilled Orders Survey collects annual data on sales and unfilled orders in order to provide annual benchmarks for unfilled orders for the monthly Manufacturers' Shipments, Inventories, and Orders (M3) survey. The Manufacturers' Unfilled Orders Survey data are also used to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis, as some industries are not requested to provide unfilled orders data in the M3 Survey.

**Annual Capital Expenditures Survey**

The ACES collects annual data on the amount of business expenditures for new and used structures and equipment from a sample of non-farm, non-governmental companies, organizations, and associations. Both employer and nonemployer companies are included in the survey. The data are the sole source of investment in buildings and other structures, machinery, and equipment by all private nonfarm businesses in the United States, by the investing industry, and by kind of investment. In 2019, the Census Bureau will begin collecting information about expenditures for both industrial and service robotics at the company level across 19 NAICS sectors.

**Business Research and Development Survey**

The BRDS collects annual data on spending for research and development activities by businesses. This survey replaced the Survey of Industrial Research and Development that had been collected since the 1950s. The BRDS collects global as well as domestic spending information, more detailed information about the R&D workforce, and information regarding intellectual property from U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF posts the joint project's information results on their website.

**Business and Professional Classification Report**

The Business and Professional Classification Report collects one-time data on a firm's type of business activity from a sample of newly organized employer firms. The data are used to update the sampling frames for our current business surveys to reflect these newly opened establishments. Additionally, the business classification data will help ensure businesses are directed to complete the correct report in the economic census.

**Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, OMB approved the surveys described in this notice under the following OMB control numbers: ABS, 0607–1004; ASM, 0607–0449; ARTS, 0607–0013; AWTS, 0607–0195; SAS, 0607–0422; Report of Organization, 0607–0444; Manufacturers' Unfilled Orders Survey, 0607–0561; ACES, 0607–0782; BRDS, 0607–0912; and Business and Professional Classification Report, 0607–0189.

Based upon the foregoing, I have directed that the current mandatory business surveys be conducted for the purpose of collecting these data.

Dated: June 24, 2019.

**Steven D. Dillingham,**

*Director, Bureau of the Census.*

[FR Doc. 2019–13967 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–07–P**

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**[B–42–2019]**

## Foreign-Trade Zone (FTZ) 92—Gulfport, Mississippi; Notification of Proposed Production Activity; Vision Technologies Marine, Inc. (Ocean Going-Vessels: Compensators) Pascagoula, Mississippi

Vision Technologies Marine, Inc. (Vision Tech) submitted a notification of proposed production activity to the FTZ Board for its facility in Pascagoula, Mississippi. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 19, 2019.

Vision Tech already has authority to produce ocean-going vessels, offshore platforms, and floating docks within FTZ 92. The current request would add a finished product and a range of foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Vision Tech from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Vision Tech would be able to choose the duty rates during customs entry procedures that apply to crown mounted compensators (duty-free). Vision Tech would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Piston accumulators; various assemblies (cylinder; header; cable; junction box layout; sheave); various steel components (pressure vessels; adapters and adapter fittings; adapter rings; retaining rings; lip seals; nuts; cap screws; locking and closing plates; axle retainers; bearing pads; platform supports; pipe support brackets; shims; guide rails; platform and derrick frames; beams; links and link arms; liquid storage tanks; springs; clamps; test ports; U-bolts; threaded rods; rings; couplings; shackles); filter elements; return filter elements, hydrojet propulsion units; various rubber components (O-rings; grommets; bumpers); stainless steel adapters and connectors; various valves (Y-block; copper ball; hydraulic and pneumatic; pressure; stainless steel in-line check); hydraulic power units; various plates (crown block support; clamp; steel cover; Teflon™); various pins (steel; pivot; bent); nameplates for cables; clamp spacers; various structural steel components (linkage arm supports; pressure vessel supports; aircraft warning light supports); lifting lugs; cylinder cradles; linkage arms; junction box supports; cabinet support frames; ventlines; ventline supports; lifting beams; transport beams; tape; pressure sensors; lubricants; adapters for hydrojets; adapters for propulsion units; various electrical components (termination boxes; cable; adhesives; sensors; connectors; control cabinets; plugs; sockets); various washers (nylon; steel; plastic; steel spring and lock; Teflon™); plastic clamps; pressure gauges; neoprene rubber shaft bearings; lighting junction box tubing adapters; synthetic rubber bumpers; filters; flanges for welding; fiberglass safety gates; eyes and eye turnbuckles; wire rope; safety wire rope; non-armour glands; armour glands; light bulbs; fluorescent lights; incandescent and LED lighting; plastic clamp bodies; and, urethane pipe sleeves (duty rate ranges from duty-free to 6.5%). The request indicates that tape will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on that item. The request also indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) and/or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 12, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: June 26, 2019.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2019–13981 Filed 6–28–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–79–2019]**

### Approval of Subzone Status; Maine Coast Shellfish LLC; York, Maine

On May 1, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Waterville, grantee of FTZ 186, requesting subzone status subject to the existing activation limit of FTZ 186, on behalf of Maine Coast Shellfish LLC, in York, Maine.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 19756–19757, May 6, 2019). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 186B was approved on June 26, 2019, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 186's 2,000-acre activation limit.

Dated: June 26, 2019.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2019–13987 Filed 6–28–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Notice of Partially Closed Meeting of the Sensors and Instrumentation Technical Advisory Committee

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 30, 2019, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

*Public Session*

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

*Closed Session*

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than July 23, 2019.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 12, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2019–13979 Filed 6–28–19; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Notice of Partially Closed Meeting of the Materials Technical Advisory Committee

The Materials Technical Advisory Committee will meet on July 18, 2019, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

**Agenda**

*Open Session*

1. Opening Remarks and Introduction.
2. Presentation: ''The Role of U.S. Engagement in China's Biotechnology Development''
3. Presentation: ''Synthetic Gene-length DNA: Evolving Export Control Concerns''
4. Discussion about merging with MPETAC co-chairs
5. Open session report by regime representatives

*Closed Session*

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than July 11, 2019.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 19, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2019–13978 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

**Deadline for Particular Market Situation Allegation**

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity to Request a Review:* Not later than the last day of July 2019,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

| | Period of review |
|---|---|
| **Antidumping Duty Proceedings** | |
| BELGIUM: Citric Acid and Certain Citrate Salts A–423–813 | 1/8/18–6/30/19 |
| COLOMBIA: Citric Acid and Certain Citrate Salts A–301–803 | 1/8/18–6/30/19 |
| INDIA: | |
| Corrosion-Resistant Steel Products A–533–863 | 7/1/18–6/30/19 |
| Fine Denier Polyester Staple Fiber A–533–875 | 1/5/18–6/30/19 |
| Polyethylene Terephthalate (Pet) Film A–533–824 | 7/1/18–6/30/19 |
| In-Shell Pistachios A–507–502 | 7/1/18–6/30/19 |
| ITALY: | |
| Certain Pasta A–475–818 | 7/1/18–6/30/19 |
| Corrosion-Resistant Steel Products A–475–832 | 7/1/18–6/30/19 |
| JAPAN: | |
| Clad Steel Plate A–588–838 | 7/1/18–6/30/19 |
| Cold-Rolled Steel Flat Products A–588–873 | 7/1/18–6/30/19 |
| Polyvinyl Alcohol A–588–861 | 7/1/18–6/30/19 |
| Stainless Steel Sheet and Strip in Coils A–588–845 | 7/1/18–6/30/19 |
| Steel Concrete Reinforcing BarA–588–876 | 7/1/18–6/30/19 |
| MALAYSIA: | |
| Steel Nails A–557–816 | 7/1/18–6/30/19 |
| Welded Stainless Steel Pressure Pipe A–557–815 | 7/1/18–6/30/19 |
| OMAN: Steel Nails A–523–808 | 7/1/18–6/30/19 |
| REPUBLIC OF KOREA: | |
| Corrosion-Resistant Steel Products A–580–878 | 7/1/18–6/30/19 |
| Fine Denier Polyester Staple Fiber A–580–893 | 1/5/18–6/30/19 |
| Stainless Steel Sheet and Strip in Coils A–580–834 | 7/1/18–6/30/19 |
| Steel Nails A–580–874 | 7/1/18–6/30/19 |
| SOCIALIST REPUBLIC OF VIETNAM: | |
| Steel Nails A–552–818 | 7/1/18–6/30/19 |
| Welded Stainless Pressure Pipe A–552–816 | 7/1/18–6/30/19 |
| TAIWAN: | |
| Corrosion-Resistant Steel Products A–583–856 | 7/1/18–6/30/19 |
| Fine Denier Polyester Staple Fiber A–583–860 | 1/5/18–6/30/19 |
| Polyethylene Terephthalate (Pet) Film A–583–837 | 7/1/18–6/30/19 |
| Stainless Steel Sheet and Strip in Coils A–583–831 | 7/1/18–6/30/19 |
| Steel Nails A–583–854 | 7/1/18–6/30/19 |
| THAILAND: | |
| Carbon Steel Butt-Weld Pipe Fittings A–549–807 | 7/1/18–6/30/19 |
| Citric Acid and Certain Citrate Salts A–549–833 | 1/8/18–6/30/19 |
| Weld Stainless Steel Pressure Pipe A–549–830 | 7/1/18–6/30/19 |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Carbon Steel Butt-Weld Pipe Fittings A–570–814 | 7/1/18–6/30/19 |
| Certain Potassium Phosphate Salts A–570–962 | 7/1/18–6/30/19 |
| Certain Steel Grating A–570–947 | 7/1/18–6/30/19 |
| Circular Welded Carbon Quality Steel Pipe A–570–910 | 7/1/18–6/30/19 |
| Cold-Rolled Steel Flat Products A–570–029 | 7/1/18–6/30/19 |
| Corrosion-Resistant Steel Products A–570–026 | 7/1/18–6/30/19 |
| Fine Denier Polyester Staple Fiber A–570–060 | 1/5/18–6/30/19 |
| Persulfates A–570–847 | 7/1/18–6/30/19 |
| Xanthan Gum A–570–985 | 7/1/18–6/30/19 |
| TURKEY: | |
| Certain Pasta A–489–805 | 7/1/18–6/30/19 |
| Steel Concrete Reinforcing Bar A–489–829 | 7/1/18–6/30/19 |
| **Countervailing Duty Proceedings** | |
| INDIA: | |
| Corrosion-Resistant Steel Products C–533–864 | 1/1/18–12/31/18 |
| Polyethylene Terephthalate (Pet) Film C–533–825 | 1/1/18–12/31/18 |
| ITALY: | |
| Certain Pasta C–475–819 | 1/1/18–12/31/18 |
| Corrosion-Resistant Steel Products C–475–833 | 1/1/18–12/31/18 |
| REPUBLIC OF KOREA: Corrosion-Resistant Steel Products C–580–879 | 1/1/18–12/31/18 |
| SOCIALIST OF REPUBLIC OF VIETNAM: Steel Nails C–552–819 | 1/1/18–12/31/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Certain Potassium Phosphate Salts C–570–963 | 1/1/18–12/31/18 |
| Circular Welded Carbon Quality Steel Pipe C–570–911 | 1/1/18–12/31/18 |
| Cold-Rolled Steel Flat Products C–570–030 | 1/1/18–12/31/18 |
| Corrosion-Resistant Steel Products C–570–027 | 1/1/18–12/31/18 |
| Prestressed Concrete Steel Wire Strand C–570–946 | 1/1/18–12/31/18 |
| Steel Grating C–570–948 | 1/1/18–12/31/18 |
| TURKEY: | |
| Certain Pasta C–489–806 | 1/1/18–12/31/18 |
| Steel Concrete Reinforcing Bar C–489–830 | 1/1/18–12/31/18 |

| | Period of review |
|---|---|
| **Suspension Agreements** | |
| UKRAINE: Oil Country Tubular Goods A–823–815 | 7/1/18–6/30/19 |

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2019. If Commerce does not receive, by the last day of July 2019, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 24, 2019.

**James Maeder,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–13985 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–DS–P**

[3] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/*.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–097]**

## Polyester Textured Yarn From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn (yarn) from

the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2018 through September 30, 2018. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–0339, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 19, 2018.[1] 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.[2] The revised tolled deadline for this preliminary determination was May 6, 2019. In response to the petitioners' request, Commerce postponed the preliminary determination of this investigation and the revised deadline is now June 25, 2019.[3] On April 18, 2019, Commerce issued its preliminary critical circumstances determination that critical circumstances exist for imports from all producers and exporters of the subject merchandise from China.[4]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Scope of the Investigation

The product covered by this investigation is polyester textured yarn from China. For a complete description of the scope of this investigation, *see* Appendix I and ''Scope Comments'' section.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[7] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[8] Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice* to exclude bulk continuous filament yarn.

On May 2, 2019, the petitioners requested that Commerce include an additional Harmonized Tariff Schedule of the United States (HTSUS) subheading in the scope language. We intend to address this request in the final determinations of this and the concurrent AD and CVD investigations of yarn from India and China.

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. In addition, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. The China-wide entity includes each of the companies selected for individual examination: Fujian Zhengqi Hi-tech Fiber Technology Co., Ltd, Suzhou Shenghong Fiber Co., Ltd., and the single entity comprising Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. and its affiliate Fujian Baikai Textile Chemical Fiber Co., Ltd. As adverse facts available (AFA) for the China-wide entity, we have assigned the highest margin alleged in the Petition of 77.15 percent.[9]

We preliminarily find that Jiangsu Hengli Chemical Fiber Co., Ltd. (Hengli), which was not selected for individual examination in this investigation, has demonstrated eligibility for a separate rate. However, because none of the mandatory respondents are receiving a separate rate and we are determining the China-wide rate based on AFA, we look to section 735(c)(5)(B) of the Act for guidance and are, consistent with that provision, using ''any reasonable method'' to determine the rate for exporters that are not being individually examined and found to be entitled to a separate rate. As ''any reasonable method,'' we find it appropriate to assign the simple average of the Petition rates (*i.e.,* 76.07 percent) [10] to Hengli, consistent with our practice.[11] For a full description of the methodology underlying Commerce's preliminary determination,

[1] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 58223 (November 19, 2018) (*Initiation Notice*).

[2] *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.

[3] *See Polyester Textured Yarn from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 16843 (April 23, 2019).

[4] *See Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping and Countervailing Duty Investigations,* 84 FR 16840 (April 23, 2019) (*Preliminary Affirmative Critical Circumstances Determination*).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice,* 83 FR at 58233.

[8] *See* Memorandum, ''Polyester Textured Yarn from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated April 26, 2019 (Preliminary Scope Decision Memorandum).

[9] *See* Petitioners' Letter, ''Polyester Textured Yarn from the People's Republic of China and India—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated October 18, 2018 (Petition); *see also* Petitioners' Letter, ''Polyester Textured Yarn from the People's Republic of China—Petitioners' Supplement for Volume II Regarding China Antidumping Duties,'' dated October 29, 2018, at 7 and Exhibit AD–PRC-Supp-5; Initiation Checklist, dated November 7, 2018, at 12.

[10] *Id.* The individual Petition rates, as initiated, are 74.98 percent and 77.15 percent. The simple average of these two Petition margins is 76.07 percent.

[11] *See, e.g., Carton-Closing Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 13236, 13238 (March 28, 2018).

*see* the Preliminary Decision Memorandum.

**Combination Rates**

In the *Initiation Notice,*[12] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[13]

**Preliminary Determination**

Commerce preliminarily determines that the following estimated dumping margins exist:

| Producer | Exporter | Estimated Dumping Margin (percent) | Cash deposit rate (adjusted for export subsidy offsets) (percent) |
|---|---|---|---|
| Jiangsu Hengli Chemical Fiber Co., Ltd | Jiangsu Hengli Chemical Fiber Co., Ltd | 76.07 | 65.39 |
| China-wide Entity [14] | | 77.15 | 66.47 |

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated dumping margins, as indicated in the chart above, as follows: (1) For the producer/exporter combination listed in the table above, the cash deposit rate is equal to the estimated dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of the subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances,[15] any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily found that critical circumstances exist for all imports of subject merchandise from China. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries from all exporters and producers of the subject merchandise from China that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated dumping margin by the appropriate rates. As noted in the chart of estimated dumping margins above, we adjusted the cash deposit rates in this preliminary determination for export subsidies determined in the companion CVD investigation.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated dumping margins assigned in this preliminary determination unadjusted for the export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the China-wide entity, of which the three mandatory respondents are a part, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, and the rate assigned to the sole separate rate company is a simple average of the Petition rates, there are no calculations to disclose.

**Verification**

Because the only rates established in this investigation are based on the Petition rates, we do not intend to conduct verification.

**Public Comment**

As stated in the Preliminary Scope Decision Memorandum, all interested parties will have the opportunity to

[12] *See Initiation Notice* at 58227.

[13] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[14] The China-wide entity includes: (1) The single entity comprising Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. and its affiliate Fujian Baikai Textile Chemical Fiber Co., Ltd.; (2) Suzhou Shenghong Fiber Co., Ltd.; (3) Fujian Zhengqi Hi-tech Fiber Technology Co., Ltd.; (4) Chori (China) Co., Ltd.; (5) Jinjiang Jinfu Chemical Fiber and Polymer Co., Ltd.; (6) Jiangsu Guowang High-Technique Fiber Co., Ltd.; and (7) Pujiang Fairy Home Textile Co., Ltd. In addition, 33 companies named in the Petition did not respond to our request for quantity and value information and two companies that submitted quantity and value data did not submit separate rate applications. Those companies are also part of the China-wide entity and are identified in the Preliminary Decision Memorandum.

[15] *See Preliminary Affirmative Critical Circumstances Determination,* 84 FR at 16842.

submit case and rebuttal briefs on the preliminary scope determination.[16] Case briefs regarding scope issues may be submitted within 10 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs regarding scope issues, limited to those issues which are raised in the scope case briefs, may be submitted no later than five days after the deadline date for scope case briefs. All scope case and rebuttal briefs must be filed identically on the records of this investigation and the concurrent AD and CVD investigations of yarn from India and China.

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[17] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

## Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 14, 2019, pursuant to 19 CFR 351.210(e), Fujian Billion requested, in the event of an affirmative preliminary determination, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[18] On June 18, 2019, the petitioners also filed a request to postpone the final determination in the event of a negative preliminary determination.[19] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will publish no later than 135 days after the date of publication of this preliminary determination.

## International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: June 25, 2019.

**Jeffrey I. Kessler**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

Excluded from the scope of the investigation is bulk continuous filament yarn that: (a) Is polyester synthetic multifilament yarn; (b) has denier size ranges of 900 and above; (c) has turns per meter of 40 and above; and (d) has a maximum shrinkage of 2.5 percent.

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Selection of Respondents
VI. Preliminary Determination of Critical Circumstances
VII. Discussion of the Methodology
VIII. Adjustment Under Section 777(A)(f) of the Act
IX. Adjustments to Cash Deposit Rates for Export Subsidies
X. Conclusion

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[16] *See* Preliminary Scope Decision Memorandum.

[17] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[18] *See* Letter from Fujian Billion, ''Request for Extension of Final Determination and Provisional Measures,'' dated June 14, 2019.

[19] *See* Letter from the Petitioners, ''Request to Extend the Antidumping Duty Final Determinations,'' dated June 18, 2019.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–864, A–201–850, A–570–102]**

### Certain Fabricated Structural Steel From Canada, Mexico, 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 July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger at (202) 482–4136 (Canada); Andrew Medley at (202) 482–4987 (the People's Republic of China (China)); and Krisha Hill at (202) 482–4037 (Mexico), 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 February 25, 2019, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LFTV) investigations of imports of certain fabricated structural steel from Canada, China, and Mexico.[1] Currently, the preliminary determinations are due no later than July 15, 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, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Pursuant to 19 CFR 351.205(e), the petitioner must submit a request to postpone 25 days or more before the scheduled date of the preliminary determination and must state the reasons for postponement. Commerce will grant the request unless it finds compelling reasons to deny the request.

On June 19, 2019, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[3] The petitioner stated that the purpose of its request is to provide Commerce with adequate time to solicit information from the respondents and to allow Commerce and the petitioner sufficient time to analyze the respondents' questionnaire responses.[4]

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the preliminary determinations in these LTFV investigations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). Accordingly, Commerce will issue its preliminary determinations in these investigations no later than September 3, 2019. Pursuant to 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.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 26, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–13986 Filed 6–28–19; 8:45 am]

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[1] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 7330 (March 4, 2019).

[2] The petitioner in these LTFV investigations is the American Institute of Steel Construction Full Member Subgroup.

[3] *See* Petitioner's letter, ''Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Postpone Preliminary Antidumping Duty Determination and to Align Final Countervailing Duty Determination with Final Antidumping Duty Determination,'' dated June 19, 2019.

[4] *Id.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–885]**

### Polyester Textured Yarn From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn (yarn) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2017 through September 30, 2018. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Katherine Johnson or Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–0768, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 19, 2018.[1] 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.[2] The revised tolled deadline for this preliminary determination was May 6, 2019. In response to the petitioners' request, Commerce postponed the preliminary determination of this investigation and the revised deadline is now June 25, 2019.[3]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary

[1] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 58223 (November 19, 2018) (*Initiation Notice*).

[2] *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.

[3] *See Polyester Textured Yarn from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 16843 (April 23, 2019).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from India'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Scope of the Investigation

The product covered by this investigation is polyester textured yarn from India. For a complete description of the scope of this investigation, *see* Appendix I and ''Scope Comments'' section below.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice* to exclude bulk continuous filament yarn.

On May 2, 2019, the petitioners requested that Commerce include an additional Harmonized Tariff Schedule of the United States (HTSUS) subheading in the scope language. We intend to address this request in the final determinations of this and the concurrent AD and countervailing duty (CVD) investigations of yarn from India and the People's Republic of China (China).

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act and normal values in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences for JBF Industries Limited. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

## All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to JBF Industries Limited. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Reliance Industries Limited (Reliance). Consequently, the rate calculated for Reliance is also assigned as the rate for all other producers and exporters.

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offset(s)) (percent) |
|---|---|---|
| JBF Industries Limited | 35.92 | 28.97 |
| Reliance Industries Limited | 17.88 | 10.93 |
| All Others | 17.88 | 10.78 |

## Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, adjusted for export subsidies, as follows: (1) The cash deposit rate for each of the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins as determined in this preliminary determination, adjusted for export subsidies; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin as established for that producer of the subject merchandise, adjusted for export subsidies; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin, adjusted for export subsidies.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section above.[8]

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

## Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

## Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice,* 83 FR at 58233.

[7] *See* Memorandum, ''Polyester Textured Yarn from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated April 26, 2019 (Preliminary Scope Decision Memorandum).

[8] *See* Preliminary Decision Memorandum for further discussion.

information relied upon in making its final determination.

## Public Comment

As stated in the Preliminary Scope Decision Memorandum, all interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination.[9] Case briefs regarding scope issues may be submitted within 10 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs regarding scope issues, limited to those issues which are raised in the scope case briefs, may be submitted no later than five days after the deadline date for scope case briefs. All scope case and rebuttal briefs must be filed identically on the records of this investigation and the concurrent AD and CVD investigations of yarn from India and China.

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[9] *See* Preliminary Scope Decision Memorandum.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

## Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 13, 2019, pursuant to 19 CFR 351.210(e), Reliance requested in the event of an affirmative preliminary determination, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] On June 18, 2019, the petitioners also filed a request to postpone the final determination in the event of a negative preliminary determination.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

## International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[11] *See* Letter from Reliance, ''Antidumping Duty Investigation of Polyester Textured Yarn from India—Request for Postponement of Final Determination and Provisional Measure Period,'' dated June 13, 2019.

[12] *See* Letter from the Petitioners, ''Request to Extend the Antidumping Duty Final Determinations,'' dated June 18, 2019.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: June 25, 2019.

**Jeffrey I. Kessler**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

Excluded from the scope of the investigation is bulk continuous filament yarn that: (a) Is polyester synthetic multifilament yarn; (b) has denier size ranges of 900 and above; (c) has turns per meter of 40 and above; and (d) has a maximum shrinkage of 2.5 percent.

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Application of Facts Available and Use of Adverse Inference
VI. Discussion of the Methodology
VII. Date of Sale
VIII. Product Comparisons
IX. Export Price
X. Normal Value
XI. Currency Conversion
XII. Adjustments to Cash Deposit Rates for Export Subsidies
XIII. Conclusion

[FR Doc. 2019–13982 Filed 6–28–19; 8:45 am]

BILLING CODE 3510–DS–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

## Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

**DATES:** Applicable July 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

### Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

| DOC case No. | ITC case No. | Country | Product | Commerce contact |
|---|---|---|---|---|
| A–570–881 | 731–TA–1021 | China | Malleable Cast Iron Pipe Fittings (3rd Review). | Joshua Poole, (202) 482–1293. |
| A–570–932 | 731–TA–1145 | China | Steel Threaded Rod (2nd Review) | Matthew Renkey, (202) 482–2312. |
| A–533–824 | 731–TA–933 | India | Polyethylene Terephthalate (PET) Film (3rd Review). | Jacqueline Arrowsmith, (202) 482–5255. |
| C–533–825 | 731–TA–415 | India | Polyethylene Terephthalate (PET) Film (3rd Review). | Jacqueline Arrowsmith, (202) 482–5255. |
| A–583–837 | 731–TA–934 | Taiwan | Polyethylene Terephthalate (PET) Film (3rd Review). | Jacqueline Arrowsmith, (202) 482–5255. |

### Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

### Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 24, 2019.

**James Maeder,**

*Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–13984 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–DS–P**

[6] *See* 19 CFR 351.218(d)(1)(iii).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Management Plan for National Estuarine Research Reserve Program

**AGENCY:** Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public comment period for the Wells National Estuarine Research Reserve management plan revision.

**SUMMARY:** Notice is hereby given that the Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is announcing a thirty (30) day public comment period for the revised management plan for Wells National Estuarine Research Reserve management plan revision.

**ADDRESSES:** You may submit comments on the draft management plan by any of the following methods:

*Written Comments:* Please submit written comments to Paul Dest, Reserve Manager, Wells Reserve, 342 Laudholm Farms Road, Wells, Maine 04090, or email comments to *dest@wellsnerr.org.* Comments that the Office for Coastal Management receives are considered part of the public record and may be publicly accessible. Any personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

**FOR FURTHER INFORMATION CONTACT:** Adrianne Harrison at (603) 862–4272 or Erica Seiden at (240) 533–0781 of NOAA's National Ocean Service, Stewardship Division, Office for Coastal Management, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

**SUPPLEMENTARY INFORMATION:** Pursuant to 15 CFR 921.33(c), a state must update their management plan. The Wells Reserve revised plan will replace the plan previously approved in 2013.

The revised management plan outlines a strategic plan; administrative structure; research and monitoring, education, stewardship, wetland science and training programs of the reserve; resource protection and manipulation plans, restoration management plan; public access and visitor use plan; considerations for future land acquisition; and facility development to support reserve operations.

The Wells Reserve takes an integrated approach to management, linking research, education, coastal training, and resource management functions. The reserve has outlined how it will manage administration and its core programs, providing detailed actions that will enable it to accomplish specific goals and objectives. Since the last management plan, the reserve has implemented its core and system-wide programs; secured science, education, and conservation grants to serve southern Maine communities; made significant repairs and improvements to buildings including installed solar arrays to generate electricity and renovated the water tower; designed and installed climate change exhibit components in Visitor Center; added a fully accessible trail at Wells Harbor; restored riverine and fisheries habitats in southern Maine watersheds; and helped partners acquire priority conservation lands.

There will be no boundary change with the approval of the revised management plan. The management plan will serve as the guiding document for the 2,250-acre Wells Reserve.

NOAA's Office Coastal Management will be conducting an environmental analysis in accordance with the National Environmental Policy Act on the proposed approval of the Reserve's revised management plan. The public is invited to provide comment or information about any potential environmental impacts of the proposed action, and these comments will be used to inform the decision making.

View the Wells Reserve management plan revision on their website, at *https://www.wellsreserve.org/writable/files/DraftPlan19.pdf,* and provide comments to Paul Dest, *dest@wellsnerr.org.*

Dated: June 10, 2019.

**Keelin Kuipers,**

*Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

Federal Domestic Assistance Catalog 11.420

Coastal Zone Management Program Administration

[FR Doc. 2019–13956 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF530**

### Marine Mammals; File No. 21006

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that Linnea Pearson, California Polytechnic State University, 1 Grand Ave., San Luis Obispo, CA 93407, has applied for an amendment to Scientific Research Permit No. 21006.

**DATES:** Written, telefaxed, or email comments must be received on or before July 31, 2019.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21006 from the list of available applications.

These documents are also available 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Sara Young or Amy Sloan, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 21006 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 21006, issued on September 15, 2017 (82 FR 48985; October 23, 2017), authorizes the permit holder to conduct research on Weddell seals in the Antarctic. The permit holder is requesting the permit be amended to include authorization for: Increased take of pups to twelve total, sedation of all pups at all time points, collection of blood samples for all pups at all time points, use of a cannulated needle for biopsy instead of a biopsy punch, attachment of flipper mounted VHF to pups at three weeks of age, attachment of accelerometer tags at one week of age, use of antibiotics to treat local or systemic infection, and collection of rectal swabs, vaginal swabs, prepucial swabs, nasal swabs, lingual swabs, buccal swabs, and superficial lingual epithelial scrapes from all pups at all time points.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–13919 Filed 6–28–19; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG958**

### Notice of Availability of the Deepwater Horizon Oil Spill Open Ocean Trustee Implementation Group Draft Restoration Plan 2 and Environmental Assessment: Fish, Sea Turtles, Marine Mammals, and Mesophotic and Deep Benthic Communities; Extension of Public Comment Period

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

**ACTION:** Notice of availability; request for comments; extension of comment period.

**SUMMARY:** We are extending the public comment period on our *Deepwater Horizon* Oil Spill Open Ocean Trustee Implementation Group Draft Restoration Plan 2/Environmental Assessment: Fish, Sea Turtles, Marine Mammals, and Mesophotic and Deep Benthic Communities (RP/EA). We opened the comment period via a May 15, 2019, notice of availability. This notice extends that comment period through July 15, 2019.

**DATES:** Comments must be submitted electronically or postmarked by July 15, 2019.

**ADDRESSES:**

*Obtaining Documents:* You may download the Draft RP/EA at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean.* Alternatively, you may request a CD of the Draft RP/EA (see **FOR FURTHER INFORMATION CONTACT** below). Also, you may view the document at any of the public facilities listed in Appendix G.

*Submitting Comments:* You may submit comments on the Draft RP/EA by one of the following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean;* or
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. Please note that mailed comments must be postmarked on or before the comment deadline of July 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** National Oceanic and Atmospheric Administration—Laurie Rounds, *Laurie.Rounds@noaa.gov,* (850) 934–9284.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

In accordance with OPA NRDA regulations in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA (42 U.S.C. 4321 *et seq.*), the Consent Decree, and the Final PDARP/PEIS, the Federal and State natural resource trustee agencies (Trustees) have prepared a Draft Restoration Plan 2/Environmental Assessment: Fish, Sea Turtles, Marine Mammals, and Mesophotic and Deep Benthic Communities. The Draft RP/EA analyzes 23 alternatives and proposes 18 preferred alternatives for the following restoration types: Fish and Water Column Invertebrates, Sea Turtles, Marine Mammals, and Mesophotic and Deep Benthic Communities:

#### Fish and Water Column Invertebrates

- Reduction of Post-Release Mortality from Barotrauma in Gulf of Mexico Reef Fish Recreational Fisheries—Preferred, $30,011,000.
- Better Bycatch Reduction Devices for the Gulf of Mexico Commercial

Shrimp Trawl Fishery—Preferred, $17,171,000.

• Communication Networks and Mapping Tools to Reduce Bycatch—Phase 1—Preferred, $4,416,000.

• Restoring for Bluefin Tuna via Fishing Depth Optimization—Preferred, $6,175,000.

• Reduce the Impacts of Ghost Fishing by Removing Derelict Fishing Gear from Marine and Estuarine Habitats—Not Preferred, $6,128,000.

### Sea Turtles

• Gulf of Mexico Sea Turtle Atlas—Preferred, $5,700,000.

• Identifying Methods to Reduce Sea Turtle Bycatch in the Reef Fish Bottom Longline Fishery—Preferred, $290,000.

• Developing a Gulf-wide Comprehensive Plan for In-Water Sea Turtle Data Collection—Preferred, $655,000.

• Developing Methods to Observe Sea Turtle Interactions in the Gulf of Mexico Menhaden Purse Seine Fishery—Preferred, $3,000,000.

• Reducing Juvenile Sea Turtle Bycatch Through Development of Reduced Bar Spacing in Turtle Excluder Devices—Preferred, $2,153,000.

• Long-term Nesting Beach Habitat Protection for Sea Turtles—Preferred, $7,000,000.

• Reducing Sea Turtle Entanglement from Recreational Fishing Debris—Not Preferred, $1,113,600.

• Reducing Sea Turtle Bycatch at Recreational Fishing Sites—Not Preferred, $1,329,000.

### Marine Mammals

• Reducing Impacts to Cetaceans During Disasters by Improving Response Activities—Preferred, $4,287,000.

• Compilation of Environmental, Threats, and Animal data for Cetacean Population Health Analyses—Preferred, $5,808,500.

• Reduce Impacts of Anthropogenic Noise on Cetaceans—Preferred, $8,992,200.

• Reduce and Mitigate Vessel Strike Mortality of Cetaceans—Preferred, $3,834,000.

• Assessment of Northern Gulf of Mexico Shelf Small Cetacean Health, Habitat. Use, and Movement Patterns—Not Preferred, $4,620,000.

### Mesophotic and Deep Benthic Communities

• Mapping, Ground-Truthing, and Predictive Habitat Modeling—Preferred, $35,909,000.

• Habitat Assessment and Evaluation—Preferred, $52,639,000.

• Coral Propagation Technique Development—Preferred, $16,951,000.

• Active Management and Protection—Preferred, $20,689,000.

• Habitat Characterization at Known High Priority Sites—Not Preferred, $21,500,000.

The Open Ocean TIG also analyzes a No Action alternative. One or more alternatives may be selected for implementation by the Open Ocean TIG in the Final RP/EA or in future restoration plans.

### Background

For additional background information, see our original **Federal Register** notice, with which we opened the comment period (May 15, 2019; 84 FR 21753).

### Invitation To Comment

The Open Ocean TIG seeks public review and comment on the Draft RP/EA (see **ADDRESSES** above). Before including your address, telephone number, email address, or other personal identifying information in your comment, please be aware that your entire comment, including your personal identifying information, will become part of the public record.

### Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: June 26, 2019.

**Carrie Selberg,**

*Deputy Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 2019–13996 Filed 6–28–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## COMMODITY FUTURES TRADING COMMISSION

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before July 31, 2019.

**ADDRESSES:** Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0078.''

• *By email addressed to: OIRAsubmissions@omb.eop.gov* or

• *By mail addressed to:* The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (Commission) by either of the following methods. The copies should refer to ''OMB Control No. 3038–0078.''

• *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;

• By Hand Delivery/Courier to the same address; or

• Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

Please submit your comments to the Commission using only one method. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established 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

[1] 17 CFR 145.9.

obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496, email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0078.

**SUPPLEMENTARY INFORMATION:**

*Title:* Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (OMB Control No. 3038–0078). This is a request for an extension of a currently approved information collection.

*Abstract:* On April 3, 2012, the Commission adopted Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers) [2] pursuant to section 4d(c) [3] of the Commodity Exchange Act (CEA). Commission regulation 1.71 requires generally that, among other things, futures commission merchants (FCM) [4] and introducing brokers (IB) [5] develop conflicts of interest procedures and disclosures, adopt and implement written policies and procedures reasonably designed to ensure compliance with their conflicts of interest and disclosure obligations, and maintain specified records related to those requirements.[6] The Commission believes that the information collection obligations imposed by Commission regulation 1.71 are essential (i) to ensuring that FCMs and IBs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA, and Commission regulations, and (ii) to the effective evaluation of these registrants' actual compliance with the CEA and Commission regulations.

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. On April 9, 2019, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 84 FR 14098 (60-Day Notice). The Commission did not receive any relevant comments on the 60-Day Notice.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection to reflect the current number of registered FCMs and IBs. Accordingly, the respondent burden for this collection is estimated to be as follows:

*Estimated Number of Respondents:* 1,244.

*Estimated Average Burden Hours per Respondent:* 44.5.

*Estimated Total Annual Burden Hours:* 55,358.

*Frequency of Collection:* As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 25, 2019.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2019–13942 Filed 6–28–19; 8:45 am]

**BILLING CODE 6351–01–P**

[2] 17 CFR 1.71.

[3] 7 U.S.C. 6d(c).

[4] For the definition of FCM, *see* section 1a(28) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(28) and 17 CFR 1.3.

[5] For the definition of IB, *see* section 1a(31) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(31) and 17 CFR 1.3.

[6] *See* 17 CFR 1.71.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2019–0037]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to reinstate with change a previously approved collection, titled, ''Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings.'' Also in accordance with the PRA, the Bureau is requesting Office of Management and Budget (OMB) approval of the following generic Information Collections titled, ''Savings and Debt Study,'' ''Vague Language in Disclosures Study,'' ''Tiered Disclosure Study,'' ''Financial Scale Development Testing,'' and ''Disclosure Market Study'' under this Generic Information Collection Plan. Each of these information collections are contemporaneously being submitted to OMB with the request to reinstate with change the aforementioned generic information collection plan.

**DATES:** Written comments are encouraged and must be received on or before July 31, 2019 to be assured of consideration.

**ADDRESSES:** Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov*.
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov*. Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*. Please do not submit comments to these email boxes.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings.

*OMB Control Number:* 3170–0048.

*Type of Review:* Reinstatement with change of a previously approved Information Collection.

*Affected Public:* Individuals and households.

*Estimated Number of Respondents:* 36,120 (three year period).

*Estimated Total Burden Hours:* 24,405 (three year period).

*Abstract:* Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau is tasked 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. Under this generic information collection plan, the Bureau collects data through controlled trials in field and economic laboratory settings. This research is used for developmental and informative purposes to increase the Bureau's understanding of consumer credit markets and household financial decision-making. Basic research projects will be submitted under this clearance.

In consultation with OMB, the Bureau is proposing to modify this generic information collection plan to provide for public notice and opportunity to comment to OMB for each request submitted under this generic information collection plan.

**Information Collections**

*Title of Collection:* Savings and Debt Study.

Generic Information Collection Plan.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,000.

*Estimated Total Annual Burden Hours:* 500.

*Abstract:* This study will explore consumers' perceptions and motivations around the experience of managing savings and credit card debt simultaneously. The goal of this project is to better understand consumers' preferences for savings and debt management strategies, which can inform the development of useful and effective financial educational materials.

*Title of Collection:* Vague Language in Disclosures Study.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 9,200.

*Estimated Total Annual Burden Hours:* 2,800.

*Abstract:* This is a research project designed to generate foundational knowledge relevant to the design of disclosures. This project will provide knowledge about how vague language influences the efficacy of disclosures. Learning about the effects of vague language on consumer understanding and use of disclosures will provide Bureau researchers with information that may help them anticipate how consumers will respond to a disclosure.

*Title of Collection:* Tiered Disclosure Study.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 315.

*Estimated Total Annual Burden Hours:* 630.

*Abstract:* In this laboratory research, we will conduct a project related to financial disclosure. This study will examine the effects of different methods of disclosure simplification, each designed to help consumers make choices. In order to estimate these effects, participants will make choices in a marketplace environment that we construct. These marketplaces will vary in terms of the disclosure form and function. All respondents will be members of an institution's participant pool who also express interest in taking part in this research study. Participants will come to the institution's laboratory to participate. The data that results from this project will be analyzed for research purposes only.

*Title of Collection:* Financial Scale Development Testing.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,058.

*Estimated Total Annual Burden Hours:* 562.

*Abstract:* In this research, we will develop a scale measuring financial behaviors. Specifically, we focus on the tendency of consumers to take action(s) to mitigate financial challenges that they anticipate. Previous research has distinguished between consumers who do and do not foresee these types of challenges. However, research has not established whether the tendency to engage in these behaviors can be measured in a reliable way. Specifically, no valid scales currently exist to measure this trait. Our research fills this gap. To develop this scale, we will perform two types of data collection. First, we will perform in-depth interviews with a small sample of consumers to ensure that our questionnaire is easy to understand and does not cause respondent confusion. Second, we will conduct a series of rounds of data collection in which we will collect responses to the questionnaire from U.S. consumers aged 18 and older. We will analyze the responses received in each round of data collection to refine the questionnaire. Respondents will be sampled from an internet panel. All participants will volunteer to participate. The data that results from this project will be analyzed for research purposes only.

*Title of Collection:* Disclosure Market Study.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 240.

*Estimated Total Annual Burden Hours:* 480.

*Abstract:* This study examines the effect of different disclosure regimes on market outcomes. In order to estimate these effects, we will invite people to participate in laboratory research in which they will make choices in a marketplace environment that we construct. These marketplaces will vary in terms of the disclosure requirements. This laboratory study builds upon earlier work conducted by the Bureau that examines how the number of product attributes in a disclosure affects outcomes including consumers' choice of providers and realized market prices. The earlier study found that when the number of attributes of a product increased (keeping product quality and features constant), consumers selected the more expensive product ten times more often, and market prices increased by over 30%. This study builds on that work by examining whether and how the findings change with increased competition in the market.

*Request for Comments:* The Bureau issued a 60-day **Federal Register** notice on February 6, 2019, 84 FR 2175, Docket Number: CFPB–2019–0005. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may address the overall information collection request plan of any or all of the individual collections. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: June 26, 2019.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2019–13974 Filed 6–28–19; 8:45 am]

BILLING CODE 4810–AM–P

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0026]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Migrant Student Information Exchange (MSIX)

**AGENCY:** Department of Education (ED), Office of Elementary and Secondary Education (OESE).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 31, 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–0026. 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 Maria Hishikawa, 202–260–1473.

**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:* Migrant Student Information Exchange (MSIX).

*OMB Control Number:* 1810–0683.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 46.

*Total Estimated Number of Annual Burden Hours:* 454,701.

*Abstract:* The U.S. Department of Education (ED) has a continued need to support existing regulations for the use of the Migrant Student Information Exchange (MSIX), a nationwide, electronic records exchange mechanism mandated under Title I, Part C of the Elementary and Secondary Education Act (ESEA), as amended. As a condition of receiving a grant of funds under the Migrant Education Program (MEP), each State educational agency (SEA) is required to collect, maintain, and submit minimum health and education-related data to MSIX within established time-frames. These regulations facilitate timely school enrollment, placement, and accrual of secondary course credits for migratory children and help us determine accurate migratory child counts and meet other MEP reporting requirements. The MEP is authorized under sections 1301–1309 in Title I, Part C of the ESEA. MSIX and the minimum data elements (MDEs) are authorized specifically under section 1308(b) of the ESEA. The burden hours and costs associated with this data collection are required to ensure that States implement and utilize MSIX for interstate migrant student records exchange, which will then enable the Department to meet the statutory mandate in section 1308(b) of the ESEA to facilitate the electronic exchange of MDEs by SEAs to address the educational and related needs of migratory children.

Dated: June 26, 2019.

**Kate Mullan,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019–13964 Filed 6–28–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2576–185]**

## FirstLight Hydro Generating Company; FirstLight CT Housatonic LLC; Notice Granting Intervention

On January 3, 2019, the Commission issued public notice of an application, filed pursuant to section 8 of the Federal Power Act, to transfer the license for the Housatonic River Project No. 2576 from FirstLight Hydro Generating Company to FirstLight CT Housatonic LLC (together referred to as the applicants). The project consists of five developments and is located on the Housatonic River in Fairfield, New Haven, and Litchfield Counties, Connecticut. One of the developments is a pumped storage facility and uses the 5,600-acre Candlewood Lake as its upper reservoir. The notice established February 25, 2019 as the deadline to file interventions.[1]

On February 25, 2019, Candlewood Lake Authority (Authority) filed a timely motion to intervene to become a party in the proceeding.[2] It subsequently supplemented the motion on March 15, 2019. On March 7, 2019, the applicants filed an answer in opposition to the Authority's

[1] On February 11, 2019, the Commission extended the original comment period from February 2, 2019 to February 25, 2019, due to a funding lapse of certain federal agencies between December 22, 2018 and January 25, 2019. 84 FR 5077 (2019).

[2] The Authority incorrectly styled its intervention as a notice of intervention under 18 CFR 385.214(a). Because the Authority does not have the right to become a party in a proceeding by filing a notice of intervention, its intervention is treated as a motion to intervene in accordance to 18 CFR 214(a)(3). *See also* 18 CFR 385.214(a)(2) (2018) (providing ''Any State Commission . . . any state fish and wildlife, water quality certification, or water rights agency . . . is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b)''); Conn. Gen. Stat. Ann. 7–151a (West 2019) (establishing Connecticut lake authorities).

intervention because they allege that the Authority failed to demonstrate an interest that may be directly affected by the outcome of the proceeding or that the Authority's participation is in the public interest.[3] In its March 15, 2019 response, the Authority states that it is an agent for the five municipalities that surround Candlewood Lake and act on their behalf on matters related to lake, shoreline, and watershed management to foster the preservation and enhancement of recreational, economic, scenic, public safety, and environmental values of Candlewood Lake.[4]

Pursuant to Rule 214(c)(2) of the Commission's Rules of Practice and Procedure, if an answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party only when the motion is expressly granted.[5]

The Authority has an interest in the potential project impacts on Candlewood Lake. Therefore, the Authority's motion to intervene is granted.

Dated: June 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–13953 Filed 6–28–19; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CD19–8–000]**

### Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene; InPipe Energy

On June 13, 2019, InPipe Energy filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Carson Water Recycling Facility Hydroelectric Project would have an installed capacity of 130 kilowatts (kW), and would be located along an existing 14-inch pipeline within the Juanita Millender-McDonald Carson Regional Water Recycling Plant in the city of Carson, Los Angeles County, California.

*Applicant Contact:* Gregg Semler, InPipe Energy, 222 NW 8th Ave., Portland, OR 97209, Phone No. (503) 341–0004, Email: *gregg@inpipeenergy.com*.

*FERC Contact:* Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov*.

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) One 130-kW turbine-generator unit; (2) a 12-inch pipeline transporting water from the existing 14-inch pipeline to the generator, and returning it to the mainline; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of up to 575 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

| Statutory provision | Description | Satisfies (Y/N) |
|---|---|---|
| FPA 30(a)(3)(A) | The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. | Y |
| FPA 30(a)(3)(C)(i) | The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit. | Y |
| FPA 30(a)(3)(C)(ii) | The facility has an installed capacity that does not exceed 40 megawatts | Y |
| FPA 30(a)(3)(C)(iii) | On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA. | Y |

*Preliminary Determination:* The proposed Carson Water Recycling Facility Hydroelectric Project will not interfere with the primary purpose of the conduit, which is used for the City's non-potable municipal water supply distribution system, which feeds commercial, industrial, and residential customers. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

[3] *See* Applicants' March 7, 2019 Answer at 2.

[4] The Authority's March 15, 2019 Supplemental Filing at 1–2.

[5] 18 CFR 385.214(c) (2018).

[1] 18 CFR 385.2001–2005 (2018).

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD19–8) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: June 24, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–13934 Filed 6–28–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2082–062; Project No. 14803–000]**

## PacifiCorp; Klamath River Renewal Corporation; Notice of Teleconference for Tribal Consultation Meeting

a. *Project Names and Numbers:* Klamath and Lower Klamath Hydroelectric Projects No. 2082 and 14803.

b. *Project licensee:* PacifiCorp and Klamath River Renewal Corporation.

c. *Date and Time of Teleconference:* Tuesday, July 9, 2019, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time.

d. FERC Contact Jennifer Polardino, (202) 502–6437 or *jennifer.polardino@ferc.gov*.

e. *Purpose of Meeting:* Commission staff will hold a teleconference with the Yurok Tribe to discuss PacifiCorp and the Klamath River Renewal Corporation's (Renewal Corporation) application to transfer the Lower Klamath Project No. 14803, consisting of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, to the Renewal Corporation. If the Commission were to approve the transfer application, then in a separate proceeding, the Renewal Corporation would propose to surrender the project license and remove the above four developments.

f. Members of the public and intervenors in the referenced proceedings may attend the teleconference; however, participation will be limited to tribal representatives of the Yurok Tribe and the Commission's representatives. If the Yurok Tribe decides to disclose information about a specific location which could create a risk or harm to an archaeological site or Native American cultural resource, the public will be excused for that portion of the meeting when such information is disclosed. The teleconference meeting will be transcribed by a court reporter and the transcript will be placed in the public record of these proceedings.

g. Please call or email Jennifer Polardino at (202) 502–6437 or *jennifer.polardino@ferc.gov* by Monday, July 8, 2019, to RSVP and to receive the teleconference call-in information.

Dated: June 25, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–13972 Filed 6–28–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18–1906–001; ER16–221–002; ER18–1907–001; ER17–1757–002; ER10–1767–004; ER10–1532–004; ER10–1541–005; ER10–1642–006; ER13–2349–003; ER13–2350–003.
*Applicants:* Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC.
*Description:* Notification of Change in Status of the Entergy Central MBR Utilities.
*Filed Date:* 6/24/19.
*Accession Number:* 20190624–5177.
*Comments Due:* 5 p.m. ET 7/15/19.

*Docket Numbers:* ER18–2002–002.
*Applicants:* Essential Power Rock Springs, LLC.
*Description:* Compliance filing: Settlement Compliance Filing to be effective 9/14/2018.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5042.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER18–2270–003.
*Applicants:* Paulding Wind Farm III LLC.
*Description:* Compliance filing: Compliance Filing Under ER19–2270 to be effective 10/20/2018.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5009.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER18–2317–003.
*Applicants:* Meadow Lake Wind Farm V LLC.
*Description:* Compliance filing: Compliance Filing Under ER19–2317 to be effective 10/27/2018.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5008.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2241–000.
*Applicants:* Midcontinent Independent System Operator, Inc., International Transmission Company, Michigan Electric Transmission Company.
*Description:* § 205(d) Rate Filing: 2019–06–24_ITC Schedule 33 Blackstart to be effective 8/24/2019.
*Filed Date:* 6/24/19.
*Accession Number:* 20190624–5156.
*Comments Due:* 5 p.m. ET 7/15/19.

*Docket Numbers:* ER19–2242–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 1977R13 Nemaha-Marshall Electric Cooperative NITSA NOA to be effective 9/1/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5038.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2243–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 1636R23 Kansas Electric Power Cooperative, Inc. NITSA NOA to be effective 9/1/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5045.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2244–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2900R11 KMEA NITSA NOA to be effective 9/1/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5060.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2245–000.
*Applicants:* Midcontinent Independent System Operator, In., ALLETE, Inc.
*Description:* § 205(d) Rate Filing: 2019–06–25_SA 3318 MP-Enbridge Reimbursement Agreement (Swatara) to be effective 6/25/2019.
*Filed Date:* 6/25/19.

*Accession Number:* 20190625–5070.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2246–000.
*Applicants:* Wellhead Power Gates, LLC.
*Description:* Tariff Cancellation: Notice of Cancellation of MBR Tariff to be effective 8/23/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5081.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2247–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Big Country EC-Golden Spread EC IA 1st Amend & Restated to be effective 6/12/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5100.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2248–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* § 205(d) Rate Filing: Amendment to Extend CCSF Hunters Point (SA 36) to be effective 7/1/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5101.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2249–000.
*Applicants:* CSOLAR IV West, LLC.
*Description:* § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5102.
*Comments Due:* 5 p.m. ET 7/16/19.

*Docket Numbers:* ER19–2250–000.
*Applicants:* TrailStone Energy Marketing, LLC.
*Description:* § 205(d) Rate Filing: Name change filing Normal 2019 to be effective 6/26/2019.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5103.
*Comments Due:* 5 p.m. ET 7/16/19.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES19–36–000.
*Applicants:* NorthWestern Corporation.
*Description:* Application for Authorization Under Section 204 of the Federal Power Act to Issue Securities of NorthWestern Corporation.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5072.
*Comments Due:* 5 p.m. ET 7/16/19.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH19–13–000.
*Applicants:* Spire Inc.
*Description:* Spire Inc. submits FERC 65–A Notice of Material Change in Facts of Exemption Notification.
*Filed Date:* 6/25/19.
*Accession Number:* 20190625–5105.
*Comments Due:* 5 p.m. ET 7/16/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–13950 Filed 6–28–19; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL19–82–000]**

### Harbor Cogeneration Company, LLC v. Southern California Edison Company; Notice of Complaint

Take notice that on June 24, 2019, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, 385.212, and 385.217, Harbor Cogeneration Company LLC (Complainant) filed a formal complaint against Southern California Edison Company (Respondent) alleging that Respondent has assessed and collected charges that violate its Transmission Owner Tariff on file with the Commission as the rate schedule governing the service that Respondent has provided to Complainant under a series of interconnection agreements and related amendments, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on July 15, 2019.

Dated: June 25, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–13973 Filed 6–28–19; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL19–74–000]**

### Notice of Institution of Section 206 Proceeding and Refund Effective Date: Diamond State Generation Partners, LLC

On June 25, 2019, the Commission issued an order in Docket No. EL19–74–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the continued justness and reasonableness of Diamond State Generation Partners, LLC's rates for providing Reactive Supply and Voltage Control from Generation or Other Sources Service. *Diamond State Generation Partners, LLC,* 167 FERC ¶ 61, 61,262 (2019).

The refund effective date in Docket No. EL19–74–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–74–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: June 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–13952 Filed 6–28–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

## Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | File date | Presenter or requestor |
|---|---|---|
| Prohibited: | | |
| None. | | |
| Exempt: | | |
| P–1744–041 | 6–14–2019 | FERC Staff.[1] |

[1] Memo forwarding email dated June 14, 2019 with Pacificorp.

Dated: June 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–13954 Filed 6–28–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

### Filings Instituting Proceedings

*Docket Numbers:* RP19–1324–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* § 4(d) Rate Filing: Jun2019 Conversion of FTS Agreements to FT–1 Agreements to be effective 7/20/2019.

*Filed Date:* 6/20/19.

*Accession Number:* 20190620–5053.

*Comments Due:* 5 p.m. ET 7/2/19.

*Docket Numbers:* RP19–1325–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* § 4(d) Rate Filing: 062019 Negotiated Rates—ConocoPhillips Company R–3015–05 to be effective 7/1/2019.

*Filed Date:* 6/20/19.

*Accession Number:* 20190620–5076.

*Comments Due:* 5 p.m. ET 7/2/19.

*Docket Numbers:* RP19–1326–000.

*Applicants:* Dominion Energy Transmission, Inc.

*Description:* § 4(d) Rate Filing: DETI—June 20, 2019 Negotiated Rate Agreement to be effective 7/1/2019.

*Filed Date:* 6/20/19.

*Accession Number:* 20190620–5096.

*Comments Due:* 5 p.m. ET 7/2/19.

*Docket Numbers:* RP19–1327–000.

*Applicants:* Colorado Interstate Gas Company, L.L.C.

*Description:* § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agmt Filing (Rocky Mtn Midstrm 214627–TFHPCIG) to be effective 7/20/2019.

*Filed Date:* 6/20/19.

*Accession Number:* 20190620–5116.

*Comments Due:* 5 p.m. ET 7/2/19.

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 25, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–13951 Filed 6–28–19; 8:45 am]

**BILLING CODE 6717–01–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA–HQ–OPPT–2019–0237 and EPA–HQ–OPPT–2019–0238; FRL–9995–40]**

## Draft Toxic Substances Control Act (TSCA) Risk Evaluations and TSCA Science Advisory Committee on Chemicals (SACC) Meetings; Cyclic Aliphatic Bromide Cluster (HBCD) and 1,4-Dioxane; Notice of Availability and Public Meetings

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

**ACTION:** Notice.

**SUMMARY:** EPA announces the availability of documents and dates for the peer review of the draft risk evaluations for Cyclic Aliphatic Bromide Cluster (HBCD) and 1,4-Dioxane, and associated documents. The purpose of the risk evaluations under the Toxic Substances Control Act (TSCA) is to determine whether a chemical substance presents an unreasonable risk to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. EPA is also submitting these same documents to the TSCA Science Advisory Committee on Chemicals (SACC) for peer review and is announcing that there will be a 5-day in-person meeting of the TSCA SACC to consider and review these draft risk evaluations. Preceding the in-person meeting, there will be a 3-hour preparatory virtual meeting for the panel to consider the scope and clarity of the draft charge questions for the peer reviews.

**DATES:**

*Meetings:* The preparatory virtual meeting will be held on July 10, 2019, from 1 p.m. to approximately 4 p.m. (EDT). The 5-day in-person meeting will be held on July 29, 2019 from 1:00 p.m. to 5:30 p.m. (EDT) and July 30, 2019 to August 2, 2019 from 9:00 a.m. to approximately 5:30 p.m. (EDT).

*Comments:* Comments on the draft risk evaluations must be received on or before August 30, 2019. Written comments for and requests to make oral comments during the TSCA SACC meeting must be submitted on or before July 19, 2019 for consideration by the TSCA SACC. For additional instructions, see Unit II.A. and Unit II.B. of the **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:**

*Webcast:* The preparatory virtual meeting will be conducted via webcast and telephone. Registration is required to participate during the preparatory virtual meeting. Please visit *https://www.epa.gov/tsca-peer-review* website for additional information including how to register. The 5-day in-person meeting may also be webcast. Please refer to the TSCA SACC website at *https://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Please note that for the in-person meeting, the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

*In-Person Meeting:* The 5-day in-person meeting will be held at the Holiday Inn Rosslyn at Key Bridge, Rosslyn Ballroom, 1900 North Fort Myer Drive, Arlington, VA 22209.

*Comments.* Submit your comments, identified by the respective docket identification (ID) numbers for each chemical (*i.e.,* Cyclic Aliphatic Bromide Cluster (HBCD) (EPA–HQ–OPPT–2019–0237) and 1,4-Dioxane (EPA–HQ–OPPT–2019–0238)), by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

*Requests to present oral comments and requests for special accommodations.* Submit requests for special accommodations, or requests to present oral comments *(in-person or over the telephone)* to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

*TSCA SACC meetings:* Dr. Todd Peterson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: *peterson.todd@epa.gov.*

*Risk Evaluations:* Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–1169; email address: *barone.stan@epa.gov.*

*Special accommodations for the SACC meeting:* For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing and risk evaluations of chemical substances under the TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in these risk evaluations, the EPA has not attempted to describe all the specific entities that may be affected by this action.

*B. What action is the EPA taking?*

EPA is announcing the availability of and seeking public comment on the draft Risk Evaluations for Cyclic Aliphatic Bromide Cluster (HBCD) and 1,4-Dioxane, and associated documents. EPA is seeking public comment on all aspects of these draft risk evaluations, including any conclusions, findings, determinations, and the submission of any additional information that might be relevant to the science underlying the risk evaluations and the outcome of the systematic review associated with HBCD and 1,4-Dioxane. This 60-day comment period on the draft risk evaluations satisfies TSCA section 6(b)(4)(H), which requires EPA to ''provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing a final risk evaluation'' and 40 CFR 702.49(a), which states that ''EPA will publish a draft risk evaluation in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation.'' In addition to any new comments on the draft risk evaluations, the public should resubmit or clearly identify any previously filed comments, modified as appropriate, that are relevant to these risk evaluations and that the submitter feels have not been addressed. EPA does not intend to respond to comments submitted prior to the release of these draft risk evaluations.

EPA is also submitting these same documents to the TSCA SACC for peer review and announcing the meetings for the peer review panel. All comments submitted to the dockets for consideration by the TSCA SACC by the deadline identified in **DATES** will be provided to the TSCA SACC peer review panel, which will have the opportunity to consider the comments during its discussions.

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

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that direct which chemical substances must undergo evaluation, the development of criteria for manufacturer-requested evaluations, the minimum components of an EPA risk evaluation, and the timelines for public comment and completion of the risk evaluation. The law also requires that EPA operate in a manner that is consistent with the best available science and make decisions based on the weight of the scientific evidence. 15 U.S.C. 2625(h) and (i).

The statute identifies the minimum components EPA must include in all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposure for the conditions of use of the chemical substance, including information on specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposure. 15 U.S.C. 2605(b)(4)(F)(i)-(ii) and (iv)-(v). The risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process last no longer than three years, with a possible additional six-month extension. 15 U.S.C. 2605(b)(4)(G). The statute also requires that the EPA allow for no less than a 30-day public comment period on the draft risk evaluation, prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4)(H).

## II. TSCA SACC Meetings

The focus of the public meeting is to peer review EPA's draft risk evaluations of Cyclic Aliphatic Bromide Cluster (HBCD) and 1,4-Dioxane. After the peer review process, EPA will consider reviewer comments and recommendations and public comments, in finalization of the risk evaluations. The draft risk evaluations contain: Discussion of chemistry and physical-chemical properties; characterization of uses/sources; environmental fate and transport assessment; engineering release(s) and occupational exposure assessment; general population, consumer and environmental exposure assessment; human health hazard assessment; environmental hazard assessment; risk characterization; risk determination; and a detailed description of the systematic review process developed by the Office of Pollution Prevention and Toxics to search, screen, and evaluate scientific literature for use in the risk evaluation process.

*A. How may I participate in the in-person meeting?*

You may participate in the 5-day in person meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify the corresponding docket ID numbers for Cyclic Aliphatic Bromide Cluster (HBCD) (EPA–HQ–OPPT–2019–0237) and 1,4-Dioxane (EPA–HQ–OPPT–2019–0238) in the subject line on the first page of your request.

1. *Written comments.* To provide TSCA SACC the time necessary to consider and review your comments, written comments must be submitted by the date outlined in the **DATES** section and using the instructions in **ADDRESSES** and Unit II.C.

2. *Oral comments.* In order to be included on the meeting agenda, submit your request to make brief oral comments to the TSCA SACC during the in-person meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date outlined in the **DATES** section. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before TSCA SACC during the in-person meeting are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation for distribution to TSCA SACC at the meeting by the DFO.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

*B. How may I participate in the preparatory virtual meeting?*

Registration for the July 10, 2019, preparatory virtual meeting is required. To participate by listening or making a comment during this meeting, please visit: *https://www.epa.gov/tsca-peer-review* website to register. Registration online will be confirmed by email that will include the webcast meeting link and audio teleconference information.

1. *Written comments.* Written comments for consideration during the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and Unit II.C., on or before July 9, 2019.

2. *Oral comments.* Requests to make brief oral comments to the TSCA SACC during the preparatory virtual meeting should be submitted when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on July 9, 2019. Oral comments before TSCA SACC during the preparatory webcast are limited to approximately 5 minutes due to the time constraints of this webcast.

3. *Webcast.* The preparatory virtual meeting will be webcast only, and will be open to the public. Please refer to the TSCA SACC website at *http://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Registration is required.

*C. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit CBI information to EPA through r*egulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed

under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

## III. Background

### *A. What is EPA's risk evaluation process for existing chemicals under TSCA?*

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As these two chemicals are part of the first ten chemical substances undergoing risk evaluation, the chemical substances that are the subject of this announcement were designated for risk evaluation and were not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of risk evaluation is to determine whether a chemical substance presents an unreasonable risk to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other non-risk factors, use scientific information and approaches in a manner that is consistent with the requirements in TSCA for the best available science, and ensure decisions are based on the weight-of-scientific-evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B will be followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

### *B. What is cyclic aliphatic bromide cluster (HBCD)?*

The hexabromocyclodecanes (HBCD cluster) in the cyclic aliphatic bromide cluster consists of the following chemicals: Hexabromocyclododecane; 1,2,5,6,9,10-Hexabromocyclododecane; and 1,2,5,6-Tetrabromocyclooctane. HBCD is a flame retardant and is primarily used in construction materials, which may include structural insulated panels (SIPS). The building and construction industry uses expanded polystyrene foam (EPS) and extruded polystyrene foam (XPS) for thermal insulation boards and laminates for sheathing products. HBCD is also used in replacement parts for vehicles and in solder paste. Data reported for the 2016 Chemical Data Reporting period for HBCD indicate that between 1 and 10 million lb of each chemical component were manufactured in or imported into the U.S. in 2015; however, domestic manufacture of HBCD has since ceased.

Information about the problem formulation and scope phases of the risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-cyclic-aliphatic-bromide-cluster-hbcd.*

### *C. What is 1,4-dioxane?*

1,4-Dioxane is used primarily as a solvent in industrial and commercial processes, such as in the manufacture of other chemicals, as a processing aid, a laboratory chemical reagent, and in adhesives and sealants. Historically, 90% of 1,4-dioxane production was used as a stabilizer in chlorinated solvents such as 1,1,1-trichloroethane (TCA). The 2016 Chemical Data Reporting data shows that there were two manufacturers producing or importing over 1 million pounds in the U.S. in 2015.

Information about the problem formulation and scope phases of the risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-14-dioxane.*

### *D. What is the purpose of the TSCA SACC?*

The TSCA SACC was established by EPA in 2016 and operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C Appendix 2 *et seq.* The SACC supports activities under TSCA, the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes. The TSCA SACC provides expert independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA.

The TSCA SACC is comprised of experts in: Toxicology; human health and environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, PBPK modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The TSCA SACC currently consists of 24 members. When needed, the committee will be assisted in their reviews by ad hoc participants with specific expertise in the topics under consideration.

### *E. TSCA SACC Documents and Meeting Minutes*

EPA's background paper, related supporting materials, and draft charge/questions to TSCA SACC are available on the TSCA SACC website and in the dockets for Cyclic Aliphatic Bromide Cluster (HBCD) (EPA–HQ–OPPT–2019–0237) and 1,4 Dioxane (EPA–HQ–OPPT–2019–0238). In addition, the EPA will provide additional background documents (*e.g.,* TSCA SACC members participating in this meeting and the meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, at *http://www.regulations.gov* and the TSCA SACC website at *https://www.epa.gov/tsca-peer-review.*

TSCA SACC will prepare meeting minutes summarizing its recommendations to the EPA. The meeting minutes will be posted on the TSCA SACC website and in the relevant dockets.

**Authority:** 15 U.S.C. 2601 *et seq.;* 15 U.S.C. 2625 *et. seq.;* 5 U.S.C Appendix 2 *et. seq.*

Dated: June 25, 2019.

**Andrew R. Wheeler,**

*Administrator.*

[FR Doc. 2019–14021 Filed 6–28–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9995–56–OP]**

## National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

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

**ACTION:** Notification of public teleconference meeting.

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**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the

National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION.** Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required.

**DATES:** The NEJAC will convene a public teleconference meeting on Wednesday, August 14, 2019, starting at 3:00 p.m., Eastern Time. The meeting discussion will focus on several topics including, but not limited to, the discussion and deliberation of final letters that address environmental justice concerns raised during the NEJAC public meeting in Bethesda, MD, April 29–May 2, 2019, and a presentation from the Office of Research and Development on research funding. One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, August 14, 2019, starting at 5:30 p.m., Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 11:59 p.m., Eastern Time on Friday, August 09, 2019.

**FOR FURTHER INFORMATION CONTACT:** Questions or correspondence concerning the public meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW (MC2202A), Washington, DC 20460; by telephone at 202–564–0203; or email at *nejac@epa.gov.* Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

**SUPPLEMENTARY INFORMATION:** The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

## Registration

Registration for the August 14, 2019, public teleconference will be processed at *https://nejac-august-2019-public-teleconference.eventbrite.com.* Pre-registration is required. Registration closes at 11:59 p.m., Eastern Time on Friday, August 09, 2019. The deadline to sign up to speak during the public comment period, or to submit written public comments, is 11:59 p.m., Eastern Time on Friday, August 09, 2019. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments before the Friday, August 09, 2019, deadline.

*A. Public Comment*

Individuals or groups making remarks during the public comment period will be limited to three (3) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *nejac@epa.gov.*

*B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance*

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: June 12, 2019.

**Matthew Tejada,**

*Director, Office of Environmental Justice.*

[FR Doc. 2019–13908 Filed 6–28–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2017–0692; FRL–9988–64–OMS]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Lead Training, Certification, Accreditation and Authorization Activities (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR), Lead Training, Certification, Accreditation and Authorization Activities (EPA ICR Number 2507.03, OMB Control Number 2070–0195) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through August 31, 2019. Public comments were previously requested via the **Federal Register** on July 31, 2018. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before July 31, 2019.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2017–0692, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.*

Address comments to OMB Desk Officer for EPA. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact John Yowell, National Program Chemicals

Division, (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1213; email address: *yowell.john@epa.gov.* For general information, contact the TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

*Abstract:* This is a request to renew the approval of an information collection involving third-party notification, required under section 406(b) of the Toxic Substances Control Act (TSCA), to owners and occupants of housing—informing them about the dangers of lead-contaminated dust and paint debris that are sometimes generated during renovations of housing where lead-based paint is present. Section 406(b) of TSCA requires EPA to promulgate regulations requiring certain persons who perform renovations for compensation on target housing to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Further, the firm performing the renovation must keep records acknowledging receipt of the pamphlet on file for three years after completion of work. Those who fail to provide the pamphlet or keep records as required may be subject to both civil and criminal sanctions.

This information collection also addresses the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of sections 402 and 404 of TSCA. These sections and their implementing regulations require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities or renovations. With respect to target housing or child-occupied facilities, 40 CFR part 745, subpart E, covers work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations while 40 CFR part 745, subpart L, covers inspections, lead hazard screens, risk assessments, and abatement activities. 40 CFR part 745, subpart Q, establishes the requirements that state or tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA Section 402.

Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Form Numbers:* 8500–25; 8500–27; 747–B–99–002.

*Respondents/affected entities:* Entities potentially affected by this ICR include persons who are engaged in lead-based paint activities and/or perform renovations of target housing or child-occupied facilities for compensation, dust sampling, or dust testing; or who perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities; or who provide training or operate a training program for individuals who perform any of these activities; or state, territorial or tribal agencies that administer lead-based paint activities and/or renovation programs.

*Respondent's obligation to respond:* Mandatory (40 CFR part 745).

*Estimated number of respondents:* 770,564 (total).

*Frequency of response:* On occasion.

*Total estimated burden:* 5,251,320 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $303,099,637 (per year), includes $15,274,835 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease of 1,211,977 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This change reflects decreases to the estimated number of respondents based on the number of respondents reporting to EPA for the prior information collection as well as changes in the number of events for certain paperwork activities based on market factors. In addition, the renewal ICR presents estimated annualized capital or operation & maintenance costs of approximately $15,274,835. These costs were inadvertently excluded from the Agency's estimates in the existing ICR.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2019–13920 Filed 6–28–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2019–0185; FRL–9995–64]**

## Pesticides; Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides; Extension of Comment Period

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of May 16, 2019, opening a 45-day comment period for a draft revised method for conducting national level threatened and endangered species biological evaluations for pesticides. The May 16, 2019 Notice also announced a June 10, 2019 public meeting for EPA to present the draft revised method and provide an additional opportunity for the public to provide feedback. This document extends the comment period for 45 days, from July 1, 2019 to August 15, 2019. EPA is extending the comment period after receipt and consideration of seven extension requests, to date, citing the following reasons for the requests: The complex and highly technical nature of the revised draft; the need to engage experts familiar with the subject matter; the potential wide-ranging impacts of the revisions and the importance of soliciting feedback from stakeholders who may be affected; and the additional time needed to develop constructive comments. In addition, stakeholders may want to review the recording of the June 10, 2019 public meeting that is now available in the revised method docket (EPA–HQ–OPP–2019–0185). EPA responded to a number of clarifying questions about the draft revised method at that public meeting. Therefore, EPA believes that additional time for the public to consider the clarifying information provided at that meeting will further ensure meaningful stakeholder involvement in this process. This extension will facilitate the submission of high quality, useful comments during the public comment period.

**DATES:** Comments, identified by docket identification (ID) number EPA–HQ–

OPP–2019–0185, must be received on or before August 15, 2019.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of May 16, 2019 (Vol. 84 FR 22120) (FRL–9993–03).

**FOR FURTHER INFORMATION CONTACT:** Tracy Perry, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 703–308–0128; email address: *perry.tracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** document of May 16, 2019. In that document, EPA opened a 45-day comment period for a draft revised method for conducting national level threatened and endangered species biological evaluations for pesticides. EPA is hereby extending the comment period, which was set to end on July 1, 2019, to August 15, 2019.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of May 16, 2019. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: June 26, 2019.

**Alexandra Dapolito Dunn,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2019–13993 Filed 6–28–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2019.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *NEB Corporation, Fond du Lac, Wisconsin*; to merge with National Bancshares Waupun, Inc. and thereby indirectly acquire NBW Bank, both of Waupun, Wisconsin.

Board of Governors of the Federal Reserve System, June 25, 2019.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2019–13916 Filed 6–28–19; 8:45 am]

**BILLING CODE P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–MG–2019–03; Docket No. 2019–0002; Sequence No. 16]**

### Office of Federal High-Performance Buildings; Notification of Public Comment Period

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

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

**SUMMARY:** Notice of a public comment period is being provided. This notice provides the schedule for public comments on the Proposed Recommendations of the GSA about High-Performance Building Certification Systems.

**DATES:** Comment submissions on GSA's draft recommendations to the Secretary of Energy on high-performance building certification systems are due by Monday, July 15, 2019. 4:00 p.m., Eastern Daylight Time (EDT).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Bloom, Office of Federal High-Performance Buildings, OGP, GSA, 1800 F Street NW, Washington, DC 20405, at email address *michael.bloom@gsa.gov,* or telephone number 312–805–6799.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 436(h) of the Energy Independence and Security Act of 2007 (EISA) requires GSA to evaluate high-performance building certification systems and provide the findings to the Secretary of Energy who, in consultation with the Department of Defense and GSA, formally identifies system(s) to be used across the federal government. GSA's Office of Federal High-Performance Buildings has just completed and published its High-Performance Building Certification Systems Review Findings Report (Findings Report). This report summarizes GSA's formal review of five systems that passed an initial market analysis screening (LEED, Green Globes, Living Building Challenge, BOMA BEST, and BREEAM). These systems were assessed against a set of review criteria to evaluate how they were developed and how effectively the systems align with current high-performance federal building requirements.

#### Purpose

GSA's draft recommendations are included in the materials for the May 28 meeting of the Green Building Advisory Committee, and are published on its website (*http://www.gsa.gov/gbac*). To assist GSA in its review and enrich its set of draft recommendations, GSA is seeking additional comments from the public.

#### Procedures for Attendance and Public Comment

GSA asks that stakeholders compile comments and questions into a single submission per each organization and send them to *highperformance buildings@gsa.gov,* by Monday, July 15, 2019. Please indicate in the subject line the name of your organization and submit your comments either in the body of your email or through a Word or PDF attachment.

**Kevin Kampschroer,**

*Federal Director, Office of Federal High-Performance Buildings, General Services Administration.*

[FR Doc. 2019–13959 Filed 6–28–19; 8:45 am]

**BILLING CODE 6820–14–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

**[Docket No. ATSDR–2014–0001]**

## Availability of Toxicological Profiles for Tetrachloroethylene and Trichloroethylene

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the release of the final Toxicological Profiles for Tetrachloroethylene and Trichloroethylene. The present profiles supersede any previously released drafts.

**FOR FURTHER INFORMATION CONTACT:** Susan Ingber, Agency for Toxic Substances and Disease Registry, Division of Toxicology and Human Health Sciences, 1600 Clifton Rd., NE, Mail Stop S102–1, Atlanta, GA, 30329–4027, Email: *ATSDRToxProfileFRNs@cdc.gov;* Phone: 1–800–232–4636.

**SUPPLEMENTARY INFORMATION:**

### Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant potential threat to human health. The SPL is available online at *www.atsdr.cdc.gov/spl.*

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B))); to respond to requests for health consultations (CERCLA Section 104(i)(4)); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency.

### Public Comment

ATSDR released the draft Toxicological Profiles for Tetrachloroethylene and Trichloroethylene for public comment December 15, 2014(79 FR 74093). The comment period ended on March 16, 2015. ATSDR received multiple comments on the draft Tetrachloroethylene profile from a professional association and multiple comments on the draft Trichloroethylene profile from three professional associations and one law firm. ATSDR carefully reviewed and considered all comments in the preparation of the final profiles.

The Toxicological Profile for Tetrachloroethylene received comments related to the use of specific studies for the profile, potential omission of studies, and derivation of the minimal risk level (MRL). ATSDR addressed these comments by correcting, clarifying, or updating data in the final toxicological profiles.

The Toxicological Profile for Trichloroethylene received comments centered on the methods and data used for deriving the MRLs, as well as suggestions for inclusion of additional studies. ATSDR clarified areas of scientific uncertainty and modeling techniques used to derive the MRLs. ATSDR updated the profile with several additional studies.

For both profiles, ATSDR also conducted a second peer review of the epidemiological carcinogenicity sections of the profile by external peer reviewers. A list of peer reviewers and the peer review comments are available at ATSDR's Peer Review Agenda web page at (*https://www.atsdr.cdc.gov/sites/peer_review/index.html*).

### Availability

The Final Toxicological Profiles for Tetrachloroethylene and Trichloroethylene are available online at *www.regulations.gov,* Docket No. ATSDR–2014–0001 and *http://www.atsdr.cdc.gov/ToxProfiles.*

**Pamela I. Protzel Berman,**

*Director, Office of Policy, Partnerships and Planning, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 2019–13980 Filed 6–28–19; 8:45 am]

**BILLING CODE 4163–70–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

## Partnership Opportunity To Develop New Designs of Powered Air-Purifying Respirators for Healthcare Workers

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH), of the Centers for Disease Control and Prevention (CDC), announces the opportunity for inventors, researchers, and/or respirator manufacturers to participate, through a collaborative agreement, in a project titled ''New Generation Powered Air-Purifying Respirators,'' to develop new designs of powered air-purifying respirators (PAPRs) for healthcare workers.

**DATES:** Interested parties must submit a letter of intent, electronically or written, by July 31, 2019.

**FOR FURTHER INFORMATION AND TO SUBMIT A LETTER OF INTENT CONTACT:** Dr. Ziqing Zhuang, NIOSH National Personal Protective Technology Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236, 412–386–4055 (not a toll-free number), *zaz3@cdc.gov.*

Letters of intent should be sent electronically to Dr. Zhuang at the email address listed.

**SUPPLEMENTARY INFORMATION:**

*Additional Information:* The National Institute for Occupational Safety and Health (NIOSH) is seeking to identify inventors, researchers, and/or respirator manufacturers with the respirator design and manufacturing capabilities to construct a new respirator prototype, based on the characteristics included in this notice.

This research endeavor grew from recommendations issued by the National Academies, Institute of Medicine's (now known as the National Academy of Medicine) 2008 report, ''*Preparing for an Influenza Pandemic: Personal Protective Equipment for Healthcare Workers;*'' 2011 report, ''*Respiratory Diseases: Personal Protective Equipment for Healthcare Workers: Update 2010;*'' and 2015 report, ''*The Use and Effectiveness of Powered Air Purifying Respirators in Health Care: Workshop Summary.*'' These reports outline the next steps toward better respiratory protection for healthcare workers.

This project aims to create and develop new concepts in PAPR design targeted for healthcare workers using a government-private partnership development model.

During the first phase of the project, a team of researchers from NIOSH's National Personal Protective Technology Laboratory will develop a set of consensus recommendations for this project, that, if implemented, are expected to improve the function and utility of respiratory protective devices used by healthcare workers. The consensus recommendations for respirator design will be comprised of desirable characteristics of the PAPR and respiratory protection programs, which fall into one of four actionable categories:

- Respirators should perform their intended functions effectively and safely.
- Respirators should support, not interfere with, healthcare worker activities.
- Respirators should be comfortable and tolerable.
- Respirators should support healthcare system policies and practices.

The following presents the plan for this phase of the study:

- The consensus recommendations developed by the National Personal Protective Technology Laboratory will be shared during partnership meetings.
- The candidate organizations will then use the guidance to build the respirator prototype(s).
- NIOSH researchers will evaluate, to the extent possible, the respirator prototype(s), to determine whether the respirator(s) under evaluation meets or exceeds the performance requirements identified in the consensus recommendations.
- NIOSH researchers will seek the collective expertise of related stakeholders regarding optimal product development.
- NIOSH researchers will pursue, to the extent possible, field evaluation of resulting respirator prototype(s), including feedback from healthcare workers.

Collaborative efforts may be made via a Cooperative Research and Development Agreement (CRADA) under the authority of the Federal Technology Transfer Act, 15 U.S.C. 3710a, or another appropriate agreement. No federal funds will be provided under this project.

NIOSH may select one or more partnering candidates with respirator design and commercial manufacturing capabilities using the following criteria:

- The candidate organization has adequate and sustained resources and/or funding, as appropriate, to develop a new PAPR prototype(s) or modify existing PAPR models.
- The candidate organization has scientific advisors and staff with a demonstrated record of new product development and knowledge to construct the desired new respirator prototype(s) within 24 months of the effective date of the CRADA or other appropriate agreement.
- The candidate organization is capable of providing up to five units of the prototype for laboratory and limited field-testing.

*Note:* Preference is for substantial U.S. manufacture of resultant product.

- A candidate organization who has prior experience with respiratory protection products is preferred, but this experience is not required.
- A candidate organization who has the capacity to transform a proof-of-concept prototype into a commercially viable model is preferred, but such capacity is not required.

Candidate organizations will be evaluated against the selection criteria above, which indicate an organization's capability to incorporate the consensus recommendations, when they are developed, into the prototype(s). The partnership also requires the candidate organization to (a) abide by HHS policies regarding testing in human subjects, as applicable, and (b) support the advancement of scientific research, as evidenced by a written agreement to publish jointly research results in a prompt manner.

This announcement does not obligate HHS, CDC, or NIOSH to enter into a contractual or collaborative agreement with any respondents.

*Background:* The 2003 severe acute respiratory syndrome (SARS), 2009 H1N1 influenza, and 2014 Ebola outbreaks highlighted the ongoing need for effective respiratory protective devices for healthcare workers. Powered air-purifying respirators are an important type of respiratory protection to defend against high-level respiratory hazards and infectious body fluids. Challenges that have limited widespread utilization of PAPRs in healthcare settings remain.

PAPRs were originally developed to protect industrial workers (primarily in mining) for a typical 8-hour work shift. Changes in PAPR design can be made to better meet the needs in the healthcare environment. Compared to industrial settings, ambient particulate and toxic gas/vapor levels in typical U.S. healthcare environments are lower. As a result, the silica dust test, which was designed for a mining or other dusty environment, may not apply to healthcare settings. Additionally, because the typical work rates of healthcare workers are significantly lower than those of industrial workers, a lower PAPR air flow rate may be justified to provide a sufficient level of protection.

Potential issues related to the protection, performance, and usability of PAPRs include particle leakage during strenuous activity, noise, overall bulkiness, visual impairment, interference with tasks, and issues related to decontamination, among other problems associated with their use.

Beginning in 2006, NIOSH requested the Institute of Medicine (now the National Academy of Medicine) review, and a follow- up review, of personal protective equipment (PPE) with the explicit purpose of recommending how to best protect healthcare workers during an influenza pandemic (IOM, 2007, 2011). In the reports, ''*Preparing for an Influenza Pandemic: Personal Protective Equipment for Healthcare Workers*'' and ''*Respiratory Diseases: Personal Protective Equipment for Healthcare Workers: Update 2010*'', the Institute of Medicine noted a lack of evidence behind respirator protective measures, including minimal attention placed on the development of equipment meeting the unique needs of the healthcare workforce. The Institute of Medicine recommended revisiting elemental aspects of respirator design and development, including distinct attention to respirators tailored to the jobs performed by healthcare workers, and pursuing an evidence-based approach for equipment design to the extent possible.

In 2014, at NIOSH's request, the Institute of Medicine convened a workshop, titled, ''*The Use and Effectiveness of Powered Air-Purifying Respirators in Health Care*'', to help prioritize and accelerate NIOSH activities to update certification requirements for PAPRs. The proceedings of the workshop are available on the IOM website (linked above).

Some of the research over the past 10 years at NIOSH's National Personal Protective Technology Laboratory has focused on breathing patterns of healthcare workers, barriers and usability of PAPRs in healthcare settings, and development of new testing methods for evaluating protective performance. The National Personal Protective Technology Laboratory previously developed a set of consensus recommendations, under the *Better Respiratory Equipment using Advanced Technologies for Healthcare Employees* project (Project BREATHE), to improve respiratory protective equipment used by healthcare workers. These earlier consensus recommendations will be modified as NIOSH develops the consensus recommendations for the project New Generation PAPRs.

This project seeks to improve respirator tolerability, comfort, and other functional characteristics, while maintaining a level of protection equivalent to or greater than current standards. The design changes contemplated in this project could increase compliance with respiratory protection guidelines and standards among healthcare workers.

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2019–13958 Filed 6–28–19; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[CFDA Number: 93.676]**

### Announcement of the Intent To Issue One OPDIV-Initiated Supplement to BCFS Health and Human Services Under the Standing Announcement for Residential (Shelter) Services for Unaccompanied Alien Children, HHS–2017–ACF–ORR–ZU–1132

**AGENCY:** Unaccompanied Alien Children's (UAC) Program, Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S Department of Health and Human Services (HHS).

**ACTION:** Notice of intent to issue one OPDIV-Initiated Supplement to BCFS Health and Human Services, San Antonio, Texas under the UAC Program.

**SUMMARY:** The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the intent to issue one OPDIV-Initiated Supplement to BCFS Health and Human Services, San Antonio, Texas in the amount of up to $300,800,000. ORR announces the issuance of the first installment for 60 days in the amount of up to $50,000,000.

ORR has been identifying additional capacity to provide shelter for potential increases in apprehensions of Unaccompanied Alien Children at the U.S. Southern Border. Planning for increased shelter capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter for Unaccompanied Alien Children referred to its care by the Department of Homeland Security (DHS).

To ensure sufficient capacity to provide shelter to unaccompanied alien children referred to HHS, ORR is requesting that BCFS provide up to 1,300 temporary shelter beds at Carrizo Springs, Texas over a graduated timeframe.

**DATES:** Supplemental award funds will support activities until January 31, 2020. The first installment will support activities for 60 days.

**FOR FURTHER INFORMATION CONTACT:** Stephen Antowiak, Office of Refugee Resettlement, Division of Unaccompanied Alien Children Operations, 330 C Street SW, Washington, DC 20201. Phone: 202–260–6165. Email: *stephen.antkowiak@acf.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** ORR is continuously monitoring its capacity to shelter the unaccompanied alien children referred to HHS, as well as the information received from interagency partners, to inform any future decisions or actions.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements. The expansion of the existing program and its services through this supplemental award is a key strategy for ORR to be prepared to meet its responsibility to provide shelter for Unaccompanied Alien Children referred to its care by DHS and so that the U.S. Border Patrol can continue its vital national security mission to prevent illegal migration, trafficking, and protect the borders of the United States.

*Statutory Authority:* This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

**Karen Shields,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2019–13992 Filed 6–26–19; 4:15 pm]

BILLING CODE 4184–45–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Intent To Award a Single-Source Supplement for the National Center for Benefits Outreach and Enrollment

**ACTION:** Notice.

The Administration for Community Living (ACL) announces the intent to award a single-source supplemental to the current cooperative agreement held by the National Council on Aging (NCOA) for the National Center for Benefits Outreach and Enrollment (NCBOE). The purpose of the NCBOE is to provide technical assistance to states, area agencies on aging, and service providers to provide outreach and low-income benefits enrollment assistance, particularly to older individuals with greatest economic need for federal and state programs. The administrative supplement for FY 2019 will be for $390,861, bringing the total award for FY 2019 to $11,390,861. With this supplemental funding, NCOA will develop specialized training and tools around integrated care models that can be used by SHIPs, MIPPA grantees, and other partners of ACL like Centers for Independent Living (CILs) and the Aging and Disability Resource Centers (ADRCs) to expand the NCBOE's outreach and education efforts targeting older adults with the greatest economic need. This includes reaching out to current MIPPA grantees to evaluate their needs and to determine what the grantees believe would be helpful and conducting other stakeholder group meeting(s) to discuss what should be created around these integrated care models. Stakeholders could include MIPPA and other ACL grantees, health plans, CMS, and other non-federal partners. Additionally, NCOA will continue, expand, and complete the work they are currently undertaking with the NCBOE award without disrupting services.

*Program Name:* The National Center for Benefits Outreach and Enrollment (NCBOE).

*Recipient:* National Council on Aging (NCOA).

*Period of Performance:* The award will be issued for the current project period of September 30, 2017 through September 29, 2020.

*Total Award Amount:* $11,390,861 in FY 2019.

*Award Type:* Cooperative Agreement Supplement.

*Statutory Authority:* The Medicare Improvements for Patients and Providers Act of 2008—Section 119, Public Law (Pub. L.) 110–275 as amended by the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), reauthorized by the American Taxpayer Relief Act of 2012 (ATRA) and reauthorized by section 110 of the Protecting Access to Medicare Act of 2014.

*Basis for Award:* The National Council on Aging (NCOA) is currently funded to carry out the NCBOE Project for the period of September 30, 2017 through September 29, 2020. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time consuming and disruptive to the NCBOE project and the beneficiaries being served for the ACL to establish a new grantee at this time when critical services are presently being provided in an efficient manner.

The NCOA is uniquely placed to complete the work under the NCBOE grant. Since 2001, the NCOA has been the national leader in improving benefits access to vulnerable older adults. They have an unparalleled history of working with community based organizations to develop and replicate outreach and enrollment solutions, while maintaining and enhancing technology to make it easier and more efficient to find benefits. The NCOA through NCBOE accomplishes its mission by developing and sharing tools, resources, best practices, and strategies for benefits outreach and enrollment via its online clearinghouse, electronic and print publications, webinars, and training and technical assistance.

In addition, the NCOA has the BenefitsCheckUp which is, by far, the nation's most comprehensive and widely-used web-based service that screens older and disabled adults with limited incomes and resources and informs them about public and private benefits for which they are very likely to be eligible. Since the BenefitsCheckUp was launched in 2001, over 7.6 million individuals have been assisted to identify over $29.6 billion in potential annual benefits. In addition to a focus on Low-Income Subsidy and Medicare Savings Programs, the BenefitsCheckUp also includes more than 2,500 benefits programs from all 50 states and DC, including the addition of Medicaid expansion programs as part of Affordable Care Act; over 50,000 local offices for people to apply for benefits; nearly 2,000 application forms in every language in which they are available; and user-friendly mapping tools that allow streamlined access to program fact sheets and application forms based upon a person's locality.

NCOA is successfully meeting all programmatic goals under the current NCBOE grant.

*For Further Information Contact:* For further information or comments regarding this program supplement, contact Rebecca Kinney, U.S. Department of Health and Human Services, Administration for Community Living, Center for Integrated Programs, Office of Healthcare Information and Counseling; telephone (202) 795–7375; email *Rebecca.Kinney@acl.hhs.gov*

Dated: June 24, 2019.

**Mary Lazare,**

*Principal Deputy Administrator.*

[FR Doc. 2019–13962 Filed 6–28–19; 8:45 am]

**BILLING CODE 4154–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2017–N–0809 and FDA–2018–N–4609]**

### Issuance of Priority Review Voucher; Rare Pediatric Disease Product

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that KANUMA (sebelipase alfa), manufactured by Alexion Pharmaceuticals Inc., meets the criteria for a priority review voucher.

**FOR FURTHER INFORMATION CONTACT:** Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9856, email: *althea.cuff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that KANUMA (sebelipase alfa), manufactured by Alexion Pharmaceuticals Inc., meets the criteria for a priority review voucher. KANUMA (sebelipase alfa), is indicated for the treatment of patients with a diagnosis of Lysosomal Acid Lipase deficiency.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about KANUMA (sebelipase alfa), go to the "Drugs@FDA" website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: June 25, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–13944 Filed 6–28–19; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–2430]**

### Request for Nominations on Device Good Manufacturing Practice Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Device Good Manufacturing Practice Advisory Committee (DGMPAC) in the Center for Devices and Radiological Health notify

FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to fill an upcoming vacancy on DGMPAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for an upcoming vacancy effective with this notice.

**DATES:** Any industry organizations interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by July 31, 2019 (see sections I and III of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by July 31, 2019.

**ADDRESSES:** All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. 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:** Margaret Ames, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5264, Silver Spring, MD 20993–0002, 301–796–5960, Fax: 301–847–8505, email: *Margaret.Ames@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Section 520 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360j), as amended, provides that DGMPAC shall be composed of two representatives of interests of the device manufacturing industry. The Agency is requesting nominations for a nonvoting industry representative to fill an upcoming vacancy on DGMPAC. FDA is publishing a separate document announcing the request for notification for voting members on DGMPAC.

### I. Function of DGMPAC

DGMPAC reviews proposed regulations regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packaging, storage, installation, and servicing of devices, and makes recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidance developed to assist the medical device industry in meeting the good manufacturing practice requirements and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

### II. Qualifications

Persons nominated for DGMPAC should possess appropriate qualifications to understand and contribute to the committee's work as described in the committee's function.

### III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting 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 résumé. 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.

### IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

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. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the device manufacturing industry.

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 26, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–13991 Filed 6–28–19; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–D–2016]**

### Epidermolysis Bullosa: Developing Drugs for Treatment of Cutaneous Manifestations; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Epidermolysis Bullosa: Developing Drugs for Treatment of Cutaneous Manifestations.'' The purpose of this guidance is to assist sponsors with the development of drugs for treatment or prevention of the serious cutaneous manifestations of the heterogeneous group of disorders collectively known as epidermolysis bullosa (EB). This guidance focuses on drug development

and trial design issues specific to the treatment of EB, including FDA's current thinking on clinical trial endpoint considerations. There is not yet sufficient clinical trial experience to establish definitive endpoints. This guidance incorporates the comments received for and finalizes the draft guidance of the same name issued on June 18, 2018.

**DATES:** The announcement of the guidance is published in the **Federal Register** on July 1, 2019.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–D–2016 for ''Epidermolysis Bullosa: Developing Drugs for Treatment of Cutaneous Manifestations.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Barbara Gould, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5166, Silver Spring, MD 20993–0002, 301–796–4224; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*FDA is announcing the availability of a guidance for industry entitled ''Epidermolysis Bullosa:* Developing Drugs for Treatment of Cutaneous Manifestations.'' The purpose of this guidance is to assist sponsors with the development of drugs for treatment or prevention of the serious cutaneous manifestations of the heterogeneous group of disorders collectively known as EB. This guidance focuses on drug development and trial design issues specific to the treatment of EB, including FDA's current thinking on endpoint considerations. There is not yet sufficient clinical trial experience to establish definitive endpoints. This guidance incorporates the comments received for and finalizes the draft guidance of the same name issued on June 18, 2018 (83 FR 28240). All the public comments received on the draft guidance have been considered, and the guidance has been revised as appropriate along with a few editorial changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Epidermolysis Bullosa: Developing Drugs for Treatment of Cutaneous Manifestations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

**III. Electronic Access**

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: June 26, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–13969 Filed 6–28–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV/AIDS Population and Behavioral Research.

*Date:* July 16, 2019.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

*Date:* July 24, 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 (Virtual Meeting).

*Contact Person:* Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Glial development, myelination and remyelination.

*Date:* July 24, 2019.

*Time:* 1:00 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:* Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 25, 2019.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–13941 Filed 6–28–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[DHS–2019–0029]**

### Project 25 Compliance Assessment Program (P25 CAP)

**AGENCY:** Science and Technology Directorate, Department of Homeland Security.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Homeland Security (DHS) invites the general public to comment on updated data collection forms for DHS Science and Technology (S&T) Directorate's Project 25 (P25) Compliance Assessment Program (CAP): Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08)) and an accompanying Summary Test Report (STR) (DHS Form 10056 (9/08)). The collections are posted on the dhs.gov website (*https://www.dhs.gov/science-and-technology/p25-cap*). The attacks of September 11, 2001, and the destruction of Hurricane Katrina made apparent the need for emergency response radio systems that can interoperate, regardless of which organization manufactured the equipment. Per congressional direction, DHS and the National Institute of Standards and Technology (NIST) developed the P25 CAP to improve the emergency response community's confidence in purchasing land mobile radio (LMR) equipment built to P25 LMR standards. Equipment suppliers provide the information to publicly attest to their products' compliance with a specific set of P25 standards. The SDoC, and its STR, which substantiates the declaration, constitutes a company's formal, public attestation of compliance with the standards for the equipment. In turn, first responders at local, tribal, state, and federal levels across multiple disciplines including law enforcement, fire, and emergency medical services personnel, will use this information to identify P25 compliant communications system products. The P25 CAP Program Manager performs a simple administrative review to ensure the documentation is complete and accurate in accordance with the current P25 CAP processes.

**DATES:** Comments are encouraged and accepted until July 31, 2019.

**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, via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** DHS/S&T System Owner: Sridhar Kowdley, *Sridhar.kowdley@HQ.DHS.GOV,* (202) 254–8804 (Not a toll free number).

**SUPPLEMENTARY INFORMATION:** DHS, in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collection of information. DHS is soliciting comments on the proposed Information Collection Request (ICR) that is described below. The Department of Homeland Security 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 Collections:* Project 25 (P25) Compliance Assessment Program (CAP): Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08) and Summary Test Report (STR) (DHS Form 10056 (9/08)).

*Prior OMB Control Number:* 1640–0015.

*Prior **Federal Register** Document:* 2018–0073, April 5, 2019.

*Type of Review:* Renewal of an information collection.

*Affected Public:* Federal, State, Local, and Tribal Governments.

*Frequency of Collections:* The SDOC is once per month and the STR is once annually.

*Average Burden per Response:* 60 minutes.

*Total Estimated Number of Annual Responses:* 156.

*Total Estimated Number of Annual Burden Hours:* 156.

**Gregg Piermarini,**

*Acting Chief Information Officer, Science and Technology Directorate.*

[FR Doc. 2019–14000 Filed 6–28–19; 8:45 am]

BILLING CODE 9110–9F–P

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of determination.

**SUMMARY:** The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas.

**DATES:** This determination takes effect on July 1, 2019.

**SUPPLEMENTARY INFORMATION:** Important missions of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

#### Determination and Waiver

*Section 1*

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. In fiscal year 2018 alone, the Border Patrol apprehended over 162,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same year, the Border Patrol had over 1,400 separate drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 204,000 pounds of marijuana, over 1,850 pounds of cocaine, over 16 pounds of heroin, and over 750 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in sections 231 and 232(c) of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116–6, Div. A, Title II, §§ 231–232.

*Section 2*

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project areas''):

- Starting at the southernmost boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending north to County Road 650; and
- Starting approximately one-tenth (0.10) of a mile north of the northernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to approximately one and one-half (1.50) miles south and east of the southernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Public Law 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Federal Land Policy and Management Act (Pub L. 94–579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd–668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

**Kevin K. McAleenan,**

*Acting Secretary of Homeland Security.*

[FR Doc. 2019–14003 Filed 6–28–19; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6164–N–01]**

## Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2019

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2019 and ending on March 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0500, telephone 202–708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2019.

**SUPPLEMENTARY INFORMATION:** Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;
2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;
3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2019 through March 31, 2019. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2019) before the next report is published (the second quarter of calendar year 2019), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 12, 2019.

**J. Paul Compton Jr.,**

*General Counsel.*

## Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2019 Through March 31, 2019

*Note to Reader:* More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Housing.

II. Regulatory waivers granted by the Office of Public and Indian Housing.

### I. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 206.41.

*Project/Activity:* National Council on Aging HECM Financial Interview Tool No Longer Available (affects the HECM program nationally).

*Nature of Requirement:* The Financial Interview Tool (FIT) assists counselors in following HUD's requirements in determining the borrowers' financial status. It is a required counseling requirement by the Commissioner under this regulation. The contract between the and NCOA for administering FIT has concluded. Therefore, HECM counselors are now prohibited from accessing FIT for purposes of providing HUD HECM counseling.

*Granted By:* Sarah Gerecke, Deputy Assistant Secretary.

*Date Granted:* February 28, 2019.

*Reason Waived:* NHA section 255(f) and HECM regulations at 24 CFR 206.41 address HECM counseling and require that a prospective borrower must receive adequate counseling, which involves discussions regarding options other than a reverse mortgage and financial implications. 24 CFR 214.3 defines counseling, in part, as ''[cJounselor to client assistance that addresses unique financial circumstances or housing issues [of the client] In addition, the Housing Counseling Handbook at Appendix 4, Section III. C. Step 2, states, in part, that ''the counselor must create a budget using the Financial Interview Tool (FIT) Discussed in Attachment B.12 [of the Handbook] based on the client's income, assets, debt and expenses.'' Attachment B.12 [of the Handbook provides that ''[c]counselors will use the National Council on Aging's (NCOA) web-based FIT to meet the budget requirement.'' The contract between the Department and NCOA for administering FIT expired on January 8, 2018. Therefore, HECM counselors are now prohibited from accessing FIT for purposes of providing HUD HECM counseling. As a result, OHC needs to waive the above-referenced Handbook provisions which mandate the use of FIT. HECM counselors must, however, continue to meet all other statutory and regulatory counseling requirements and policies as clarified in the Handbooks, such as creating a budget.

*Contact:* John Olmstead, Senior Housing Program Manager, Office of Policy and Grant Administration, Office of Housing, Department of Housing and Urban Development, Norris Cotton Federal Building, 275 Chestnut Street, 4th Floor; Manchester, NH 03101–2487, telephone (802) 238–9003.

- *Regulation:* 24 CFR 219.220(b).

*Project/Activity:* Westminster Village, FHA Project Number 083–44016, Lexington, KY. Westminster Kentucky, LLC (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

*Nature of Requirement:* The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

*Date Granted:* March 15, 2019.

*Reason Waived:* The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 40 years through the execution and recordation of a Rental Use Agreement.

*Contact:* Munir Malik, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8236, Washington, DC 20410, telephone (202) 402–7589.

- *Regulation:* 24 CFR 266.200(b)(2).

*Project/Activity:* The Massachusetts Housing Finance Agency (MassHousing) requested a waiver of certain provisions of the 542(c) Housing Finance Agency (HFA) Risk Sharing Program. The Department approved the request for forty (40) mortgages insured under the Section 542(c) HFA Risk Sharing Program for fiscal year 2019 (*i.e.,* HUD issuance of a firm approval letter by September 30, 2019), Mass Housing, Boston, Massachusetts, no project names listed.

*Nature of Requirement:* The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. Substantial rehabilitation is defined as any combination of the following work to an existing facility of a project that aggregates to at least 15 percent of the project's value after the rehabilitation and that results in material improvement of the project's economic life, livability, marketability, and profitability. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the revised MAP Guide published on January 29, 2016, such that S/

R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable *High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

*The High Cost Factors for 2017 were published through a Housing Notice (HN) on August 31, 2017, and the revised statutory limits were recently published in the **Federal Register** on November 7, 2017. The 2017 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,315. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to forty (40) projects and expires on September 30, 2019 for waiver request related to regulation 24 CFR 266.200 (b)(2).

2. MassHousing must elect to take 50 percent or more of the risk of loss on all transactions;

3. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

4. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

5. MassHousing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

6. The loans exceeding $50 million require a separate waiver request;

7. Occupancy is no less than 93 percent for previous 12 months;

8. No defaults in the last 12 months of the HFA loan to be refinanced;

9. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

10. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

11. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time MassHousing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, MassHousing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing- Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* Granted waivers of certain provisions under the 542(c) HFA Risk-Sharing Program regulations for forty (40) mortgages through the fiscal year 2019. The waiver, under the Risk Sharing Program will provide more competitive financing options for developers and continue to create and preserve affordable housing in the State of Massachusetts.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410–8000, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

*Project/Activity:* The Massachusetts Housing Finance Agency (MassHousing), Risk Sharing Program, Equity Take Outs. Boston, Massachusetts, no project names listed.

*Nature of Requirements:* The Department requires, in 24 CFR 266.200(c)(2), Existing Project ''Equity Take-out'', that the refinancing of HFA refinance loan is permissible if the preservation is the result, with certain conditions: (1) Occupancy at least 93 percent for previous 12 months; (2) underwrite to the lower of Section 8 or market rents; (3) no equity take-outs: Risk sharing loan cannot exceed sum of existing indebtedness, cost of repairs, and transaction costs; (4) no defaults in the last 12 months of HFA loans.

The waiver of 24 CFR 266.200(c)(2) would permit equity take-outs for any existing property, including both MassHousing-financed developments and those outside of MassHousing's portfolio, to be refinanced by MassHousing, where MassHousing and HUD split the risk of loss 50/50.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to forty (40) projects and expires on September 30, 2019 for waiver request related to regulation 24 CFR 266.200(c)(2).

2. MassHousing must elect to take 50 percent or more of the risk of loss on all transactions;

3. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

4. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225.

5. MassHousing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

6. The loans exceeding $50 million require a separate waiver request;

7. Occupancy is no less than 93 percent for previous 12 months;

8. No defaults in the last 12 months of the HFA loan to be refinanced;

9. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

10. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

11. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time MassHousing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, MassHousing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* The waiver would provide more competitive financing options for developers and to continue to create and preserve affordable housing in the State of Massachusetts.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.410(e).

*Project/Activity:* Mortgage Provisions ''Amortization. requires that the mortgage must provide for complete amortization (*i.e.,* regularly amortizing) over the term of the mortgage. The waiver would permit balloon mortgages with a minimum term of 17 years with a maximum amortization period of up to 40 years.

*Nature of Requirement:* The 24 CFR 266.410(e), which ''requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. . . .'' The waiver would permit MassHousing to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* The waiver was granted to allow Mass Housing's clients additional financing options to their customers and to align Mass Housing business practices with industry standards. The waiver would permit MassHousing the ability to offer balloon mortgages with a minimum term of 17 years for 50/50 risk sharing transactions. This waiver is effective from the date of issuance. The waiver has no time limit. The regulatory waiver is subject to the following conditions:

1. The waiver is limited to ten (10) projects with no time limit.

2. MassHousing must elect to take 50 percent or more of the risk of loss on all transactions;

3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum of 17 years;

4. All other requirements of 24 CFR 266.410—Mortgage Provision remain applicable. The waiver is applicable only to loans made under MassHousing's Risk Sharing Agreement.

5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

7. MassHousing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

8. The loans exceeding $50 million require a separate waiver request;

9. Occupancy is no less than 93 percent for previous 12 months;

10. No defaults in the last 12 months of the HFA loan to be refinanced;

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

12. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time MassHousing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, MassHousing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

- *Regulation:* 24 CFR 266.410(e).

*Project/Activity:* Minnesota Housing Finance Agency (Minnesota Housing), Mortgage Provisions ''Amortization: that the mortgage must provide for complete amortization (*i.e.* regularly amortizing) over the term of the mortgage. Minnesota Housing Finance Agency, (Minnesota Housing) Saint Paul, Minnesota, no project name listed.

*Nature of Requirement:* The 24 CFR 266.410(e), which ''requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. . . .'' The waiver would permit Minnesota Housing to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* The waiver was granted to allow Minnesota Housing's clients additional financing options to their customers and to align Minnesota Housing business practices with industry standards. The waiver would permit Minnesota Housing the ability to offer balloon mortgages with a minimum term of 17 years for 50/50 risk sharing transactions. This waiver is effective from the date of issuance. The waiver expires on December 31, 2020. The regulatory waiver is subject to the following conditions:

1. The waiver is limited to twenty (20) refinance transactions, ten (10) substantial rehabilitation transactions and ten (10) new construction transactions and expires on December 31, 2020.

2. Minnesota Housing must elect to take 50 percent or more of the risk of loss on all transactions;

3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum of 17 years;

4. All other requirements of 24 CFR 266.410- Mortgage Provision remain applicable. The waiver is applicable only to loans made under Minnesota Housing's Risk Sharing Agreement.

5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

7. Minnesota Housing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

8. The loans exceeding $50 million require a separate waiver request;

9. Occupancy is no less than 93 percent for previous 12 months;

10. No defaults in the last 12 months of the HFA loan to be refinanced;

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

12. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time Minnesota Housing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, Minnesota Housing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

- *Regulation:* 24 CFR 266.200(b)(2).

*Project/Activity:* Rhode Island Housing and Mortgage Finance Corporation (RIHousing), a waiver of certain provisions of the 542(c) Housing Finance Agency (HFA) Risk Sharing Program. The Department's approval request for a total of thirty-six (36) projects which includes twelve (12) projects identified in the Pipeline provided for mortgages insured under the 542(c) HFA Risk Sharing Program. Providence, RI.

*Nature of Requirement:* The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. Substantial Rehabilitation is defined as any combination of the following work to an existing facility of a project that aggregates to at least 15 percent of the project's value after the rehabilitation and that results in material improvements of the project's economic life, livability, marketability, and profitability. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the Revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable *High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

*The High Cost Factors for 2017 were published through a Housing Notice (HN) on August 31, 2017, and the revised statutory limits were recently published in the **Federal Register** on November 7, 2017. The 2017 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,315. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to thirty-six (36) projects and expires on December 31, 2021 for waiver request related to regulation 24 CFR 266.200(b)(2).

2. RIHousing must elect to take 50 percent or more of the risk of loss on all transactions;

3. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

4. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

5. RIHousing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

6. The loans exceeding $50 million require a separate waiver request;

7. Occupancy is no less than 93 percent for previous 12 months;

8. No defaults in the last 12 months of the HFA loan to be refinanced;

9. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

10. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

11. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time RIHousing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, RIHousing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* Granted waivers of certain provisions under the 542(c) HFA Risk-Sharing Program regulations for thirty-six (36) projects which includes twelve (12) projects identified in the Pipeline provided for mortgages under the 5429(c) HFA Risk Sharing Program. The waiver will expire on December 31, 2021. The waiver, under the Risk Sharing Program will provide more competitive financing options for developers and continue to create and preserve affordable housing in the State of Rhode Island.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

*Project/Activity:* The Rhode Island Housing and mortgage Finance Corporation (RIHousing), Risk Sharing Program, Equity Take Outs. Providence, Rhode Island.

The Department requires, in 24 CFR 266.200(c)(2), Existing Project ''Equity Take-out'', that the refinancing of HFA refinance loan is permissible if the preservation is the result, with certain conditions: (1) Occupancy at least 93 percent for previous 12 months; (2) underwrite to the lower of Section 8 or market rents; (3) no equity take-outs: Risk sharing loan cannot exceed sum of existing indebtedness, cost of repairs, and transaction costs; (4) no defaults in the last 12 months of HFA loans.

*Nature of Requirements:* The waiver of 24 CFR 266.200(c)(2) would permit equity take-outs of the RIHousing financed project and those outside of RIHousing 's portfolio resulting in preservation where the insured mortgage exceeds the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction cost, or ''equity take-out'' risk sharing refinancing where RIHousing and HUD split the risk of loss 50/50.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to thirty-six (36) projects and expires on December 31, 2021 for waiver request related to regulation 24 CFR 266.200(c)(2).

2. RIHousing must elect to take 50 percent or more of the risk of loss on all transactions;

3. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

4. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

5. RIHousing must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

6. The loans exceeding $50 million require a separate waiver request;

7. Occupancy is no less than 93 percent for previous 12 months;

8. No defaults in the last 12 months of the HFA loan to be refinanced;

9. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

10. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

11. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time RIHousing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, RIHousing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

*Granted By:* Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

*Date Granted:* February 7, 2019.

*Reason Waived:* Under 542(c) Housing Financing Agency (HFA) Risk Sharing Program, will create and preserve affordable housing in the State of Rhode Island.

*Contact:* Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

**II. Regulatory Waivers Granted by the Office of Public and Indian Housing**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 983.354(a).

*Project/Activity:* Revitz House Corporation c/o Hebrew Home of greater Washington, Inc. in Rockville, Maryland, requested a waiver of 24 CFR 983.354(a) to allow low income residents of Revitz House to receive Project-Based Voucher (PBV) rental assistance and participate in the mandatory meals program.

*Nature of Requirement:* The regulation 24 CFR 983.354(a) states that except as provided in paragraph (a)(2) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. 24 CFR 983.354(a) (2) states that in assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* February 19, 2019.

*Reason Waived:* Revitz House's Section 236 loan matures on April 1, 2019 and will be applying for Tenant-Protection Set-Aside funding in the form of PBV assistance under PIH Notice 2018–02. Revitz House has had a long-standing mandatory meals program, which was allowed under the Section 236 program. However, the PBV rules do not allow for such a provision. It was determined that it would be financially infeasible to convert an existing mandatory meals program to a voluntary program which would in turn increase the cost of the meals program for those residents who choose to stay. Because the residents live on a fixed income, such a cost increase would make the program cost-prohibitive and likely cause the program to end. Without the program, resident's health would be at risk because many of them are unable to prepare meals themselves.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.633(a).

*Project/Activity:* Belmont Housing Authority in Buffalo, New York requested a waiver of 24 CFR 982.633(a) to allow the PHA to continue paying homeownership assistance payments for a family unable to live in the unit.

*Nature of Requirement:* The regulation at 24 CFR 982.633(a) states that homeownership assistance may only be paid while the family is residing in the home.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* February 25, 2019.

*Reason Waived:* The waiver was approved because it is consistent with the Department's position of approving similar waivers for unforeseen circumstances, such as disasters.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.161(a).

*Project/Activity:* The Brown County Housing Authority in Green Bay, Wisconsin requested a waiver of 24 CFR 982.161(a) due to a conflict of interest.

*Nature of Requirement:* The regulation 24 CFR 982.161(a) states that neither the public housing agency (PHA) nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the HCV program with any present or former member or officer of the PHA (except a participant commissioner) during tenure or for one year thereafter.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* March 8, 2019.

*Reason Waived:* This waiver was approved to prevent hardship of requiring the family to move, particularly upon uncertainty of finding a unit in the same neighborhood or potentially losing the housing assistance which covers the rent in its entirety.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.152(c) pursuant to 24 CFR 5.110.

*Project/Activity:* The Housing and Redevelopment Authority of Duluth of Minnesota, in Duluth, Minnesota, requested a waiver of 24 CFR 983.152(c)

*Nature of Requirement:* The regulation 24 CFR 983.152(c) prohibits a PHA from entering into an Agreement to enter into a Housing Assistance Payment (HAP) contract with an owner if the owner has commenced construction or rehabilitation activity after submitting the Project-based Voucher (PBV) proposal.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 13, 2019.

*Reason Waived:* This waiver was approved due to compelling and unique circumstances that resulted in the PHA and owner failing to execute the AHAP prior to commencing construction.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.161(a) and 24 CFR 982.161(c).

*Project/Activity:* The Eagle Pass Housing Authority in Eagle Pass, Texas, requested a waiver of 24 CFR 982.161(c), because of a potential conflict of interest with an immediate family member of a local public official.

*Nature of Requirement:* The regulation 24 CFR 982.161(a), states that any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program, may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract during tenure or one year thereafter. This includes the interest of an immediate family member, including a parent, of the covered individual.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* March 27, 2019.

*Reason Waived:* This waiver was approved to allow units to remain on the program and prevent hardship of requiring the family to move, particularly upon uncertainty of finding a unit in the same neighborhood or potentially losing the housing assistance which covers the rent in its entirety.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517.

*Project/Activity:* The Housing Authority of the County of Contra Costa in Martinez, California, requested a waiver from HUD to allow for the use of a site-specific utility allowance.

*Nature of Requirement:* The regulation 24 CFR 983.301(f)(2)(ii) states that ''The same PHA utility allowance schedule applies to both the tenant-based and PBV programs''. The regulation 24 CFR 982.517 requires that the utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy conservative households using normal patterns of consumption for the community as a whole.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* February 13, 2019.

*Reason Waived:* This waiver was approved because it was determined based on the information submitted, the utility allowances as currently calculated, would be excessive thus discouraging conservation and efficient use of HAP funds.

*Contact:* Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 905.400(i)(5)(i).

*Project/Activity:* Housing Authority of Indiana County (HAIC), PA.

*Nature of Requirement:* The housing authority is requesting a waiver of 24 CFR 905.400(i)(5)(i) for several First Increment Replacement Housing Factor (RHF) grants.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* March 8, 2019.

*Reason Waived:* The current regulation requires that the housing authority use RHF grant funds for the development of replacement housing only. Consequently, RHF cannot be used for any modernization activities unless the Department grants a waiver for good cause. The housing authority is not able to use RHF funds, totaling $139,280, to acquire residential units due to market conditions. HAIC administers 158 Public Housing units. Rather than returning the funds, the housing authority would like to use the RHF grants for security cameras and lighting. In accordance with 24 CFR 5.110, good cause has been determined, and hereby approve the housing authority's request for a waiver to use funds to pay for modernization work.

*Contact:* David Fleischman, Director, Office of Capital Program Division. Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room, Washington, DC 20410, telephone (202) 402–2071.

• *Regulation:* 24 CFR 902.

*Project/Activity:* Housing Authority of Springfield (FL035).

*Nature of Requirement:* The regulation establishes guidelines to determine whether a public housing authority or agency (PHA) is meeting the standard of decent, safe, sanitary housing in good repair (DSS/GR). It is incumbent upon the Department to ensure that living conditions of occupied units are within regulation compliance.

*Granted By:* Dominique Blom, General Deputy Assistant Secretary.

*Date Granted:* February 6, 2019.

*Reason Waived:* The Housing Authority of Springfield (HA) requested assistance under ''Relief from HUD Requirements Available to

PHAs During CY 2018 to Assist with Recovery and Relief Efforts on Behalf of Families Affected by Disasters,'' FR–6050–N–02. The HA incurred damages resulted from Hurricane Michael and is within the Bay County of the applicable Major Disaster Declaration. The Housing Authority of Springfield serves Public Housing and Housing Choice Voucher families in Florida.

*Contact:* Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

[FR Doc. 2019–14012 Filed 6–28–19; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–IA–2019–0062; FXIA16710900000–190–FF09A30000]**

### Foreign Endangered Species; Receipt of Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

**DATES:** We must receive comments by July 31, 2019.

**ADDRESSES:** *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2019–0062.

*Submitting Comments:* When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2019–0062.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2019–0062; U.S. Fish and Wildlife Service Headquarters, MS: PERMA; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Public Comment Procedures

*A. How do I comment on submitted applications?*

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

*B. May I review comments submitted by others?*

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

*C. Who will see my comments?*

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

### III. Permit Applications

We invite comments on the following applications.

*Applicant: Fresno Chaffee Zoo, Fresno, CA; Permit No. 33775D*

The applicant requests a permit to export two captive-bred male and one captive-bred female red ruffed lemurs (*Varecia rubra*) to the Bermuda Aquarium, Museum and Zoo in Flatts, Bermuda, for the purpose of enhancing the survival of the species. This notification is for a single export.

*Applicant: Tanganyika Wildlife Park, Goddard, KS; Permit No. 33206D*

The applicant requests a permit to import one captive-bred male Siamang (*Symphalangus syndactylus*) from Safari Niagara in Stevensville, Ontario, Canada, for the purpose of enhancing the survival of the species. This notification is for a single import.

*Applicant: Seneca Park Zoo, Rochester, NY; Permit No. 12348D*

The applicant requests a permit to export two male and three female captive-born ring-tailed lemur (*Lemur catta*) to Bermuda Aquarium, Museum and Zoo, Flatts, Bermuda, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

*Applicant: Brevard Zoo, Melbourne, FL; Permit No. 36852D*

The applicant requests a permit to export a female captive-hatched Komodo dragon (*Varanus komodoensis*) to the Toronto Zoo, Toronto, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

*Applicant: Zoological Society of Pittsburg dba Pittsburg Zoo & PPG Aquarium, Pittsburg, PA; Permit No. 98224C*

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

| Common name | Scientific name |
|---|---|
| Cheetah | *Acinonyx jubatus.* |
| Dama gazelle | *Nanger dama.* |
| Northern white-cheeked gibbon | *Nomascus leucogenys.* |
| Siamang | *Symphalangus syndactylus.* |
| Red-ruffed lemur | *Varecia rubra.* |
| Black-and-white ruffed lemur | *Varecia variegata variegata.* |
| Clouded leopard | *Neofelis nebulosa.* |

*Applicant: Zoo New England, Boston, MA; Permit No. 22280D*

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

| Common name | Scientific name |
|---|---|
| Panamanian golden frog | *Atelopus zeteki.* |
| African dwarf crocodile | *Osteolaemus tetraspis tetraspis.* |
| Jamaican iguana | *Cyclura collei.* |
| Andean condor | *Vultur gryphus.* |
| Red-crowned crane | *Grus japonensis.* |
| Siberian crane | *Grus leucogeranus.* |
| Hooded crane | *Grus monacha.* |
| Black-necked crane | *Grus nigricollis.* |
| White-naped crane | *Grus vipio.* |
| Cabot's tragopan | *Tragopan caboti.* |
| Rothschild's starling (Bali mynah) | *Leucopsar rothschildi.* |
| Tiger | *Panthera tigris.* |
| Snow leopard | *Uncia uncia.* |
| Cotton-top tamarin | *Saguinus oedipus.* |
| Western gorilla | *Gorilla gorilla.* |
| Northern white-cheeked gibbon | *Nomascus leucogenys.* |
| Siamang | *Symphalangus syndactylus.* |
| Ring-tailed lemur | *Lemur catta.* |
| Baird's tapir | *Tapirus bairdii.* |

*Applicant: Julio Rodriguez, Brooklyn, NY; Permit No. 35974D*

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

*Multiple Trophy Applicants*

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

*Applicant: Anthony Osterkamp, Orange, CA; Permit No. 41617D*

*Applicant: Wayne Farnsworth, Newark, OH; Permit No. 42135D*

## IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

## V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2019–13946 Filed 6–28–19; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX19EG00COM0001; OMB Control Number 1028–New]**

### Agency Information Collection Activities; Markup Application

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before August 30, 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–new in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Tatyana DiMascio by email at *tdimascio@usgs.gov,* or by telephone at (303) 202–4206.

**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 are that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract**

Markup Application is the name of the USGS National Geospatial Technical Operations Center project that allows citizen participation in volunteer map data collection activities for hydrography datasets.

The USGS manages the National Hydrography Dataset (NHD), Watershed Boundary Dataset (WBD), and National Hydrography Dataset Plus High Resolution (NHDPlus HR). All three hydrography datasets include user-driven data provided by state stewards or USGS trained editors. The USGS also provides an editing tool, offers technical support, and distributes authoritative hydrography data to the public as part of The National Map.

Markup Application allows citizens to submit proposed changes and corrections, called ''markups,'' to NHD, WBD, or NHDPlus HR by drawing newly proposed features on the map or by filling out a form that explains a suggested change for a selected feature. All submitted markups, along with the user email contact, are saved in a database to be reviewed by NHD or WBD state stewards, or USGS staff, for validation. State stewards or USGS staff may contact the data volunteer via the recorded email address if further clarification is needed for a proposed change. Validated markups go in a queue of edits to be incorporated into the NHD or WBD. The edits are made by NHD or WBD state stewards or USGS editors using established editing tools. No edits to the hydrography datasets take place within the Markup Application.

*Title of Collection:* Markup Application.

*OMB Control Number:* 1028–new.

*Form Number:* None.

*Type of Review:* New.

*Respondents/Affected Public:* General Public.

*Total Estimated Number of Annual Respondents:* 113.

*Total Estimated Number of Annual Responses:* 1821.

*Estimated Completion Time per Response:* 3 minutes.

*Total Estimated Number of Annual Burden Hours:* 91 hours.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Occasional.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kari Craun,**

*Director, National Geospatial Technical Operations Center, U.S. Geological Survey.*

[FR Doc. 2019–14002 Filed 6–28–19; 8:45 am]

BILLING CODE 4338–11–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVC02000 L57000000.BX0000; 241A; MO# 4500132166]**

### Notice of Temporary Closure of Public Land in Washoe County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** As authorized under the provisions of the Federal Land Policy and Management Act of 1976, *et seq.,* the Bureau of Land Management (BLM) is issuing a temporary closure to restrict all public use on certain public land, roads, routes and trails located near Stead, Nevada, for public safety during the Reno Air Racing Association's annual Pylon Racing Seminar events and National Championship Air Races events authorized by a Special Recreation Permit (SRP). The temporary closure is in effect for the Pylon Racing Seminar events which take place annually during a five-day period at the beginning of June, and the National Championship Air Races which take place annually during a nine-day period in September. The temporary closures will take place during these periods of time every year from 2019 to 2023.

**DATES:** The dates for the temporary closures for the Pylon Racing Seminars and the National Championship Air Races will be posted at the Carson City District Office and on the BLM website at the addresses provided below every year at least 30 days prior to the events. The dates are also available upon request.

The closure takes effect upon date of issuance of the SRP and shall remain in effect for the duration of the Reno Air Racing Association's SRP, which will expire on September 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Victoria Wilkins, (775) 885–6000, email: *vwilkins@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 the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The purpose of the temporary closure is to provide for public safety and to ensure that the Reno Air Racing Association can meet Federal Aviation Administration (FAA) requirements for air shows which require spectators to be a certain distance away from the course. A portion of the race course occurs over public lands and there is potential for fallout of planes or plane parts in the event of an accident. This temporary closures apply to all public use, including motorized and non-motorized recreation, casual use, access through public lands, or entry for any other purposes. The public lands affected by the closures are described as follows:

**Mount Diablo Meridian, Nevada**

T. 21 N., R. 19 E.,
Sec. 8, E½ NE¼, NW¼NE¼, and E½SE¼;
Sec. 16, SW¼SW¼NE¼, NW¼, and W½SE¼.

The areas described aggregate 450 acres, in Washoe County, Nevada.

Temporary closure notices and maps of the closure areas will be posted at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, at the BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada, and on the BLM website: *http://www.blm.gov.* Public notification will be provided during the scheduled events and the temporary closure areas will be posted and patrolled by law enforcement. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7 and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above: All public use and entry, whether motorized, on foot, or otherwise, is prohibited.

*Exceptions:* Temporary closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, agency personnel monitoring the event, or other permitted users with written authorization from the authorized officer.

*Penalties:* Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

**Authority:** 43 U.S.C. 1733(a), 43 CFR 8360.0–7 and 43 CFR 8364.1.

**Victoria Wilkins,**
*Acting Field Manager, Sierra Front Field Office.*

[FR Doc. 2019–13966 Filed 6–28–19; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

### Renewals of Information Collections Under the Paperwork Reduction Act

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is seeking comments on the renewal of information collections for the following activities: Compliance and enforcement actions under the Indian Gaming Regulatory Act, as authorized by Office of Management and Budget (OMB) Control Number 3141–0001; approval of tribal ordinances, and background investigation and issuance of licenses, as authorized by OMB Control Number 3141–0003; National Environmental Policy Act submissions, as authorized by OMB Control Number 3141–0006; and issuance to tribes of certificates of self-regulation for Class II gaming, as authorized by OMB Control Number 3141–0008. These information collections all expire on January 31, 2020.

**DATES:** Submit comments on or before August 30, 2019.

**ADDRESSES:** Comments can be mailed, faxed, or emailed to the attention of: Tim Osumi, National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240. Comments may be faxed to (202) 632–7066, and may be sent electronically to *info@nigc.gov,* subject: PRA renewals.

**FOR FURTHER INFORMATION CONTACT:** Tim Osumi at (202) 632–7054; fax (202) 632–7066 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**I. Request for Comments**

You are invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and dollar costs) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is the Commission's policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask in your comment that the Commission withhold your PII from public review, the Commission cannot guarantee that it will be able to do so.

**II. Data**

*Title:* Indian Gaming Compliance and Enforcement.

*OMB Control Number:* 3141–0001.

*Brief Description of Collection:* Although IGRA places primary responsibility with the tribes for regulating their gaming activities, 25 U.S.C. 2706(b) directs the Commission to monitor gaming conducted on Indian lands on a continuing basis. Amongst other actions necessary to carry out the Commission's statutory duties, the Act authorizes the Commission to access and inspect all papers, books, and records relating to gross revenues of a gaming operation. The Act also requires tribes to provide the Commission with annual independent audits of their gaming operations, including audits of all contracts in excess of $25,000. 25 U.S.C. 2710(b)(2)(C), (D); 2710(d)(1)(A)(ii). The Act also authorizes the Commission to ‘‘promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). Part 571 of title 25, Code of Federal Regulations, implements these statutory requirements.

Section 571.7(a) requires Indian gaming operations to keep/maintain permanent books of account and records sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other relevant financial information. Section 571.7(c) requires that these records be kept for at least five years. Under § 571.7(b), the Commission may require a gaming operation to submit statements, reports, accountings, and specific records that will enable the NIGC to determine whether or not such operation is liable for fees payable to the Commission (and in what amount). Section 571.7(d) requires a gaming operation to keep copies of all enforcement actions that a tribe or a state has taken against the operation.

Section 571.12 requires tribes to prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands, and to engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation. Section 571.13 requires tribes to prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits, together with management letter(s) and other documented auditor communications and/or reports as a result of the audit, setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of the fiscal year of each gaming operation, including when a gaming operation changes its fiscal year or when gaming ceases to operate. Section 571.14 requires tribes to reconcile quarterly fee reports with audited financial statements and to keep/maintain this information to be available to the NIGC upon request in order to facilitate the performance of compliance audits.

This information collection is mandatory and allows the Commission to fulfill its statutory responsibilities under IGRA to regulate gaming on Indian lands.

*Respondents:* Indian tribal gaming operations.

*Estimated Number of Respondents:* 931.

*Estimated Annual Responses:* 931.

*Estimated Time per Response:* Depending on the type of information collection, the range of time can vary from 40 burden hours to 1,105 burden hours for one item.

*Frequency of Responses:* 1 per year.

*Estimated Total Annual Burden Hours on Respondents:* 406,905.

*Estimated Total Non-hour Cost Burden:* $34,349,884.

*Title:* Approval of Class II and Class III Ordinances, Background Investigations, and Gaming Licenses.

*OMB Control Number:* 3141–0003.

*Brief Description of Collection:* The Act sets standards for the regulation of gaming on Indian lands, including requirements for the approval or disapproval of tribal gaming ordinances. Specifically, § 2705(a)(3) requires the NIGC Chair to review all class II and class III tribal gaming ordinances. Section 2710 sets forth the specific requirements for the tribal gaming ordinances, including the requirement that there be adequate systems in place: To cause background investigations to be conducted on individuals in key employee and primary management official (PMO) positions (§ 2710(b)(2)(F)(i)); and to provide two prompt notifications to the Commission, including one containing the results of the background investigations before the issuance of any gaming licenses, and the other one of the issuance of such gaming licenses to key employees and PMOs (§ 2710(b)(2)(F)(ii)). In addition, § 2710(d)(2)(D)(ii) requires tribes who have, in their sole discretion, revoked any prior class III ordinance or resolution to submit a notice of such revocation to the NIGC Chair. The Act also authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). Parts 519, 522, 556, and 558 of title 25, Code of Federal Regulations, implement these statutory requirements.

Sections 519.1 and 519.2 require a tribe, management contractor, and a tribal operator to designate an agent for service of process, and § 522.2(g) requires it to be submitted by written notification to the Commission. Section 522.2(a) requires a tribe to submit a copy of an ordinance or resolution certified as authentic, and that meets the approval requirements in 25 CFR 522.4(b) or 522.6. Sections 522.10 and 522.11 require tribes to submit, respectively, an ordinance for the licensing of individually owned gaming operations other than those operating on September 1, 1986, and for the licensing of individually owned gaming operations operating on September 1, 1986. Section 522.3(a) requires a tribe to submit an amendment to an ordinance or resolution within 15 days after adoption of such amendment.

Section 522.2(b)–(h) requires tribes to submit to the Commission: (i) Procedures that the tribe will employ in conducting background investigations on key employees and PMOs, and to ensure that key employees and PMOs are notified of their rights under the Privacy Act; (ii) procedures that the tribe will use to issue licenses to key employees and PMOs; (iii) copies of all tribal gaming regulations; (iv) a copy of any applicable tribal-state compact or procedures as prescribed by the Secretary of the Interior; (v) procedures for resolving disputes between the gaming public and the tribe or the management contractor; and (vi) the identification of the law enforcement agent that will take fingerprints and the procedures for conducting criminal history checks, including a check of criminal history records information maintained by the Federal Bureau of Investigation. Section 522.3(b) requires a tribe to submit any amendment to these submissions within 15 days after adoption of such amendment. Section 522.12(a) requires a tribe to submit to the Commission a copy of an authentic ordinance revocation or resolution.

Section 556.4 requires tribes to mandate the submission of the following information from applicants for key employee and PMO positions: (i) Name(s), Social Security number(s), date and place of birth, citizenship, gender, and languages; (ii) present and past business and employment positions, ownership interests, business and residential addresses, and driver's license number(s); (iii) the names and addresses of personal references; (iv) current business and personal telephone numbers; (v) a description of any existing and previous business relationships with Indian tribes, including ownership interests; (vi) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests; (vii) the name and address of any licensing/regulatory agency with which the person has filed an application for a license or permit related to gaming, even if the license or permit was not granted; (viii) for each ongoing felony prosecution or conviction, the charge, the name and address of the court, and the date and disposition, if any; (ix) for each misdemeanor conviction or ongoing prosecution within the past 10 years, the name and address of the court and the date and disposition; (x) for each criminal charge in the past 10 years that is not otherwise listed, the criminal charge, the name and address of the court, and the date and disposition; (xi) the name and address of any licensing/regulatory agency with which the person has filed an application for an occupational license or permit, even if the license or permit was not granted; (xii) a photograph; and (xiii) fingerprints. Sections 556.2 and 556.3, respectively, require tribes to place a specific Privacy Act notice on their key employee and PMO applications, and to warn applicants regarding the penalty for false statements by also placing a specific false statement notice on their applications.

Sections 556.6(a) and 558.3(e) require tribes to keep/maintain the individuals' complete application files, investigative reports, and eligibility determinations during their employment and for at least three years after termination of their employment. Section 556.6(b)(1) requires tribes to create and maintain an investigative report on each background investigation that includes: (i) The steps taken in conducting a background investigation; (ii) the results obtained; (iii) the conclusions reached; and (iv) the basis for those conclusions. Section 556.6(b)(2) requires tribes to submit, no later than 60 days after an applicant begins work, a notice of results of the applicant's background investigation that includes: (i) The applicant's name, date of birth, and Social Security number; (ii) the date on which the applicant began or will begin work as a key employee or PMO; (iii) a summary of the information presented in the investigative report; and (iv) a copy of the eligibility determination.

Section 558.3(b) requires a tribe to notify the Commission of the issuance of PMO and key employee licenses within 30 days after such issuance. Section 558.3(d) requires a tribe to notify the Commission if the tribe does not issue a license to an applicant, and requires it to forward copies of its eligibility determination and notice of results to the Commission for inclusion in the Indian Gaming Individuals Record System. Section 558.4(e) requires a tribe, after a gaming license revocation hearing, to notify the Commission of its decision to revoke or reinstate a gaming license within 45 days of receiving notification from the Commission that a specific individual in a PMO or key employee position is not eligible for continued employment.

These information collections are mandatory and allow the Commission to carry out its statutory duties.

*Respondents:* Indian tribal gaming operations.

*Estimated Number of Respondents:* 1,597.

*Estimated Annual Responses:* 202,509.

*Estimated Time per Response:* Depending on the type of information collection, the range of time can vary from 1.0 burden hour to 1,483 burden hours for one item.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden Hours on Respondents:* 1,121,340.

*Estimated Total Non-hour Cost Burden:* $3,070,189.

*Title:* NEPA Compliance.

*OMB Control Number:* 3141–0006.

*Brief Description of Collection:* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.,* and the Council on Environmental Quality's (CEQ) implementing regulations, require federal agencies to prepare (or cause to be prepared) environmental documents for agency actions that may have a significant impact on the environment. Under NEPA, an Environmental Assessment (EA) must be prepared when the agency action cannot be categorically excluded, or the environmental consequences of the agency action will not result in a significant impact or the environmental impacts are unclear and need to be further defined. An Environmental Impact Statement (EIS) must be prepared when the agency action will likely result in significant impacts to the environment.

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chair to review and approve third-party management contracts that involve the operation of tribal gaming facilities. 25 U.S.C. 2711. The Commission has taken the position that the NEPA process is triggered when a tribe and a potential contractor seek approval of a management contract. Normally, an EA or EIS and its supporting documents are prepared by an environmental consulting firm and submitted to the Commission by the tribe. In the case of an EA, the Commission independently evaluates the NEPA document, verifies its content, and assumes responsibility for the accuracy of the information contained therein. In the case of an EIS, the Commission directs and is responsible for the preparation of the NEPA document, but the tribe or potential contractor is responsible for paying for the preparation of the document. The information collected includes, but is not limited to, maps, charts, technical studies, correspondence from other agencies (federal, tribal, state, and local), and comments from the public. These information collections are mandatory and allow the Commission to carry out its statutory duties.

*Respondents:* Tribal governing bodies, management companies.

*Estimated Number of Respondents:* 3.

*Estimated Annual Responses:* 3.

*Estimated Time per Response:* Depending on whether the response is an EA or an EIS, the range of time can vary from 2.5 burden hours to 12.0 burden hours for one item.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden Hours on Respondents:* 26.5.

*Estimated Total Non-hour Cost Burden:* $14,846,686.

*Title:* Issuance of Certificates of Self-Regulation to Tribes for Class II Gaming.

*OMB Control Number:* 3141–0008.

*Brief Description of Collection:* The Act sets the standards for the regulation of Indian gaming, including a framework for the issuance of certificates of self-regulation for class II gaming operations to tribes that meet certain qualifications. Specifically, 25 U.S.C. 2710(c) authorizes the Commission to issue a certificate of self-regulation if it determines that a tribe has: (i) Conducted its gaming activity in a manner that has resulted in an effective and honest accounting of all revenues, in a reputation for safe, fair, and honest operation of the activity, and has been generally free of evidence of criminal or dishonest activity; (ii) adopted and is implementing adequate systems for the accounting of all revenues from the activity, for the investigation, licensing, and monitoring of all employees of the gaming activity, and for the investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations; and (iii) conducted the operation on a fiscally and economically sound basis. The Act also authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). Part 518 of title 25, Code of Federal Regulations, implements these statutory requirements.

Section 518.3(e) requires a tribe's gaming operation(s) and the tribal regulatory body (TRB) to have kept all records needed to support the petition for self-regulation for the three years immediately preceding the date of the petition submission. Section 518.4 requires a tribe petitioning for a certificate of self-regulation to submit the following to the Commission, accompanied by supporting documentation: (i) Two copies of a petition for self-regulation approved by the tribal governing body and certified as authentic; (ii) a description of how the tribe meets the eligibility criteria in

§ 518.3; (iii) a brief history of each gaming operation, including the opening dates and periods of voluntary or involuntary closure(s); (iv) a TRB organizational chart; (v) a brief description of the criteria that individuals must meet before being eligible for employment as a tribal regulator; (vi) a brief description of the process by which the TRB is funded, and the funding level for the three years immediately preceding the date of the petition; (vii) a list of the current regulators and TRB employees, their complete resumes, their titles, the dates that they began employment, and if serving limited terms, the expiration date of such terms; (viii) a brief description of the accounting system(s) at the gaming operation that tracks the flow of the gaming revenues; (ix) a list of the gaming activity internal controls at the gaming operation(s); (x) a description of the recordkeeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three-year period immediately preceding the date of the petition; and (xi) the tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance. Section 518.10 requires each Indian gaming tribe that has been issued a certificate of self-regulation to submit to the Commission the following information by April 15th of each year following the first year of self-regulation, or within 120 days after the end of each gaming operation's fiscal year: (i) An annual independent audit; and (ii) a complete resume for all TRB employees hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation.

Submission of the petition and supporting documentation is voluntary. Once a certificate of self-regulation has been issued, the submission of certain other information is mandatory.

*Respondents:* Tribal governments.

*Estimated Number of Respondents:* 7.

*Estimated Annual Responses:* 7.

*Estimated Time per Response:* Depending on the information collection, the range of time can vary from 3.66 burden hours to 1,940 burden hours for one item.

*Frequency of Responses:* Varies.

*Estimated Total Annual Burden Hours on Respondents:* 2,092.

*Estimated Total Non-hour Cost Burden:* $821,545.

Dated: June 26, 2019.

**Christinia Thomas,**

*Chief of Staff (Acting).*

[FR Doc. 2019–14011 Filed 6–28–19; 8:45 am]

**BILLING CODE 7565–01–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1145 (Second Review)]**

## Steel Threaded Rod From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on steel threaded rod from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2019. To be assured of consideration, the deadline for responses is July 31, 2019. Comments on the adequacy of responses may be filed with the Commission by September 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), 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 proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*— On April 14, 2009, the Department of Commerce issued an antidumping duty order on imports of certain steel threaded rod from China (74 FR 17154). Following first five-year reviews by Commerce and the Commission, effective August 19, 2014, Commerce issued a continuation of the antidumping duty order on imports of certain steel threaded rod from China (79 FR 49050). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined a single *Domestic Like Product* consisting of certain steel threaded rod, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined a single *Domestic Industry* consisting of all U.S. producers of certain steel threaded rod.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding 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 information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 12, 2019. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–438, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be Provided in Response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandis*e, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–13855 Filed 6–28–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–415 and 731–TA–933–934 (Third Review)]**

## Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews

pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (''PET film'') from India and the antidumping duty orders on PET film from India and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2019. To be assured of consideration, the deadline for responses is July 31, 2019. Comments on the adequacy of responses may be filed with the Commission by September 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), 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 proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On July 1, 2002, the Department of Commerce issued a countervailing duty order on imports of PET film from India (67 FR 44179) and antidumping duty orders on imports of PET film from India (67 FR 44175) and Taiwan (67 FR 44174). Following the first five-year reviews by Commerce and the Commission, effective May 8, 2008, Commerce issued a continuation of the countervailing duty order on imports of PET film from India (73 FR 26080) and the antidumping duty orders on imports of PET film from India and Taiwan (73 FR 26079). Following the second five-year reviews by Commerce and the Commission, effective August 6, 2014, Commerce issued a continuation of the countervailing duty order on imports of PET film from India and the antidumping duty orders on imports of PET film from India and Taiwan (79 FR 45762). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are India and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of all PET film, not including equivalent PET film (*i.e.,* PET film with a coating of more than 0.00001 inch thick and outside the scope), corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first and second five-year review determinations, the Commission defined the *Domestic Industry* to include all domestic producers of PET film.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding 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 information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 12, 2019. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–437, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information to be Provided in Response to this Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic*

*Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–13856 Filed 6–28–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1021 (Third Review)]**

## Malleable Iron Pipe Fittings From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on malleable iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted July 1, 2019. To be assured of consideration, the deadline for responses is July 31, 2019. Comments on the adequacy of responses may be filed with the Commission by September 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), 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 proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*— On December 12, 2003, the Department of Commerce issued an antidumping duty order on imports of malleable iron pipe fittings from China (68 FR 69376). Following the first five-year reviews by Commerce and the Commission, effective April 22, 2009, Commerce issued a continuation of the antidumping duty order on imports of malleable iron pipe fittings from China (74 FR 18349). Following the second five-year reviews by Commerce and the Commission, effective August 12, 2014, Commerce issued a continuation of the antidumping duty order on imports of malleable iron pipe fittings from China (79 FR 47089). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as malleable iron pipe fittings, other than grooved fittings, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all producers of malleable iron pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding 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 information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 12, 2019. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–436, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be Provided in Response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–13854 Filed 6–28–19; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–990 (Third Review)]**

## Non-Malleable Cast Iron Pipe Fittings From China

### Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on January 2, 2019 (84 FR 14) and determined on April 12, 2019 that it would conduct an expedited review (84 FR 20659, May 10, 2019).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on June 25, 2019. The views of the Commission are contained in USITC Publication 4915 (June 2019), entitled *Non-Malleable Cast Iron Pipe Fittings from China: Investigation No. 731–TA–990 (Third Review).*

By order of the Commission.

Issued: June 25, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–13931 Filed 6–28–19; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## DEPARTMENT OF JUSTICE

## Notice of Lodging of Proposed Consent Decree Under The Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, Emergency Planning and Community Right-To-Know Act, Resource Conservation and Recovery Act, and Clean Water Act

On June 25, 2019, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Michigan in the lawsuit entitled *United States* v. *Dow Silicones Corporation,* Civil Action No. 19–cv–11880. The consent decree addresses alleged violations of several federal environmental laws at a facility in Midland, Michigan operated by Dow Silicones Corporation (''DSC'').

The complaint alleges, *inter alia,* that DSC has violated the following laws: (1) The Clean Air Act (''CAA''), by failing to implement a facility-wide leak detection and repair program, and failing to control emissions of hazardous air pollutants and volatile organic compounds; (2) the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), and the Emergency Planning and Community Right-To-Know Act (''EPCRA''), by failing to report releases of hazardous substances in a timely manner; (3) the Resource Conservation and Recovery Act (''RCRA''), by failing to characterize hazardous waste properly, and by failing to inspect and maintain hazardous waste secondary containment areas adequately; and (4) the Clean Water Act (''CWA''), by failing to comply with the terms and conditions of DSC's National Pollutant Discharge Elimination System permit.

The consent decree requires, *inter alia,* that DSC: (1) Address CAA violations by implementing a facility-wide leak detection and repair program and a CAA compliance plan to remedy violations of the national emissions standards for hazardous air pollutants disclosed by DSC; (2) address RCRA violations by identifying and re-characterizing all hazardous waste streams at the facility, and coating all secondary containment systems for the tanks with an impervious liner or monitoring the systems more frequently; (3) address CWA violations by performing hydraulic capacity and pollutant monitoring studies to evaluate deficiencies in current stormwater management and discharge monitoring, and amending its stormwater pollution prevention plan to reflect enhanced monitoring measures; and (4) address EPCRA/CERCLA violations by revising release reporting and training policies and conducting root cause analyses of releases.

The consent decree would also require that DSC pay a civil penalty of $4.55 million, and perform a package of supplemental environmental projects at an estimated cost of $1.6 million, including monitoring connectors and upgrading and replacing pumps and agitators, which should reduce volatile organic compound emissions, and performing lead abatement projects to protect children from lead-based paint hazards in the Midland area.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Principal Deputy Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Dow Silicones Corporation,* D.J. Ref. No. 90–5–2–1–10469 and 90–5–2–1–10469/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ....... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ......... | Principal Deputy Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $51.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Randall M. Stone,**

*Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2019–13929 Filed 6–28–19; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health State Plans

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Occupational Safety and Health State Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 31, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-1218-009* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** For Further Information Contact: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Occupational Safety and Health State Plans information collection. Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667) offers an opportunity to the states to assume responsibility for the development and enforcement of state standards through the mechanism of an OSHA-approved State Plan. Absent an approved plan, states are precluded from enforcing occupational safety and health standards in the private sector with respect to any issue for which Federal OSHA has promulgated a standard. Once approved and operational, the state adopts standards and provides most occupational safety and health enforcement and compliance assistance in the state under the authority of its plan, instead of Federal OSHA. States also must extend their jurisdiction to cover state and local government employees and may obtain approval of State Plans limited in scope to these workers. To obtain and maintain State Plan approval, a state must submit various documents to OSHA describing program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. OSHA funds 50 percent of the costs required to be incurred by an approved State Plan, with the state at least matching and providing additional funding at its discretion. The agency is requesting an adjustment decrease related to the number of burden hours associated with the developmental steps necessary for certain states in the developmental process, including Maine, Illinois, and Virgin Islands. As a result, the total burden hours have decreased slightly from 11,519 to 11,369. The Occupational Safety and Health Act of 1970 section 18 authorizes this information collection. *See* 29 U.S.C. 651.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0247.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2019 (84 FR 10551).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0247. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Occupational Safety and Health State Plans.

*OMB Control Number:* 1218–0247.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 28.

*Total Estimated Number of Responses:* 1,301.

*Total Estimated Annual Time Burden:* 11,369 hours.

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

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: June 25, 2019.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2019–13977 Filed 6–28–19; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[OMB Control No. 1219–00151]**

### Proposed Extension of Information Collection; Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**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 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles.

**DATES:** All comments must be received on or before August 30, 2019.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0019.

• *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

**FOR FURTHER INFORMATION CONTACT:** Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

A program for regular cleanup and removal of accumulations of coal and float coal dusts, loose coal, and other combustibles is essential to protect miners from explosions. Effective and frequent rock dust application is necessary to protect miners from the potential of a float coal dust explosion or, if one occurs, to reduce its propagation. Section 75.400–2 requires that mine operators establish and maintain a ''program for regular cleanup and removal of accumulations of coal and float coal dusts, loose coal, and other combustibles.'' In addition, the cleanup program must be available to the Secretary or authorized representative.

### II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

**III. Current Actions**

This request for collection of information contains provisions for Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0151.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 203.

*Frequency:* On occasion.

*Number of Responses:* 183.

*Annual Burden Hours:* 281 hours.

*Annual Respondent or Recordkeeper Cost:* $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**Sheila McConnell,**

*Certifying Officer.*

[FR Doc. 2019–13976 Filed 6–28–19; 8:45 am]

**BILLING CODE 4510–43–P**

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[OMB Control No. 1219–0141]**

### Proposed Extension of Information Collection; Emergency Mine Evacuation

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**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 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Emergency Mine Evacuation.

**DATES:** All comments must be received on or before August 30, 2019.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0017.

• *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• *Hand Delivery:* USDOL–Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

**FOR FURTHER INFORMATION CONTACT:** Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA requires each operator of an underground coal mine to submit a Mine Emergency Evacuation and Firefighting Program of Instruction to the District Manager for approval. Upon approval by the MSHA District Manager, the operator uses the approved program of instruction to implement programs for training miners in responding appropriately to mine emergencies. MSHA uses the plans to ensure that the operator's program will provide the required training and drills to all miners. MSHA requires the operator to certify the training and drill for each miner at the completion of each quarterly drill, annual expectations training, or other training, and that a copy be provided to the miner upon request. These certifications are used by MSHA, operators, and miners as evidence that the required training has been completed. MSHA requires that escapeway maps show the SCSR storage locations. Accurate and up-to-date maps are essential to the engineering plans and safe operation of mines and to the health and safety of the miners. MSHA and other emergency evacuation personnel will use the notations on the maps should a rescue or recovery operation be necessary. Miners use the escapeway maps in training and during mine evacuations. Escapeway maps are required to be posted or readily accessible for all miners in each working section, areas where mechanized mining equipment is being installed or removed, at surface locations where miners congregate and in each refuge alternative. MSHA requires that persons that test Self-Contained, Self-Rescuers (SCSRs) certify that the tests were done and record all corrective actions. MSHA inspectors use these records to determine compliance with the standards. It includes requirements for compiling, maintaining, and reporting an inventory of all SCSRs at the mine, and for reporting defects, performance problems, or malfunctions with SCSRs. This will assure that MSHA can investigate SCSR problems, if necessary, notify other users of these problems before accidents occur and require manufacturers to address potential problems with these critical devices.

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Emergency Mine Evacuation. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL–Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

**III. Current Actions**

This request for collection of information contains provisions for Emergency Mine Evacuation. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0141.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 208.

*Frequency:* On occasion.

*Number of Responses:* 1,035,909.

*Annual Burden Hours:* 431,506 hours.

*Annual Respondent or Recordkeeper Cost:* $52,298.

*MSHA Forms:* MSHA Form 2000–222, Self Contained Self Rescuer (SCSR) Inventory and Report.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**Sheila McConnell,**

*Certifying Officer.*

[FR Doc. 2019–13975 Filed 6–28–19; 8:45 am]

**BILLING CODE 4510–43–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Uniform Administrative Requirements, Cost Principles, and Audit Requirements

**AGENCY:** Executive Office of the President, Office of Management and Budget.

**ACTION:** Notice of availability.

**SUMMARY:** This Notice announces the availability of the 2019 OMB Compliance Supplement (2019 Supplement). This Notice also offers interested parties an opportunity to comment on the 2019 Supplement. The 2019 Supplement adds 12 new programs, deleted 3 expired programs and provides updated on many other programs, where necessary. It reduces the compliance areas for auditor review in Part 2 Matrix from a maximum of twelve to six. It adds guidance in Part 3.I, Procurement and Suspension and Debarment and Appendix VII of the Supplement.

**DATES:** The 2019 Supplement replaces the 2017 and 2018 Supplements and applies to audits of fiscal years beginning after June 30, 2018.

**ADDRESSES:** All comments on the 2019 Supplement must be in writing and received by July 30, 2019. Late comments will be considered to the extent practicable. Comments will be reviewed and addressed, when appropriate, in the 2020 Compliance Supplement.

Electronic mail comments may be submitted to: *Hai_M._Tran@omb.eop.gov.* Please include ''2 CFR part 200 Subpart F—Audit Requirements, Appendix XI—Compliance Supplement—2019'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be sent through *http://www.regulations.gov.*

The 2019 Supplement is available online on the OMB home page at *https://www.whitehouse.gov/omb/offices/offm*

**FOR FURTHER INFORMATION CONTACT:** Recipients and auditors should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. The Federal agency contacts are listed in Appendix III of the Supplement. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, at (202) 395–3052.

**SUPPLEMENTARY INFORMATION:** This Notice announces the availability of the 2019 OMB 2 CFR part 200, subpart F—Audit Requirements, Appendix XI—Compliance Supplement (2019 Supplement).

**Timothy F. Soltis,**

*Deputy Controller.*

[FR Doc. 2019–13943 Filed 6–28–19; 8:45 am]

**BILLING CODE 3110–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[(19–038)]**

### Notice of Information Collection; Name of Information Collection: NASA Internship Data Collection Screens: NASA Internship Management System Student-Level Data

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection—existing information collection in use without OMB approval.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Gatrie.Johnson@NASA.gov.*

**SUPPLEMENTARY INFORMATION:**

**Abstract**

The NASA Internship Management System is a comprehensive tool designed to allow student applicants to apply to NASA internship opportunities in a single location. NASA personnel manage the intern selection process and implementation of internship sessions in a single system. Information from the NASA Internship Management System Student-Level Data collection will be used in accordance with the criteria established by NASA for monitoring research and STEM Engagement projects. This information collection is also necessary to provide NASA STEM Engagement projects with information on participants necessary to determine participant eligibility, selection for activity participation, identify accommodations participants may have, and provide other information necessary for effective activity implementation.

## II. Methods of Collection

Online/Web-based.

## III. Data

*Title:* NASA Internship Data Collection Screens: NASA Internship Management System Student-Level Data.

*OMB Number:* 2700–xxxx.

*Type of review:* Existing Information Collection in use without OMB approval.

*Affected Public:* Eligible high school and college students, and/or in-service educators may voluntarily apply for an internship experience at a NASA facility.

*Average Expected Annual Number of Activities:* On average, 3 internship sessions/activities are offered annually (*i.e.,* Spring, Summer and Fall).

*Average Number of Respondents per Activity:* On average, there are 4,666 respondents per internship session/activity.

*Annual Responses:* Approximately 14,000 completed internship applications are submitted annually.

*Frequency of Responses:* 1.

*Average Minutes per Response:* It takes 60 minutes per response on average.

*Burden Hours:* 14,000.

## IV. Request for Comments

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Gatrie Johnson,**

*NASA PRA Clearance Officer.*

[FR Doc. 2019–13909 Filed 6–28–19; 8:45 am]

**BILLING CODE 7510–13–P**

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# NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## National Endowment for the Arts

### 60-Day Notice for the "Blanket Justification for Arts Endowment Funding Application Guidelines and Requirements"

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and the Humanities.

**ACTION:** Notice of proposed collection; comment request.

**SUMMARY:** The National Endowment for the Arts (Arts Endowment), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 is 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 is properly assessed. Currently, the Arts Endowment is soliciting comments concerning the proposed information collection of: Blanket Justification for Arts Endowment Funding Application Guidelines and Reporting Requirements. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. We are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the electronic submission of responses.

**ADDRESSES:** Email comments to Jillian Miller, Director, Office of Guidelines and Panel Operations, National Endowment for the Arts, at *millerj@arts.gov.*

Dated: June 26, 2019.

**Jillian Miller,**

*Director, Office of Guidelines and Panel Operations, National Endowment for the Arts.*

[FR Doc. 2019–13955 Filed 6–28–19; 8:45 am]

**BILLING CODE 7537–01–P**

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# NUCLEAR REGULATORY COMMISSION

**[NRC–2019–0119]**

### Methodology for Modeling Fire Growth and Suppression for Electrical Cabinet Fires in Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG entitled, "Methodology for Modeling Fire Growth and Suppression for Electrical Cabinet Fires in Nuclear Power Plants" (NUREG–2230/EPRI 3002016051). This report is a joint product of the NRC and the Electric Power Research Institute (EPRI) collaborating under a memorandum of understanding for fire research. The purpose of this report is to provide an approach that more closely models the types of fire progressions and response activities observed in operating experience. This report provides a revised set of parameters addressing both the fire growth portion and the suppression response for electrical cabinet fires.

**DATES:** Submit comments by July 31, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0119. 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:** David W. Stroup, Office of Nuclear Regulatory Research, telephone: 301–415–1649, email: *David.Stroup@nrc.gov*; or Nicholas Melly, Office of Nuclear Regulatory Research, telephone: 301–415–2392, email: *Nicholas.Melly@nrc.gov*. Both are staff of the 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–2019–0119 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0119.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The draft NUREG on ''Methodology for Modeling Fire Growth and Suppression Response of Electrical Cabinet Fires in Nuclear Power Plants'' is available in ADAMS under Accession No. ML19163A293.

• *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–2019–0119 in your comment submission.

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

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

## II. Discussion

Over the past decade, modern fire probabilistic risk assessments (PRAs) have been developed using NUREG/CR–6850 (EPRI 1011989), *EPRI/NRC Fire PRA Methodology for Nuclear Power Facilities*. The results show that fire can be a significant portion of the overall site risk profile, however, the methodology was never fully piloted tested before implementation. As a result, some areas of the fire PRAs have been found to be overly conservative resulting in potentially unrealistic results. Additional research is being conducted to improve the tools, methods, and data used for fire PRAs and refine the estimates of risk and close technical gaps in the methodology.

Recent research efforts focused on obtaining more detailed information regarding the fire incidents at nuclear power plants. This data collection has enabled researchers to obtain more details on the fire attributes, timeline, and plant impact. This project specifically reviewed the available electrical cabinet fire incident data in an effort to update the methodology to better reflect the observed operating experience. Insights from the data review served as the basis for amending portions of the fire modeling and suppression response to more accurately align with operating experience.

Specifically, the methodology described in this report provides:

• A conceptual fire event tree progression model developed through a review of insights from the fire event database. From this review, guidance was developed to allow for consistent classification of fire events into two different growth profiles, *Interruptible* and *Growing*.

• Split fractions for *Interruptible* and *Growing fires* for use in the revised detection-suppression event tree.

• A revised electrical cabinet heat release rate (HRR) profile for use in the detailed fire modeling of *Interruptible Fires*. This revised profile includes a pre-growth period of up to 8 minutes of negligible HRR. The treatment for the HRR profile for *Growing* Fires was not modified in this research.

• Revisions to the detection-suppression event tree to include paths for crediting early intervention by plant personnel as well as new parameters to facilitate these revisions. These new parameters include an opportunity to credit detection by general plant personnel.

• An opportunity for main control room (MCR) indications as a means for fire detection when applicable in the detection-suppression event tree.

• New suppression curves for electrical cabinets (Bin 15) applicable to *Interruptible* and *Growing* electrical cabinet fire scenarios.

• New suppression curves for the MCR.

• A new electrical fire suppression curve for use with other non-cabinet electrical ignition sources (*e.g.,* motors, pumps, transformers).

• A probability of automatic smoke detection effectiveness for characterizing the ability of spot type smoke detection devices to operate in a range of geometric conditions and heat release rates. This is necessary for better alignment with operating experience, which suggests that the majority of the fires are detected by plant personnel and MCR indicators instead of automatic smoke detection systems.

• An updated Bin 15 fire frequency that makes use of the fire event data classified in EPRI 3002005302, *Fire Events Database Update for the Period 2010–2014*.

Dated at Rockville, Maryland, this 25th day of June 2019.

For the Nuclear Regulatory Commission.

**Mark H. Salley,**

*Branch Chief, Fire and External Hazards Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.*

[FR Doc. 2019–13928 Filed 6–28–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–293; NRC–2019–0130]**

## Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption in response to a November 16, 2018, request from Entergy Nuclear Operations, Inc. (Entergy or the licensee), for Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, Massachusetts. The proposed action would permit the licensee to use funds from the Pilgrim decommissioning trust fund (the Trust) for management of spent fuel and site restoration activities. The staff is issuing a final environmental assessment and final finding of no significant impact associated with the proposed exemption.

**DATES:** The environmental assessment and finding of no significant impact referenced in this document is available on July 1, 2019.

**ADDRESSES:** Please refer to Docket ID NRC–2019–0130 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0130. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the AVAILABILITY OF DOCUMENTS section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to section 50.12 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' the NRC is considering issuance of an exemption from 10 CFR 50.82(a)(8)(i)(A) for Renewed Facility Operating License No. DPR–35, issued to Entergy for Pilgrim, located in Plymouth County, Massachusetts. The proposed action is in response to the licensee's application for exemption dated November 16, 2018 (ADAMS Accession No. ML18320A037). The exemption would allow the licensee to use funds from the Trust for spent fuel management and site restoration activities, in the same manner that funds from the Trust are used under 10 CFR 50.82(a)(8) for decommissioning activities.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a finding of no significant impact (FONSI).

### II. Environmental Assessment

*Description of the Proposed Action*

The proposed action would partially exempt Entergy from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A). Specifically, the proposed action would allow Entergy to use funds from the Trust for spent fuel management and site restoration activities not associated with radiological decommissioning activities.

The proposed action is also described in the licensee's application dated November 16, 2018 (ADAMS Accession No. ML18320A037).

*Need for the Proposed Action*

By letter dated November 10, 2015 (ADAMS Accession No. ML15328A053), Entergy informed the NRC that it planned to permanently cease power operations at Pilgrim no later than June 1, 2019. Entergy permanently ceased power operations on May 31, 2019. Entergy permanently defueled Pilgrim on June 9, 2019.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decontamination and does not include activities associated with spent fuel management or site restoration. Therefore, exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Entergy to use funds from the Trust for spent fuel management and site restoration activities.

Entergy stated that Table 4 of the application dated November 16, 2018, demonstrates that the Trust contains the amount needed to cover the estimated costs of radiological decommissioning, as well as spent fuel management and site restoration activities. The adequacy of funds in the Trust to cover the costs of activities associated with spent fuel management, site restoration, and radiological decontamination through license termination is supported by the Pilgrim Post-Shutdown Decommissioning Activities Report submitted by Entergy in a letter dated November 16, 2018 (ADAMS Accession No. ML18320A034), as supplemented by letter dated January 9, 2019 (ADAMS Accession No. ML19015A020). The licensee stated that it needs access to the funds in the Trust in excess of those needed for radiological decontamination to support spent fuel management and site restoration activities not associated with radiological decontamination.

In summary, by letter dated November 16, 2018, Entergy requested an exemption from NRC regulations to allow Trust withdrawals for spent fuel management and site restoration activities.

*Environmental Impacts of the Proposed Action*

The proposed action involves regulatory requirements that are of a financial or administrative nature and that do not have an impact on the environment. The NRC has completed its evaluation of the proposed action and concludes that there is reasonable assurance that adequate funds are available in the Trust to complete all activities associated with decommissioning and spent fuel management and site restoration. There would be no decrease in safety associated with the use of the Trust to fund activities associated with spent fuel management and site restoration.

The NRC regulations in 10 CFR 50.82(a)(8)(v) require licensees to submit a financial assurance status report annually between the time of submitting their decommissioning cost estimate until they submit their final radiation survey and demonstrate that residual radioactivity has been reduced to a level that permits termination of the operating license. Section 50.82(a)(8)(vi) of 10 CFR requires that if the sum of the balance of any remaining decommissioning funds, plus expected rate of return, plus any other financial surety mechanism relied upon by the licensee, does not cover the estimated costs to complete the decommissioning, the financial assurance status report must include additional financial assurance to cover the cost of completion. These annual reports provide a means for the NRC to monitor the adequacy of available funding. The proposed exemption would allow Entergy to use funds in excess of those required for radiological decontamination of the site, and the adequacy of Trust funds dedicated for radiological decontamination are not affected by the proposed exemption. Thus, there is reasonable assurance that there will be no environmental effect due to lack of adequate funding for decommissioning.

The proposed action will not significantly increase the probability or consequences of radiological accidents or change the types of effluents released offsite. In addition, there would be no significant increase in the amount of any radiological effluent released offsite, and no significant increase in occupational or public radiation exposure. There would be no materials or chemicals introduced into the plant affecting the characteristics or types of effluents released offsite. In addition, waste processing systems would not be affected by the proposed exemption. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Regarding potential nonradiological impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents, and no changes to the plant's National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region, no air quality impacts, and no potential to affect historic properties. Therefore, there would be no significant nonradiological environment impacts associated with the proposed action.

Accordingly, the NRC concludes that there would be no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action would be similar.

*Alternative Use of Resources*

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

*Agencies or Persons Consulted*

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On May 20, 2019, the NRC notified the Commonwealth of Massachusetts representative of the EA and FONSI.

## III. Finding of No Significant Impact

The licensee has requested an exemption from 10 CFR 50.82(a)(8)(i)(A). The proposed action would allow Entergy to use funds from the Trust for spent fuel management and site restoration activities.

The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. The reason the human environment would not be significantly affected is that the proposed action involves an exemption from requirements that are of a financial or administrative nature that do not have an impact on the human environment. Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA included in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), the related environmental document is the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Pilgrim Nuclear Power Station, Final Report,'' (NUREG–1437, Supplement 29, Volumes 1 and 2, ADAMS Accession Nos. ML071990020 and ML071990027), which provides the latest environmental review of current operations and description of environmental conditions at Pilgrim.

The finding and other related environmental documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly available records are accessible electronically from ADAMS Public Electronic Reading Room on the internet at the NRC's website: *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

## IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Date | Title | ADAMS Accession No. |
|---|---|---|
| 11/16/2018 | Letter from Entergy to NRC titled ''Request for Exemption from 10 50.82(a)(8)(i)(A) | ML18320A037 |
| 11/16/2018 | Letter from Entergy to NRC titled ''Post Shutdown Decommissioning Activities Report Pilgrim Nuclear Power Station''. | ML18320A034 |
| 11/10/2015 | Letter from Entergy to NRC titled ''Notification of Permanent Cessation of Power Operations'' | ML15328A053 |
| 1/2007 | NUREG–1437, Supplement 29, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Pilgrim Nuclear Power Station,'' Volumes 1 and 2. | ML071990020<br>ML071990027 |

Dated at Rockville, Maryland, this 26th day of June, 2019.

For the Nuclear Regulatory Commission.

**Scott P. Wall,**

*Senior Project Manager, Licensing Projects Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2019–13968 Filed 6–28–19; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–047; NRC–2016–0119]**

## Tennessee Valley Authority; Clinch River Nuclear Site

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Early site permit application; notice of hearing.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) will convene an evidentiary session to receive testimony and exhibits in the uncontested proceeding regarding the Tennessee Valley Authority (TVA) early site permit (ESP) application. In its application, TVA proposes to use the Clinch River Nuclear (CRN) Site in Roane County, TN, as a site for two or more small modular reactors (SMRs).

**DATES:** The hearing will be held on August 14, 2019, beginning at 9:00 a.m. Eastern Daylight Savings Time. For the schedule for submitting pre-filed documents and deadlines affecting Interested Government Participants, see Section VI of the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Please refer to Docket ID 52–047 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods: *NRC's Electronic Hearing Docket:* You may obtain publicly available documents related to this hearing online at *http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html.*

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

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

**FOR FURTHER INFORMATION CONTACT:** Denise McGovern, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act of 1954, as amended (the Act), it will convene an evidentiary session to receive testimony and exhibits in the uncontested proceeding regarding TVA's May 12, 2016, ESP application for the CRN site under part 52 of the title 10 of the *Code of Federal Regulations* (10 CFR). TVA proposes to use the CRN site in Roane County, TN, as a site for two or more small modular reactors (*https://www.nrc.gov/reactors/new-reactors/esp/clinch-river.html*). This hearing will concern safety and environmental matters relating to the requested ESP, as more fully described below.

### II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9:00 a.m. Eastern Daylight Savings Time on August 14, 2019, at the U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### III. Presiding Officer

The Commission is the presiding officer for this proceeding.

### IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR 52.24 and 10 CFR 51.105. Findings that must be made for this ESP are as follows:

*Issues Pursuant to the Atomic Energy Act of 1954, as Amended*

The Commission will determine whether (1) the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) any required notifications to other agencies or bodies have been duly made; (3) there is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations; (4) the applicant is technically qualified to engage in any activities authorized; (5) issuance of the permit will not be inimical to the common defense and security or the health and safety of the public; and (6) the findings required by subpart A of 10 CFR part 51 have been made.

*Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended*

The Commission will (1) determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the early site permit should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

### V. Schedule for Submittal of Pre-Filed Documents

No later than July 26, 2019, unless the Commission directs otherwise, the NRC staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than July 26, 2019, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The NRC staff submitted its testimony on June 21, 2019.

The Commission plans to issue written questions on July 12, 2019. Responses to these questions are due on July 26, 2019, unless the Commission directs otherwise.

### VI. Interested Government Participants

No later than July 9, 2019, any interested State, local government body, or affected, federally recognized Indian Tribe may file with the Commission a statement of any issues or questions to which the State, local government body, or Indian Tribe wishes the Commission to give particular attention as part of the proceeding. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system [1] by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the NRC staff and applicant, its inquiries at the oral hearing, and its decision following the hearing. The Commission may also request, by July 11, 2019, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

Dated at Rockville, Maryland, this 26th day of June, 2019.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2019–13988 Filed 6–28–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2019–0067]**

## Information Collection: Reporting of Defects and Noncompliance

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Reporting of Defects and Noncompliance.''

**DATES:** Submit comments by August 30, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Federal Rulemaking website: Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0067. 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 individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** David Cullison, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2019–0067 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0067. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0067 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML19123A214 and ML19123A213.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

*B. Submitting Comments*

Please include Docket ID NRC–2019–0067 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

### II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Reporting of Defects and Noncompliance.
2. *OMB approval number:* 3150–0035.

[1] The process for accessing and using the agency's E-filing system is described in the April 4, 2017, notice of hearing that was issued by the Commission for this proceeding. See Tennessee Valley Authority; Early Site Permit Application for the Clinch River Nuclear Site; Notice of Hearing, Opportunity to Petition for Leave to Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (82 FR 16436). Participants who are unable to use the electronic information exchange (EIE), or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to *hearing.docket@nrc.gov.*

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion. Defects and noncompliances are reportable as they occur.

6. *Who will be required or asked to respond:* Individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, to report Immediately to the NRC the discovery of defects in basic components or failures to comply that could create a substantial safety hazard.

7. *The estimated number of annual responses:* 800 (88 reporting responses + 357 third-party disclosure responses + 355 recordkeepers).

8. *The estimated number of annual respondents:* 355.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 32,083 (6,500 reporting hours + 25,215 hours recordkeeping + 368 hours third party disclosure).

10. *Abstract:* Part 21 of title 10 of the *Code of Federal Regulations* (10 CFR), requires each individual, corporation, partnership, commercial grade dedicating entity, or other entity subject to the regulations in this part to adopt appropriate procedures to evaluate deviations and failures to comply to determine whether a defect exists that could result in a substantial safety hazard. Depending upon the outcome of the evaluation, a report of the defect must be submitted to the NRC. Reports submitted under 10 CFR part 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at the NRC licensed facilities or activities are potentially generic safety problems. These reports have been the basis for the issuance of numerous NRC Generic Communications that have contributed to the improved safety of the nuclear industry. The records required to be maintained in accordance with 10 CFR part 21 are subject to inspection by the NRC to determine compliance with the subject regulation.

## III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 25th day of June 2019.

For the Nuclear Regulatory Commission.

**Kristen E. Benney,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2019–13921 Filed 6–28–19; 8:45 am]

**BILLING CODE 7590–01–P**

# OFFICE OF PERSONNEL MANAGEMENT

## Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from December 1, 2018 to December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

## Schedule A

No Schedule A Authorities to report during December 2018.

## Schedule B

No Schedule B Authorities to report during December 2018.

## Schedule C

The following Schedule C appointing authorities were approved during December 2018.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of Rural Housing Service | Policy Advisor | DA190029 | 12/11/2018 |
| | | Congressional Advisor | DA190039 | 12/20/2018 |
| | Farm Service Agency | State Executive Director | DA190028 | 12/20/2018 |
| | Office of Natural Resources Conservation Service. | Policy Advisor | DA190021 | 12/17/2018 |
| | Office of the Assistant Secretary for Congressional Relations. | Congressional Advisor | DA190030 | 12/11/2018 |
| | Office of the Assistant To the Secretary for Rural Development. | Confidential Assistant | DA190037 | 12/20/2018 |
| | Office of the Secretary | Advance Lead | DA190020 | 12/17/2018 |
| | | Confidential Assistant | DA180178 | 12/20/2018 |
| DEPARTMENT OF COMMERCE | Patent and Trademark Office | Special Advisor for Communications. | DC190021 | 12/17/2018 |
| | Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets. | Senior Advisor for External Affairs | DC190031 | 12/20/2018 |
| DEPARTMENT OF DEFENSE | Office of the Secretary of Defense | Protocol Officer | DD190021 | 12/20/2018 |
| | Office of the General Counsel | Attorney-Advisor (General) | DD190022 | 12/20/2018 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF EDUCATION | Office of Communications and Outreach. | Confidential Assistant (3) | DB190028 | 12/12/2018 |
| | | | DB190027 | 12/20/2018 |
| | | | DB190041 | 12/20/2018 |
| | Office of Elementary and Secondary Education. | Confidential Assistant (2) | DB190037 | 12/12/2018 |
| | | | DB190044 | 12/20/2018 |
| | Office of Legislation and Congressional Affairs. | Special Assistant | DB190032 | 12/11/2018 |
| | | Confidential Assistant | DB190030 | 12/13/2018 |
| | | Director, Office of Legislation and Congressional Affairs. | DB190049 | 12/21/2018 |
| | Office of Postsecondary Education | Special Assistant | DB190016 | 12/03/2018 |
| | Office of Special Education and Rehabilitative Services. | Special Assistant | DB190036 | 12/12/2018 |
| | Office of the Deputy Secretary | Confidential Assistant | DB190018 | 12/12/2018 |
| | | Confidential Assistant | DB190043 | 12/20/2018 |
| | Office of the General Counsel | Attorney Adviser (4) | DB190038 | 12/03/2018 |
| | | | DB190033 | 12/13/2018 |
| | | | DB190031 | 12/17/2018 |
| | | | DB190011 | 12/26/2018 |
| | Office of the Secretary | Confidential Assistant (4) | DB190021 | 12/12/2018 |
| | | | DB190024 | 12/13/2018 |
| | | | DB190022 | 12/17/2018 |
| | | | DB190023 | 12/17/2018 |
| | | Director, White House Liaison | DB190034 | 12/13/2018 |
| | | Special Assistant | DB190025 | 12/13/2018 |
| | Office of the Under Secretary | Executive Director, Center for Faith and Opportunity Initiatives. | DB190029 | 12/13/2018 |
| | | Confidential Assistant | DB190017 | 12/17/2018 |
| DEPARTMENT OF ENERGY | Office of Scheduling and Advance | Scheduling Coordinator | DE190029 | 12/20/2018 |
| | Office of Economic Impact and Diversity. | Senior Advisor on Minority Education. | DE180146 | 12/21/2018 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Assistant Administrator for Land and Emergency Management. | Attorney-Adviser (General) | EP190014 | 12/20/2018 |
| | Office of the Assistant Administrator for Water. | Attorney-Adviser (General) | EP190015 | 12/13/2018 |
| | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Director for Oversight | EP190004 | 12/04/2018 |
| | | Special Advisor for the Office of Congressional Affairs. | EP180079 | 12/20/2018 |
| | Region VII—Lenexa, Kansas | Renewable Fuels Advisor | EP190013 | 12/11/2018 |
| GENERAL SERVICES ADMINISTRATION. | Office of Governmentwide Policy | Senior Advisor for Governmentwide Policy. | GS190012 | 12/20/2018 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Secretary | Advisor | DH190026 | 12/11/2018 |
| | Office of the Assistant Secretary for Legislation. | Deputy Assistant Secretary for Legislation for Discretionary (Public Health and Science). | DH190030 | 12/17/2018 |
| | Office of Intergovernmental and External Affairs. | Regional Director, New York, New York, Region II. | DH180172 | 12/20/2018 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the General Counsel | Oversight Counsel | DM190046 | 12/11/2018 |
| | Office of the Assistant Secretary for Policy. | Confidential Assistant for Border, Immigration and Trade Policy. | DM190045 | 12/20/2018 |
| | Office of United States Customs and Border Protection. | Oversight Counsel | DM190058 | 12/20/2018 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of the Administration | Advance Coordinator | DU190020 | 12/20/2018 |
| | Office of Housing | Deputy Assistant Secretary for Operations. | DU190021 | 12/20/2018 |
| DEPARTMENT OF THE INTERIOR | Office of the Assistant Secretary—Indian Affairs. | Special Assistant | DI190005 | 12/13/2018 |
| | Office of the Solicitor | Counselor | DI190009 | 12/17/2018 |
| DEPARTMENT OF JUSTICE | Office of Public Affairs | Chief Speechwriter and Media Affairs Specialist. | DJ190024 | 12/11/2018 |
| DEPARTMENT OF LABOR | Office of Bureau of International Labor Affairs. | Policy Advisor | DL180127 | 12/21/2018 |
| OFFICE OF MANAGEMENT AND BUDGET. | Office of Natural Resource Programs. | Confidential Assistant | BO190004 | 12/17/2018 |
| SECURITIES AND EXCHANGE COMMISSION. | Office of the Chairman | Senior Policy Adviser, Regulatory Reporting. | SE190001 | 12/11/2018 |
| DEPARTMENT OF STATE | Office of Policy Planning | Staff Assistant | DS190015 | 12/17/2018 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Assistant Secretary for Governmental Affairs. | Senior Governmental Affairs Officer. | DT180082 | 12/11/2018 |
| | Office of the Assistant Secretary for Transportation Policy. | Director of Public Engagement | DT190005 | 12/13/2018 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of the Secretary | Special Assistant for Strategic Initiatives. | DT190009 | 12/13/2018 |
| | | Senior Advisor | DT190007 | 12/17/2018 |
| DEPARTMENT OF VETERANS AFFAIRS. | Office of the Secretary and Deputy | White House Liaison | DV190013 | 12/11/2018 |
| | | Special Assistant | DV190014 | 12/11/2018 |

The following Schedule C appointing authorities were revoked during December 2018.

| Agency name | Organization name | Position title | Request No. | Date vacated |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Assistant Secretary for Congressional Relations. | Senior Advisor | DA170186 | 12/08/2018 |
| | Office of the Secretary | Staff Assistant | DA180143 | 12/08/2018 |
| | Office of Rural Housing Service | State Director—Florida | DA180074 | 12/09/2018 |
| DEPARTMENT OF EDUCATION | Office of Elementary and Secondary Education. | Confidential Assistant | DB180045 | 12/08/2018 |
| | Office of the Under Secretary | Special Assistant (Supervisory) | DB180008 | 12/22/2018 |
| | Office of the Deputy Secretary | Confidential Assistant | DB180048 | 12/22/2018 |
| | Office of the Secretary | Confidential Assistant | DB180049 | 12/22/2018 |
| DEPARTMENT OF ENERGY | Office of Management | Senior Congressional Correspondence Advisor. | DE180068 | 12/08/2018 |
| | Office of the Assistant Secretary for Congressional and Intergovernmental Affairs. | Director of External Affairs | DE170225 | 12/22/2018 |
| | Office of National Nuclear Security Administration. | Director of Congressional Affairs | DE180110 | 12/22/2018 |
| | Office of Economic Impact and Diversity. | Special Advisor | DE180033 | 12/22/2018 |
| | Office of the Secretary of Energy Advisory Board. | Deputy Director, Office of Secretarial Boards and Councils. | DE180029 | 12/29/2018 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Global Affairs | Chief of Staff | DH170307 | 12/08/2018 |
| | Office of Administration for Children and Families. | Confidential Assistant | DH180164 | 12/18/2018 |
| | Office of the Secretary | Policy Advisor | DH180177 | 12/22/2018 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Fair Housing and Equal Opportunity. | Senior Advisor | DU170159 | 12/09/2018 |
| DEPARTMENT OF JUSTICE | Office of Public Affairs | Media Affairs Specialist | DJ180036 | 12/15/2018 |
| | | Program Event Press Specialist | DJ180061 | 12/15/2018 |
| DEPARTMENT OF THE TREASURY. | Department of the Treasury | Deputy Chief of Staff | DY170145 | 12/10/2018 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Assistant Secretary for Governmental Affairs. | Senior Governmental Affairs Officer. | DT180083 | 12/28/2018 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Special Assistant to the Deputy Associate Administrator for Congressional Relations. | EP170063 | 12/22/2018 |
| SMALL BUSINESS ADMINISTRATION. | Office of Field Operations | Regional Administrator for Region X. | SB170045 | 12/11/2018 |
| | Office of Administration | Director of Scheduling and External Affairs. | SB180014 | 12/21/2018 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2019–13937 Filed 6–28–19; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

## Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from January 1, 2019 to January 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

**Schedule A**

No Schedule A Authorities to report during January 2019.

**Schedule B**

No Schedule B Authorities to report during January 2019.

**Schedule C**

The following Schedule C appointing authorities were approved during January 2019.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF COMMERCE | Office of the Assistant Secretary for Industry and Analysis. | Director, Office of Industry Engagement. | DC190034 | 01/29/2019 |
| DEPARTMENT OF DEFENSE | Office of the Secretary of Defense | Defense Fellow | DD190027 | 01/25/2019 |
| | Washington Headquarters Services | Defense Fellow | DD190017 | 01/23/2019 |
| | | Attorney-Advisor (General) | DD190031 | 01/25/2019 |
| | | Special Assistant | DD190032 | 01/25/2019 |
| DEPARTMENT OF EDUCATION | Office for Civil Rights | Confidential Assistant for Policy | DB190040 | 01/25/2019 |
| | | Confidential Assistant | DB190056 | 01/30/2019 |
| | Office of Legislation and Congressional Affairs. | Confidential Assistant | DB190046 | 01/25/2019 |
| | Office of Special Education and Rehabilitative Services. | Special Assistant | DB190053 | 01/17/2019 |
| | Office of the General Counsel | Attorney Adviser | DB190047 | 01/25/2019 |
| | Office of the Secretary | Special Assistant | DB190020 | 01/17/2019 |
| | | Confidential Assistant (2) | DB190019 | 01/25/2019 |
| | | | DB190042 | 01/25/2019 |
| DEPARTMENT OF ENERGY | Office of Cybersecurity, Energy Security and Emergency Response. | Chief of Staff | DE190037 | 01/25/2019 |
| | Office of Public Affairs | Writer-Editor (Speechwriter) | DE190034 | 01/30/2019 |
| | Office of Scheduling and Advance | Senior Advisor for Strategic Planning. | DE190036 | 01/25/2019 |
| | Office of the Assistant Secretary for Energy Efficiency and Renewable Energy. | Senior Advisor | DE190035 | 01/25/2019 |
| | Office of the Under Secretary of Energy. | Senior Advisor | DE190033 | 01/25/2019 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of Public Affairs | Public Affairs Specialist (2) | EP190019 | 01/30/2019 |
| | | | EP190026 | 01/30/2019 |
| | Office of the Administrator | Senior Advisor | EP190023 | 01/30/2019 |
| | Office of the Assistant Administrator for Water. | Special Assistant | EP190009 | 01/30/2019 |
| GENERAL SERVICES ADMINISTRATION. | Office of Congressional and Intergovernmental Affairs. | Congressional Policy Analyst | GS190014 | 01/30/2019 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Administration for Children and Families. | Director of Legislative Affairs | DH190057 | 01/28/2019 |
| | Office of Global Affairs | Chief of Staff | DH190044 | 01/17/2019 |
| | | Senior Advisor | DH190043 | 01/25/2019 |
| | Office of the Assistant Secretary for Financial Resources. | Director of Congressional Relations | DH190037 | 01/29/2019 |
| | Office of the Assistant Secretary for Legislation. | Advisor | DH190035 | 01/25/2019 |
| | | Director of Congressional Liaison | DH190034 | 01/29/2019 |
| | Office of the Assistant Secretary for Public Affairs. | Assistant Speechwriter | DH190050 | 01/25/2019 |
| | Office of the Secretary | Advance Representative | DH190029 | 01/25/2019 |
| | | Advisor | DH190053 | 01/25/2019 |
| | | Special Assistant | DH190062 | 01/29/2019 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Executive Secretariat | Briefing Book Coordinator | DM190027 | 01/19/2019 |
| | Federal Emergency Management Agency. | Special Assistant | DM190055 | 01/29/2019 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Congressional and Intergovernmental Relations. | Senior Advisor | DU190018 | 01/30/2019 |
| DEPARTMENT OF JUSTICE | Office of Antitrust Division | Chief of Staff and Senior Counsel | DJ190007 | 01/30/2019 |
| DEPARTMENT OF LABOR | Bureau of International Labor Affairs. | Chief of Staff | DL190007 | 01/25/2019 |
| | Office of Employee Benefits Security Administration. | Senior Policy Advisor | DL190025 | 01/25/2019 |
| | Office of Employment and Training Administration. | Policy Advisor | DL190030 | 01/25/2019 |
| | Office of Occupational Safety and Health Administration. | Chief of Staff | DL190018 | 01/25/2019 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of Congressional and Intergovernmental Affairs. | Senior Legislative Officer (2) | DL190027 | 01/25/2019 |
| | | | DL190032 | 01/25/2019 |
| | Office of Disability Employment Policy. | Chief of Staff | DL190023 | 01/17/2019 |
| | | Special Assistant | DL190034 | 01/17/2019 |
| | Office of Public Liaison | Deputy Director, Office of Public Liaison. | DL190029 | 01/25/2019 |
| | Office of Wage and Hour Division | Senior Policy Advisor (2) | DL190031 | 01/25/2019 |
| | | | DL190020 | 01/28/2019 |
| | Office of Women's Bureau | Deputy Director Women's Bureau | DL190011 | 01/29/2019 |
| OFFICE OF MANAGEMENT AND BUDGET. | Office of the General Counsel | Deputy for Oversight | BO190005 | 01/15/2019 |
| SECURITIES AND EXCHANGE COMMISSION. | Office of the Chairman | Confidential Assistant | SE190002 | 01/28/2019 |
| DEPARTMENT OF STATE | Bureau of Legislative Affairs | Deputy Assistant Secretary | DS190022 | 01/29/2019 |
| | Bureau of Western Hemisphere Affairs. | Deputy Assistant Secretary | DS190021 | 01/29/2019 |
| | | Senior Advisor | DS190023 | 01/29/2019 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Assistant Secretary for Governmental Affairs. | Senior Governmental Affairs Officer. | DT190021 | 01/25/2019 |
| | Office of the Secretary | Special Assistant for Advance | DT190024 | 01/29/2019 |
| DEPARTMENT OF THE TREASURY. | Secretary of the Treasury | Special Assistant | DY190023 | 01/29/2019 |

The following Schedule C appointing authorities were revoked during January 2019.

| Agency name | Organization name | Position title | Request No. | Date vacated |
|---|---|---|---|---|
| COMMODITY FUTURES TRADING COMMISSION. | Office of the Chairperson | Market Intelligence Advisor | CT170008 | 01/04/2019 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Intergovernmental and External Affairs. | Senior Advisor | DH180242 | 01/04/2019 |
| | Office of Administration for Community Living. | Advisor | DH170234 | 01/13/2019 |
| | Office of the Deputy Secretary | Assistant to the Deputy Secretary | DH180038 | 01/13/2019 |
| | Office of Global Affairs | Senior Policy Advisor | DH180133 | 01/19/2019 |
| DEPARTMENT OF JUSTICE | Office of Public Affairs | Lead Media Affairs Coordinator | DJ180148 | 01/05/2019 |
| | Office of Civil Rights Division | Counsel | DJ180108 | 01/31/2019 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of Communications | Senior Advisor/Press Secretary | NN180018 | 01/11/2019 |
| SMALL BUSINESS ADMINISTRATION. | Office of the Administrator | Scheduler | SB180041 | 01/05/2019 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2019–13938 Filed 6–28–19; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

## Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from February 1, 2019 to February 28, 2019.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No Schedule A Authorities to report during February 2019.

### Schedule B

No Schedule B Authorities to report during February 2019.

### Schedule C

The following Schedule C appointing authorities were approved during February 2019.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Assistant Secretary for Congressional Relations. | Senior Congressional Advisor | DA190040 | 02/05/2019 |
| | | Special Assistant | DA190058 | 02/13/2019 |
| | Food and Nutrition Service | Confidential Assistant | DA190046 | 02/06/2019 |
| | Office of Communications | Press Assistant | DA190047 | 02/22/2019 |
| | Office of Under Secretary for Natural Resources and Environment. | Staff Assistant | DA190041 | 02/06/2019 |
| DEPARTMENT OF COMMERCE | Bureau of Industry and Security | Policy Advisor | DC190050 | 02/22/2019 |
| | Office of the Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets. | Senior Advisor for United States and Foreign Commercial Service. | DC190040 | 02/13/2019 |
| | Office of Policy and Strategic Planning. | Policy Assistant | DC190036 | 02/06/2019 |
| | Office of Public Affairs | Speechwriter and Press Assistant | DC190048 | 02/22/2019 |
| | Office of the Chief Financial Officer and Assistant Secretary for Administration. | Confidential Assistant | DC190027 | 02/01/2019 |
| | Office of the General Counsel | Special Advisor | DC190038 | 02/14/2019 |
| DEPARTMENT OF DEFENSE | Office of the Under Secretary of Defense (Policy). | Special Assistant (2) | DD190057 | 02/22/2019 |
| | | | DD190060 | 02/22/2019 |
| DEPARTMENT OF EDUCATION | Office of Legislation and Congressional Affairs. | Confidential Assistant | DB190061 | 02/13/2019 |
| | Office of Communications and Outreach. | Special Assistant (Supervisory) | DB190063 | 02/22/2019 |
| | | Confidential Assistant | DB190065 | 02/22/2019 |
| DEPARTMENT OF ENERGY | Office of the Assistant Secretary for Congressional and Intergovernmental Affairs. | Special Assistant | DE190053 | 02/04/2019 |
| | Office of the Assistant Secretary for International Affairs. | Special Assistant | DE190041 | 02/01/2019 |
| | Office of National Nuclear Security Administration. | Director of Congressional Affairs | DE190054 | 02/13/2019 |
| | Office of Cybersecurity, Energy Security and Emergency Response. | Special Assistant | DE190062 | 02/27/2019 |
| | Office of General Counsel | Special Assistant | DE190059 | 02/28/2019 |
| | Office of Technology Transition | Senior Advisor | DE190060 | 02/28/2019 |
| | Office of the Secretary | Special Assistant | DE190057 | 02/28/2019 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of Public Affairs | Deputy Associate Administrator for Regional Affairs. | EP190022 | 02/04/2019 |
| | Office of the Administrator | Senior Advisor | EP190029 | 02/11/2019 |
| | | Senior Advisor for Health and Human Safety. | EP190016 | 02/26/2019 |
| | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Attorney-Advisor (General) | EP190034 | 02/22/2019 |
| | | Special Advisor for the Office of Congressional and Intergovernmental Affairs. | EP190042 | 02/26/2019 |
| | Office of the Chief Financial Officer | Associate Chief Financial Officer for Policy. | EP190033 | 02/22/2019 |
| | Office of the General Counsel | Attorney-Advisor (General) (2) | EP190035 | 02/22/2019 |
| | | | EP190038 | 02/28/2019 |
| | Region II—New York, New York | Senior Advisor | EP190040 | 02/28/2019 |
| | Region V—Chicago, Illinois | Senior Advisor for Water | EP190025 | 02/11/2019 |
| FEDERAL ENERGY REGULATORY COMMISSION. | Office of Commissioner McNamee | Senior Technical Advisor | DR190003 | 02/22/2019 |
| | Office of the Chairman | Senior Public Affairs Specialist | DR190004 | 02/28/2019 |
| FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION. | Federal Mine Safety and Health Review Commission. | Confidential Assistant | FR190002 | 02/26/2019 |
| GENERAL SERVICES ADMINISTRATION. | Northwest/Arctic Region | Senior Advisor | GS190015 | 02/06/2019 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Administration for Community Living. | Advisor | DH190059 | 02/12/2019 |
| | Office of Food and Drug Administration. | Director of Communications | DH190063 | 02/22/2019 |
| | Office of Administration for Children and Families. | Senior Advisor for Communications | DH190070 | 02/11/2019 |
| | | Chief of Staff | DH190075 | 02/27/2019 |
| | Office of Intergovernmental and External Affairs. | Senior Advisor | DH190025 | 02/27/2019 |
| | Office of the Assistant Secretary for Preparedness and Response. | Senior Policy Advisor | DH190054 | 02/28/2019 |
| | Office of the Assistant Secretary for Public Affairs. | Advisor—Strategic Communications. | DH190068 | 02/15/2019 |
| | Office of the Deputy Secretary | Assistant | DH190067 | 02/11/2019 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of Assistant Secretary for Legislative Affairs. | Senior Advisor | DM190074 | 02/12/2019 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Fair Housing and Equal Opportunity. | Senior Advisor | DU190023 | 02/06/2019 |
| | Office of Field Policy and Management. | Special Assistant | DU190024 | 02/06/2019 |
| | | Regional Administrator | DU190028 | 02/06/2019 |
| | Office of the General Counsel | Senior Counsel (2) | DU190031 | 02/11/2019 |
| | | | DU190035 | 02/22/2019 |
| | | Paralegal Specialist | DU190036 | 02/22/2019 |
| | Office of the Secretary | Special Policy Assistant | DU190037 | 02/26/2019 |
| | Office of Policy Development and Research. | Special Policy Advisor | DU190038 | 02/26/2019 |
| DEPARTMENT OF THE INTERIOR | Office of the Assistant Secretary—Land and Minerals Management. | Advisor | DI190021 | 02/13/2019 |
| | Office of the Assistant Secretary—Water and Science. | Senior Advisor | DI190016 | 02/26/2019 |
| DEPARTMENT OF JUSTICE | Office of Legal Policy | Counsel | DJ190029 | 02/11/2019 |
| | Office of Public Affairs | Media Affairs Specialist | DJ190026 | 02/13/2019 |
| | Executive Office for United States Attorneys. | Secretary | DJ190016 | 02/27/2019 |
| DEPARTMENT OF LABOR | Office of Workers Compensation Programs. | Chief of Staff | DL190014 | 02/06/2019 |
| | Office of Congressional and Intergovernmental Affairs. | Senior Legislative Officer | DL190026 | 02/06/2019 |
| | Office of Employment and Training Administration. | Chief of Staff | DL190021 | 02/12/2019 |
| | Office of the Assistant Secretary for Policy. | Counsel and Policy Advisor | DL190017 | 02/13/2019 |
| MERIT SYSTEMS PROTECTION BOARD. | Office of the General Counsel | Confidential Assistant | MP190004 | 02/28/2019 |
| | | Special Assistant | MP190005 | 02/28/2019 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of the Deputy Administrator | Special Assistant | NN190015 | 02/06/2019 |
| NATIONAL TRANSPORTATION SAFETY BOARD. | Office of Board Members | Special Assistant | TB190001 | 02/12/2019 |
| OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE. | Office of Congressional Affairs | Director of Congressional Affairs | TN190002 | 02/22/2019 |
| SMALL BUSINESS ADMINISTRATION. | Office of the Administrator | Director of Scheduling | SB190006 | 02/06/2019 |
| | Office of Communications and Public Liaison. | Digital Director | SB190009 | 02/13/2019 |
| DEPARTMENT OF STATE | Bureau of Economic and Business Affairs. | Senior Advisor | DS190025 | 02/06/2019 |
| | | Special Assistant | DS190039 | 02/27/2019 |
| | Bureau of Education and Cultural Affairs. | Special Advisor | DS190030 | 02/04/2019 |
| | Bureau of Public Affairs | Press Secretary | DS190033 | 02/13/2019 |
| | Office of the Chief of Protocol | Protocol Officer | DS190028 | 02/11/2019 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Assistant Secretary for Governmental Affairs. | Senior Governmental Affairs Officer. | DT190033 | 02/01/2019 |
| | Office of the Secretary | Special Assistant for Scheduling and Advance. | DT190025 | 02/27/2019 |
| | Office of the Assistant Secretary for Transportation Policy. | Special Assistant for Public Engagement. | DT190037 | 02/27/2019 |
| | Office of the Assistant Secretary for Budget and Programs. | Special Assistant for Budget and Programs. | DT190043 | 02/28/2019 |
| DEPARTMENT OF VETERANS AFFAIRS. | Office of the General Counsel | Counselor (Healthcare) | DV190032 | 02/01/2019 |
| | Office of the Secretary and Deputy | White House Liaison | DV190033 | 02/14/2019 |

The following Schedule C appointing authorities were revoked during February 2019.

| Agency name | Organization name | Position title | Request No. | Date vacated |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Farm Service Agency | State Executive Director—Washington. | DA170190 | 02/02/2019 |
| | Office of the Assistant Secretary for Congressional Relations. | Policy Advisor | DA170167 | 02/02/2019 |
| | Office of the Secretary | Confidential Assistant | DA180115 | 02/08/2019 |
| DEPARTMENT OF COMMERCE | Office of the Chief of Staff | Confidential Assistant | DC180210 | 02/15/2019 |
| | Immediate Office | Special Advisor to the Secretary and Director of the Immediate Office of the Secretary. | DC180001 | 02/16/2019 |

| Agency name | Organization name | Position title | Request No. | Date vacated |
|---|---|---|---|---|
| | Office of the Assistant Secretary for Economic Development. | Legislative Affairs Specialist | DC190010 | 02/16/2019 |
| | Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets. | Senior Advisor | DC170134 | 02/27/2019 |
| OFFICE OF THE SECRETARY OF DEFENSE. | Office of the Assistant Secretary of Defense (Homeland Defense and Global Security). | Special Assistant to Deputy Assistant Secretary of Defense (Cyber). | DD170198 | 02/02/2019 |
| | Office of the Secretary of Defense | Advance Officer | DD180027 | 02/02/2019 |
| | | Protocol Officer | DD180018 | 02/02/2019 |
| | Office of the Under Secretary of Defense (Policy). | Special Assistant to the Deputy Assistant Secretary of Defense (Europe and North Atlantic Treaty Organization). | DD180024 | 02/02/2019 |
| DEPARTMENT OF EDUCATION | Office for Civil Rights | Confidential Assistant | DB170112 | 02/02/2019 |
| | Office of Elementary and Secondary Education. | Senior Advisor | DB190006 | 02/02/2019 |
| | Office of the Secretary | Confidential Assistant (Protocol) | DB180041 | 02/02/2019 |
| | Office of the Under Secretary | Executive Director | DB180029 | 02/02/2019 |
| DEPARTMENT OF ENERGY | Office of Assistant Secretary for Electricity Delivery and Energy Reliability. | Senior Advisor for External Affairs | DE180024 | 02/02/2019 |
| | Office of Assistant Secretary for Energy Efficiency and Renewable Energy. | Special Advisor | DE170169 | 02/02/2019 |
| | Office of Management | Director of Scheduling | DE170124 | 02/02/2019 |
| | Office of Assistant for Congressional and Intergovernmental Affairs. | Special Assistant | DE180144 | 02/16/2019 |
| | Office of the Assistant Secretary for Fossil Energy. | Senior Advisor | DE180060 | 02/16/2019 |
| | Office of the Secretary | Special Assistant | DE180118 | 02/16/2019 |
| | Office of the Under Secretary for Science. | Senior Advisor | DE180048 | 02/16/2019 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Assistant Secretary for Financial Resources. | Deputy Assistant Secretary, Congressional Relations. | DH180168 | 02/02/2019 |
| | Office of the Assistant Secretary for Health. | Senior Policy Advisor | DH180103 | 02/02/2019 |
| | Office of the General Counsel | Associate Deputy General Counsel | DH180049 | 02/02/2019 |
| | Office of the Secretary | Special Assistant | DH180160 | 02/02/2019 |
| | Office of Administration for Children and Families. | Chief of Staff | DH180218 | 02/03/2019 |
| | Office of Health Resources and Services Administration, Office of the Administrator. | Policy Advisor | DH170346 | 02/16/2019 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Community Planning and Development. | Special Policy Advisor | DU180037 | 02/17/2019 |
| | Office of Congressional and Intergovernmental Relations. | Advisor for Intergovernmental Relations. | DU180042 | 02/02/2019 |
| | | Senior Advisor | DU170118 | 02/16/2019 |
| | Office of Field Policy and Management. | Special Assistant | DU180033 | 02/16/2019 |
| | Office of Housing | Chief of Staff | DU180055 | 02/02/2019 |
| | Office of Public Affairs | Press Secretary | DU180021 | 02/16/2019 |
| | Office of the Deputy Secretary | Senior Executive Officer | DU190015 | 02/04/2019 |
| DEPARTMENT OF JUSTICE | Office of Antitrust Division | Counsel | DJ170152 | 02/02/2019 |
| | Office of the Associate Attorney General. | Senior Counsel | DJ180139 | 02/08/2019 |
| | Office of the Attorney General | Confidential Assistant | DJ180114 | 02/07/2019 |
| | | Special Assistant | DJ180101 | 02/28/2019 |
| | Office of the Environment and Natural Resources Division. | Chief of Staff and Counsel | DJ180032 | 02/12/2019 |
| DEPARTMENT OF LABOR | Office of the Secretary | Counsel to the Secretary | DL170059 | 02/16/2019 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of Public Affairs | Press Secretary | EP180006 | 02/02/2019 |
| | | Deputy Associate Administrator for State and Regional Affairs. | EP170085 | 02/16/2019 |
| | Office of the Assistant Administrator for Land and Emergency Management. | Senior Advisor to the Administrator for Land and Emergency Management. | EP170067 | 02/16/2019 |
| | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Deputy Associate Administrator for Congressional Relations. | EP170053 | 02/15/2019 |

| Agency name | Organization name | Position title | Request No. | Date vacated |
|---|---|---|---|---|
| FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION. | Federal Mine Safety and Health Review Commission. | Confidential Assistant | FR180002 | 02/22/2019 |
| GENERAL SERVICES ADMINISTRATION. | Office of Congressional and Intergovernmental Affairs. | Communications Advisor | GS170044 | 02/02/2019 |
| SMALL BUSINESS ADMINISTRATION. | Office of the Administrator | White House Liaison | SB180038 | 02/23/2019 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2019–13939 Filed 6–28–19; 8:45 am]

BILLING CODE 6325–39–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2019–158 and CP2019–177]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* July 3, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–158 and CP2019–177; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 63 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 25, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* July 3, 2019.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2019–13965 Filed 6–28–19; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No 34–86197; File No. SR–MIAX–2019–30]**

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515, Execution of Orders and Quotes

June 25, 2019.

Pursuant to the provisions of 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 18, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 515, Execution of Orders and Quotes, to add additional detail and make clarifying changes to the rule.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**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 amend Exchange Rule 515, Execution of Orders and Quotes, to add additional detail and make clarifying changes to the rule. Specifically, the Exchange proposes to make a number of minor non-substantive edits to references to ''Rule 515'' or ''Exchange Rule 515'' throughout the rule text. Currently, there are several references in Exchange Rule 515 where the rule refers back to itself generally as ''Rule 515'' or ''Exchange Rule 515.'' The Exchange proposes to amend all general references in Exchange Rule 515 that are to ''Rule 515'' or ''Exchange Rule 515'' that do not refer to any particular section or paragraph to be replaced with ''this Rule'' in order to provide consistency and clarity within the rule text. The proposed changes would be to references to ''Rule 515'' or ''Exchange Rule 515'' that are currently in the following sections in Exchange Rule 515: Paragraph (a); paragraph (c); subsection (c)(1)(i); subsection (c)(1)(ii)(A); subsection (c)(2)(i)(B); and Interpretation and Policy .04.

Next, the Exchange proposes to amend paragraph (c) of Exchange Rule 515, Non-Market Maker Orders That Could Not Be Executed or Could Not Be Executed in Full at the Original NBBO [3] Upon Receipt, subsection (3)(i)(C), to clarify the System's [4] behavior when certain conditions arise during a liquidity refresh pause. Paragraph (c) provides a definition of ''initiating order'' and ''original NBBO'' for the purposes of Exchange Rule 515 as follows. The term ''initiating order'' will be used to refer to (i) the incoming order that could not be executed, (ii) the order reevaluated by the System for execution that could not be executed, or (iii) the remaining contracts of the incoming order or reevaluated order that could not be executed in full. The term ''original NBBO'' will be used to refer to the NBBO that existed at time of receipt of the initiating order or the NBBO at time of reevaluation of an order pursuant to Exchange Rule 515.

Subsection (c)(3), Liquidity Refresh Pause for Exhausted Market Maker [5] Quotes, provides that the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO [6] to be received (''liquidity refresh pause'') [7] when at the time of receipt or reevaluation of the initiating order by the System: (A) Either the initiating order is a limit order whose limit price crosses the NBBO or the initiating order is a market order, and the limit order or market order could only be partially executed; (B) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (C) and the Market Maker quote was exhausted.[8]

As described in the Exchange's current subsection (c)(3)(i)(C), during the liquidity refresh pause, if the Exchange receives a new order or quote on the same side of the market as the initiating order's remaining contracts, which locks or crosses the original NBBO, the liquidity refresh pause will be terminated early.[9] The Exchange recently identified an inconsistency between subsection (c)(3)(i)(C) of Exchange Rule 515 and the Exchange's System behavior regarding the NBBO used for evaluation purposes (original versus current), which determines whether the System will terminate the liquidity refresh pause early based on the receipt of a new order or quote on the same side of the market as the initiating order's remaining contracts. The Exchange believes that the System is operating correctly and that the rule text inadvertently described the NBBO used for evaluation purposes as the original NBBO, rather than the current NBBO. The System currently operates in the following manner. During the liquidity refresh pause, if the Exchange receives a new order or quote on the same side of the market as the initiating order's remaining contracts, which locks or crosses the current NBBO, the liquidity refresh pause will be terminated early. Accordingly, in subsection (c)(3)(i)(C) of Exchange Rule 515, the Exchange proposes to replace the word ''original'' preceding NBBO with the word ''current'' to more accurately describe the NBBO used in the reevaluation process that occurs in this scenario. By using the current NBBO, the System ensures the proper handling of new same side interest. The System will not execute routable orders [10] or non-routable orders [11] at prices that are inferior to the current NBBO, therefore the Exchange's proposal improves the specificity of Exchange Rule 515.

Next, the Exchange proposes to amend subsection (c)(3) of Exchange Rule 515 to succinctly describe the conditions that must be present for the liquidity refresh pause to occur and make minor corrective changes to the numerical and alphabetical list item identifiers to properly conform to the hierarchical heading scheme used throughout the Exchange's rulebook. In particular, the Exchange proposes to insert numerical identifiers ''(1)'' and ''(2)'' into subsection (c)(3)(A) in order to clarify that to meet the first condition for the liquidity refresh pause to occur, the initiating order must be a limit order or market order, whose limit price must cross the NBBO and could only be partially executed. The Exchange proposes to delete redundant rule text in the first clause of subsection (c)(3)(A) in order to clarify the conditions for the liquidity refresh pause to occur. Accordingly, with the proposed changes, subsection (c)(3) will provide as follows:

> The System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (''liquidity refresh pause'') when at the time of receipt or reevaluation of the initiating order by the System: (A) The initiating order is a limit order or market order whose (1) limit price crosses the NBBO and (2) could only be partially executed; (B) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (C) the Market Maker quote was exhausted.

Next, the Exchange proposes to amend paragraph (d) of Exchange Rule 515 to harmonize the rule text to the Exchange's affiliate, MIAX Emerald,

[3] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of Securities. *See* Exchange Rule 100.

[5] The term ''Market Maker'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[6] The term ''MBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

[7] The Exchange notes that the current setting is 20 milliseconds.

[8] *See* Exchange Rule 515(c)(3).

[9] *See* Exchange Rule 515(c)(3)(i)(C).

[10] *See* Exchange Rule 515(c)(1)(i).

[11] *See* Exchange Rule 515(c)(1)(ii)(A).

LLC (''MIAX Emerald''), and to make corrective changes to the numerical and alphabetical list item identifiers to properly conform to the hierarchical heading scheme used throughout the Exchange's rulebook. The Exchange proposes to separate paragraph (d) into several subsections. In particular, the Exchange proposes to adopt subsection (d)(1) of Exchange Rule 515, which would state as follows:

If a Market Maker order or quote could not be executed or could not be executed in full upon receipt, the System will continue to execute the Market Maker's order or quote at multiple prices until (i) the Market Maker's quote has been exhausted or its order has been completely filled; (ii) the executions have reached the Market Maker's limit price; or (iii) further executions will trade at a price inferior to the ABBO, whichever occurs first.

This new subsection (d)(1) would not contain any substantive change or add or delete any rule text already in place. The Exchange also proposes to adopt new subsection (d)(2) of Exchange Rule 515, which would state as follows:

For a Market Maker order or quote that locks or crosses the opposite side ABBO and the MBBO is inferior to the ABBO, the System will manage such order or quote in accordance with the following. Once the System can no longer execute the Market Maker's order or quote, the System will display the order or quote one MPV away from the current opposite side ABBO and book the order or quote at a price that will lock the current opposite side ABBO. Should the ABBO price change to an inferior price level, the Market Maker order or quote's Book price will continuously re-price to lock the new ABBO and the Market Maker order or quote's displayed price will continuously re-price one MPV away from the new ABBO, until the Market Maker order or quote reaches its original limit price, is fully executed or cancelled.

This new subsection (d)(2) of Exchange Rule 515 does not contain any substantive change to the rule text already in place and harmonizes the rule text to the Exchange's affiliate, MIAX Emerald, by replacing references from ''NBBO'' to ''ABBO.''[12] The Exchange also proposes to delete the word ''internally'' in subsection (d)(2) to harmonize the rule text to the Exchange's affiliate, MIAX Emerald.[13]

The Exchange also proposes to adopt new subsection (d)(3)(i) of Exchange Rule 515, which would state as follows:

If the Exchange receives a new order or quote on the opposite side of the market from the Market Maker order or quote that can be executed, the System will immediately execute the remaining contracts from the Market Maker order or quote to the extent possible at the Market Maker order or quote's current Book bid or offer price, provided that the execution price does not violate the current NBBO.

The Exchange also proposes to adopt new subsection (d)(3)(ii) of Exchange Rule 515, which would state as follows:

If unexecuted contracts remain from the Market Maker's order or quote, the order or quote size will be revised and the MBBO disseminated to reflect the order or quote's remaining contracts.

The new subsections (d)(3)(i) and (d)(3)(ii) of Exchange Rule 515 do not contain any substantive change or add or delete any rule text already in place.

Next, the Exchange proposes to amend Exchange Rule 515(h) to consolidate subsections (h)(1)(A) and (h)(1)(C) into paragraph (h)(1) to conform Exchange Rule 515(h) to the Exchange's affiliate, MIAX Emerald.[14] The Exchange also proposes to delete the rule text for subsection (h)(1)(B) as that subsection is redundant rule text and the Exchange believes that it is not necessary to specify the minimum trading increments applicable to that particular order type since minimum trading increments are covered in Exchange Rule 510. Accordingly, with the proposed changes, subsection (h)(1) of Exchange Rule 515 would state as follows:

Customer Cross Orders, as defined in Rule 516(i), are automatically executed upon entry provided that the execution (i) is at or between the best bid and offer on the Exchange; (ii) is not at the same price as a Priority Customer Order on the Exchange's Book; and (iii) will not trade at a price inferior to the NBBO. If trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529 when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order. If trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order. Customer Cross Orders will be automatically canceled if they cannot be executed. Rule 520, Interpretation and Policy .01 applies to the entry and execution of Customer Cross Orders.

The Exchange proposes to amend Exchange Rule 515(h) to consolidate subsection (h)(2)(A) into subsection (h)(2) to conform Exchange Rule 515(h) to the Exchange's affiliate, MIAX Emerald. The Exchange also proposes to delete the rule text for subsection (h)(2)(B) of Exchange Rule 515 as that subsection is redundant rule text and the Exchange believes that it is not necessary to specify the minimum trading increments applicable to that particular order type since minimum trading increments are covered in Exchange Rule 510. Accordingly, with the proposed changes, subsection (h)(2) of Exchange Rule 515 would state as follows:

Qualified Contingent Cross Orders, as defined in Rule 516(j), are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's Book; and (ii) is at or between the NBBO. If trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529 when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. If trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. Qualified Contingent Cross Orders will be automatically canceled if they cannot be executed.

Next, the Exchange proposes to amend subsections (h)(3) and (h)(4) of Exchange Rule 515 to amend references in those subsections from the plural ''Interpretations and Policies'' to the singular ''Interpretation and Policy'' when referring to one specific Interpretation and Policy. Accordingly, the Exchange proposes to amend subsection (h)(3) of Exchange Rule 515, which references ''Interpretations and Policies .12'' to now read ''Interpretation and Policy .12.'' The Exchange proposes to amend subsection (h)(3)(C) of Exchange Rule 515, which references ''Interpretations and Policies .01'' to now read ''Interpretation and Policy .01.'' The Exchange proposes to amend subsection (h)(4) of Exchange Rule 515, which references ''Interpretations and Policies .12'' to now read ''Interpretation and Policy .12.'' The purpose of these changes is to provide consistency and clarity within the rule text and harmonize the rule text to the Exchange's affiliate, MIAX Emerald.

[12] *See* MIAX Emerald Rule 515(d)(ii).

[13] *See id.*

[14] *See* MIAX Emerald Rule 515(h).

Additionally, the Exchange proposes to amend Exchange Rule 515, Execution of Orders and Quotes, Interpretation and Policy .02, to adopt new rule text clarifying the treatment of interest being managed by the System during the limited scenario when the ABBO [15] transitions from a crossed state to an uncrossed state. Currently, Exchange Rule 515 provides two separate processes for handling orders that could not be executed or that could not be executed in full upon receipt; subsection (c), Non-Market Maker Orders That Could Not Be Executed or Could Not Be Executed in Full at the Original NBBO Upon Receipt, and subsection (d) Handling of Market Maker Orders and Quotes. Exchange Rule 515(c)(1)(ii) discusses the Managed Interest Process for Non-Routable Orders. If the limit price locks or crosses the current opposite side NBBO, the System will display the order one MPV [16] away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's Book price will continuously re-price to lock the NBBO and the managed order's display price will continuously re-price one MPV away from the new NBBO.[17] Similarly, current Exchange Rule 515(d) discusses the handling of Market Maker orders or quotes that could not be executed or could not be executed in full upon receipt. Specifically, for a Market Maker order or quote that locks or crosses the ABBO, the System will manage such order or quote in accordance with the following. Once the System can no longer execute the Market Maker's order or quote, the System will display the order or quote one MPV away from the current opposite side NBBO and book the order or quote at a price that will internally lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the Market Maker order or quote's Book price will continuously re-price to lock the new NBBO and the Market Maker order or quote's displayed price will continuously re-price one MPV away from the new NBBO.[18]

Currently, Interpretation and Policy .02 of Exchange Rule 515 discusses the Managed Interest Process for Non-Routable Orders as provided in subparagraph (c)(1)(ii) if managed interest becomes tradable at multiple price points on MIAX due to the ABBO transitioning from a crossed state to an uncrossed state, the midpoint of the MBBO, rounded up to the nearest MPV if necessary, will be used for the initial trade price. However, the current rule does not discuss how Market Maker orders or quotes that are being managed by the System are handled if the ABBO transitions from a crossed state to an uncrossed state.

The Exchange now proposes to amend Interpretation and Policy .02 of Exchange Rule 515 to adopt a definition for the term ''Handled Interest'' which will include both Non-Routable Orders as defined in subparagraph (c)(1)(ii) and Market Maker orders and quotes as defined in subparagraph (d). Additionally, the Exchange proposes to adopt new rule text regarding the handling of Handled Interest when the ABBO transitions from a crossed state to an uncrossed state. Specifically, the Exchange proposes to amend Interpretation and Policy .02 to replace the term ''order'' with the newly defined term ''Handled Interest'' where necessary, to more accurately describe the current functionality of the System during this specific scenario as Market Maker orders and quotes that are being managed are handled in a similar fashion. The purpose of these changes is to provide consistency and clarity within the rule text and harmonize the rule text to the Exchange's affiliate, MIAX Emerald.[19] Accordingly, with the proposed changes to Interpretation and Policy .02, the Exchange would adopt new paragraphs ''(a)'' through ''(c),'' and Interpretation and Policy .02 would be newly titled ''Uncrossing of Orders and Quotes.'' The proposed changes to Interpretation and Policy .02 would be as follows:

(a) In the course of the Managed Interest Process for Non-Routable Orders as provided in subparagraph (c)(1)(ii) or the management of a Market Maker order or quote as provided in subparagraph (d) (such Non-Routable Orders and Market Maker orders and quotes, ''Handled Interest''), if Handled Interest becomes tradable at multiple price points on MIAX due to the ABBO transitioning from a crossed state to an uncrossed state, the midpoint of the MBBO, rounded up to the nearest MPV if necessary, will be used for the initial trade price for the Handled Interest. If locking or crossing interest remains, the next trade occurs at the Book price of the interest with lesser size.

(b) Trades included in the Handled Interest will continue to occur until (i) all locking or crossing interest has been satisfied, (ii) the ABBO is reached at which time the interest will be managed according to subparagraph (c)(1)(ii) or subparagraph (d), as applicable, (iii) the Handled Interest's limit price is reached at which time any remaining contracts will be booked, or (iv) the Handled Interest's price protection limit is reached at which time any remaining contracts will be canceled.

(c) Trades included in the Handled Interest will then be handled as follows: (i) If the order or quote would lock or cross the current opposite side MBBO where the MBBO is the NBBO, the order or quote will be handled pursuant to the Managed Interest Process under 515(c)(1)(ii) and Rule 515(d).

The proposed changes are designed to clarify existing Exchange functionality in the Exchange's rules. The Exchange believes the proposed changes will also help eliminate potential confusion on behalf of market participants by clearly stating that any interest being managed is handled similarly by the System in this limited situation.

2. Statutory Basis

The Exchange believes that its proposed rule change are consistent with Section 6(b) of the Act [20] in general, and furthers the objectives of Section 6(b)(5) of the Act [21] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to Exchange Rule 515(c)(3)(i)(C) to replace the word ''original'' preceding NBBO with the word ''current'' to more accurately describe the NBBO used in the reevaluation process promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and removes impediments to and perfects the mechanisms of a free and open market. This is because the proposal provides clarity and additional detail to Members, investors, and the public regarding the operation of the

[15] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[16] An ''MPV'' is the Minimum Price Variation for options traded on the Exchange. *See* Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments.

[17] *See* Exchange Rule 515(c)(1)(ii)(A).

[18] *See* Exchange Rule 515(d).

[19] *See* MIAX Emerald Rule 515, Interpretation and Policy .02.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

Exchange's System in the limited circumstance when a new order or quote is received on the same side of the market as an initiating order's remaining contracts during a liquidity refresh pause. The Exchange believes that the System is operating correctly and that the rule text inadvertently described the NBBO used for evaluation purposes as the original NBBO, rather than the current NBBO. By using the current NBBO, the System ensures the proper handling of new same side interest. The System will not execute routable orders or non-routable orders at prices that are inferior to the current NBBO, therefore the Exchange's proposal improves the specificity of Exchange Rule 515. Further, the Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Accordingly, the Exchange proposes to replace the word ''original'' preceding NBBO with the word ''current'' to more accurately describe the NBBO used in the reevaluation process that occurs during a liquidity refresh pause under Exchange Rule 515(c)(3)(i)(C) to correct this inconsistency between the rule text and the System's behavior. Transparency and clarity are consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System.

Currently, Exchange Rule 515 discusses the treatment of Non-Routable Orders that are being managed by the System as the ABBO transitions from a crossed to an uncrossed state. The Exchange believes that adopting a new definition of ''Handled Interest'' in Interpretation and Policy .02(a) to include Market Maker orders and quotes and amending the rule text to replace the term order with the newly defined term ''Handled Interest'' more accurately describes the operation of Exchange functionality during the limited circumstance when interest becomes tradable at multiple price points on MIAX due to the ABBO transitioning from a crossed state to an uncrossed state. The Exchange believes that its proposal contributes to the operation of a fair and orderly market, and in general, protects investors and the public interest by providing additional detail to clarify how orders that are being managed are handled in the limited circumstance when the ABBO transitions from a crossed state to an uncrossed state. The Exchange believes these changes provide consistency and clarity within the rule text regarding how Market Maker orders and quotes are handled and harmonize the rule text to the Exchange's affiliate, MIAX Emerald.[22] The Exchange also believes that its proposal to add the term ''Handled Interest'' to describe the System's functionality when interest becomes tradable at multiple price points on MIAX due to the ABBO transitioning from a crossed state to an uncrossed state contributes to the operation of a fair and orderly market, and in general, protects investors and the public interest because this proposed change will facilitate executions on the Exchange.

The Exchange believes the proposed changes to consolidate Exchange Rule 515 subsections (h)(1)(A) and (h)(1)(C) into paragraph (h)(1) and delete redundant rule text in subsections (h)(1)(B) promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes clarify the Exchange's rule text. In particular, the Exchange believes that deleting the rule text for subsection (h)(1)(B) will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because that subsection is redundant rule text. The Exchange believes it is not necessary to specify the minimum trading increments applicable to Customer Cross Orders since minimum trading increments are covered in Exchange Rule 510 and applicable to all options traded on the Exchange.[23] Accordingly, the reference to minimum trading increments in subsection (h)(1)(B) is redundant, which the Exchange believes will cause confusion. The Exchange believes it is in the interest of investors and the public to accurately describe the Exchange's rules as this information is used by investors to make decisions concerning the submission of their orders on the Exchange.

Likewise, the Exchange believes the proposed changes to consolidate subsection (h)(2)(A) into subsection (h)(2) promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes clarify the Exchange's rule text and conform Exchange Rule 515(h) to the Exchange's affiliate, MIAX Emerald.[24] Further, the Exchange believes that deleting the rule text for subsection (h)(2)(B) will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because that subsection is redundant rule text. The Exchange believes it is not necessary to specify the minimum trading increments applicable to Qualified Contingent Cross Orders as minimum trading increments are covered in Exchange Rule 510 and applicable to all options traded on the Exchange.[25] Accordingly, the reference to minimum trading increments in subsection (h)(2)(B) is redundant, which the Exchange believes will cause confusion. The Exchange believes it is in the interest of investors and the public to accurately describe the Exchange's rules as this information is used by investors to make decisions concerning the submission of their orders on the Exchange.

The Exchange believes the proposed changes to amend paragraph (d) to harmonize the rule text to the Exchange's affiliate, MIAX Emerald, by replacing references from ''NBBO'' to ''ABBO'' and to make corrective changes to the numerical and alphabetical list item identifiers promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes clarify the Exchange's rule text and conform Exchange Rule 515(d) to the Exchange's affiliate, MIAX Emerald.[26] The Exchange also believes that its proposal to replace references from ''NBBO'' to ''ABBO'' in subsection (d)(2) contributes to the operation of a fair and orderly market, and in general, protects investors and the public interest because it is more accurate to use the term ''ABBO'' as the System is not considering MIAX's market at this point. Further, the Exchange's proposal to delete the word ''internally'' in subsection (d)(2) harmonizes the rule text to the Exchange's affiliate, MIAX Emerald.[27]

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes provide

[22] *See* MIAX Emerald Rule 515, Interpretation and Policy .02.

[23] *See* Exchange Rule 510(a).

[24] *See* MIAX Emerald Rule 515(h).

[25] *See* Exchange Rule 510(a).

[26] *See* MIAX Emerald Rule 515(d)(ii).

[27] *See* MIAX Emerald Rule 515(d)(ii).

additional detail and make clarifying changes to the rule text of Exchange Rule 515, and correct errors in the hierarchical heading scheme to provide uniformity in the Exchange's rulebook. The Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's rules and that it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange's System and because the rules of the Exchange apply to all MIAX participants equally. The proposed rule changes will have no impact on competition as they are not designed to address any competitive issues but rather are designed to add additional clarity to existing Exchange Rule 515 and to remedy minor non-substantive issues in the rule text. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's functionality.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) [29] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–30 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–30. 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–MIAX–2019–30, and should be submitted on or before July 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Eduardo A. Aleman,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No 34–86195; File No. SR–NYSEArca–2019–39]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E**

June 25, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b-4 thereunder,[3] notice is hereby given that on June 12, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') 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 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 (1) to amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade the shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201–E, as proposed to be

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[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

amended. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes (1) amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade shares (''Shares'') of the United States Bitcoin and Treasury Investment Trust (the ''Trust'') under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares.

Proposed Amendment to NYSE Arca Rule 8.201–E

Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [4] Rule 8.201–E(c)(1) currently states that such securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. The Exchange proposes to amend Rule 8.201–E(c)(1) to provide that Commodity-Based Trust Shares may be issued and redeemed for the underlying commodity and/or cash.

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.[5] The Exchange believes the proposed change will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than the underlying commodity upon requesting the issuance or redemption of shares. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.[6]

The Exchange further proposes to amend Rule 8.201–E(c)(2) to state that the term ''commodity'' is defined in Section 1(a)(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently stated in Rule 8.201–E(c)(2)) to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[7]

United States Bitcoin and Treasury Investment Trust (the ''Trust'')

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the ''Trust Agreement'') between Wilshire Phoenix Funds, LLC (the ''Sponsor'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee'').[8] UMB Bank N.A. will act as custodian for the Trust's cash and U.S. treasury assets (the ''Cash and Treasury Custodian'') and UMB Fund Services, Inc. will act as the transfer agent for the Trust (the ''Transfer Agent'') and as the administrator of the Trust (the ''Administrator'') to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Coinbase Custody Trust Company, LLC will act as the Bitcoin custodian for the Trust (the ''Bitcoin Custodian'') to maintain custody of the Trust's Bitcoin assets in cold storage.

According to the Registration Statement, the investment objective of the Trust is for the Shares to closely reflect the Bitcoin Treasury Index (the ''BTI'' or ''Index''), less the Trust's liabilities and expenses. The Shares will provide investors with exposure to Bitcoin in a manner that is efficient and convenient while also reducing the volatility typically associated with Bitcoin without the use of derivatives or leverage methods.

The Trust will have no assets other than (a) Bitcoin and (b) short-term U.S.

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[4] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 8.201–E (c)(1) defines the term ''Commodity-Based Trust Shares'' as follows: ''The term ''Commodity-Based Trust Shares'' means a security (a) that is issued by a trust (''Trust'') that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.''

[5] *See, e.g.,* Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR–NYSEArca–2010–84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR–NYSEArca–2012–111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5, 2018) (SR–NYSEArca–2017–131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201–E); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18) (order approving listing and trading shares of the APMEX Physical-1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR–NYSE–2004–22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

[6] The Commodity Futures Trading Commission (''CFTC'') has stated that bitcoin and other virtual currencies are encompassed in the definition of commodities under the Commodity Exchange Act (''CEA'') (17 U.S.C. 1). See ''In the Matter of Coinflip, Inc.'' (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions) (''Coinflip''), in which the CFTC stated the following: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. See, *e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.'' In Coinflip, the CFTC further concluded that Bitcoin is a virtual currency that is a commodity, ''distinct from 'real' currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance.'' See CFTC No. 15–29 (2015), 2015 CFTC LEXIS 20, at *1 n.2.

[7] Public Law 111–203, 124 Stat. 1900 (2010).

[8] On May 21, 2019, the Trust filed Amendment 3 to Form S–1 under the Securities Act of 1933 (File No. 333–229187) (the ''Registration Statement''). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

Treasury securities with a maturity of less than one year (''T-Bills''). The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Calculated on a daily basis, the ''Bitcoin Price'' (as defined below) is used to determine the Index's monthly weighting between the ''Bitcoin Component'' and the ''Treasury Component'' (as described below). The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. On a monthly basis, following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Upon the maturity of any T-Bill, the Trust will receive U.S. dollars representing principal and interest. The portion of the cash that represents interest on the T-Bills will be used to pay, in full or in part, the sponsor's fee, redemptions and any additional fees and expenses of the Trust.

Assets of the Trust

According to the Registration Statement, Bitcoin will be held by the Bitcoin Custodian on behalf of the Trust, and T-Bills and U.S. dollars will be held by the Cash and Treasury Custodian on behalf of the Trust. The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. The Trust's assets, other than Bitcoin, will consist of T-Bills to be purchased by the Cash and Treasury Custodian. The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Custody of the Trust's Bitcoin

The Bitcoin Custodian is a New York-state chartered trust company operating under the direct supervision of the New York State Department of Financial Services and is subject to the anti-money laundering requirements of the Financial Crimes Enforcement Network (''FinCEN''). In addition, the Bitcoin Custodian is a qualified custodian under the Investment Advisers Act of 1940. The Bitcoin Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Bitcoin Custodian (the ''Bitcoin Custodian Agreement''). Under the Bitcoin Custodian Agreement, the Bitcoin Custodian will be responsible for the safety and security of the Trust's Bitcoin as well as overseeing the process of deposit, withdrawal, sale and purchase of the Trust's Bitcoin. The Sponsor expects that the Bitcoin Custodian's custodial operations will maintain custody and access of the private keys associated with the Trust's Bitcoin.[9] The Bitcoin Custodian will custody the Bitcoin in accordance with the terms of the Bitcoin Custodian Agreement. The Bitcoin Custodian will maintain a secured and segregated custody account in the name of the Trust (the ''Bitcoin Custody Account''). The Trust's Bitcoin will be stored in the Bitcoin Custody Account on behalf of the Trust. The Bitcoin Custodian will utilize certain ''Security Procedures'' when the Trust is required to deposit or withdraw Bitcoin to or from the Bitcoin Custody Account. This deposit and withdrawal process provides additional levels of security including, but not limited to, passwords, encryption of private keys, multi-factor authentication process, multi-signature wallets and telephone call-backs during the administration and operation of the Bitcoin Custody Account.

According to the Registration Statement, the Trust has obtained insurance for the Bitcoin held by the Trust, through the Bitcoin Custodian. Currently, the Bitcoin Custodian, either directly or through an affiliate, procures fidelity (also known as crime) insurance to protect the organization from risks such as theft of funds. Specifically, the fidelity insurance coverage program provides coverage for the theft of funds held in hot or cold storage and provides a limit excess of $200,000,000. The Bitcoin Custodian's insurance coverage program is provided by a syndicate of industry-leading insurers that are highly rated by AM Best.[10] To the extent the value of the Trust's Bitcoin holdings exceeds the total insurance coverage provided by the Bitcoin Custodian's insurance coverage program, the Sponsor will use commercially reasonable efforts to procure additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's Bitcoin holdings such that for every dollar of Bitcoin held by the Trust there is an equal amount of insurance coverage.

Custody of U.S. Dollars and T-Bills

The Cash and Treasury Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Cash and Treasury Custodian (the ''Cash and Treasury Custodian Agreement'').

According to the Registration Statement, under the Cash and Treasury Custodian Agreement, the Cash and Treasury Custodian will be responsible for maintaining an account that holds T-Bills and U.S. dollars (the ''Cash Account''). Pursuant to a request from the Trust, the Cash and Treasury Custodian will establish and maintain the Cash Account in the name of the Trust that will hold U.S. dollars and T-Bills. The Cash and Treasury Custodian deposits and withdraws U.S. dollars to and from the Trust's Cash Account at the instruction of the Trust's Administrator or Sponsor, as applicable. The Cash and Treasury Custodian is responsible for administering the Cash Account.

The Bitcoin Treasury Index

The Index is based on a pairing of notional components and is not an investment product. The Index is calculated and published by Solactive AG (the ''Index Calculation Agent'').[11] The level of the Index is published on each Business Day at approximately 5:00 p.m. Eastern time and is available through various market data vendors, including without limitation, Bloomberg L.P. and Thompson Reuters Company. ''Business Day'' means any day on which the New York Stock Exchange is scheduled to be open for business. The Index has two components: (1) A notional component representing Bitcoin (the ''Bitcoin Component'') and (2) a notional component representing T-Bills (the ''Treasury Component'').

On a monthly basis, the Index rebalances its weighting of the Bitcoin Component and the Treasury Component utilizing a mathematically derived passive rules-based methodology that is based on the daily

[9] According to the Registration Statement, the term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to Bitcoin stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

[10] AM Best is a global credit rating agency with a unique focus on the insurance industry. Credit ratings issued by AM Best are a recognized indicator of insurer financial strength and creditworthiness.

[11] The Index is a passive rules-based index and the Index Calculation Agent provides calculation services only. The Index Calculation Agent is not affiliated with the Sponsor and has represented that it and its employees are subject to market abuse laws and the Index Calculation Agent has established and maintains processes and procedures to prevent the use and dissemination of material non-public information regarding the Index.

volatility of the Bitcoin Price (as defined below). The price of Bitcoin used to determine the weighting of the Bitcoin Component and the Treasury Component of the Index, as well as the value of Bitcoin held by the Trust, will be based on the Chicago Mercantile Exchange (''CME'') CF Bitcoin Reference Rate (''CME CF BRR'') (the ''Bitcoin Reference Rate,'' and the price of Bitcoin based on the Bitcoin Reference Rate (the ''Bitcoin Price'')).

On a monthly basis, following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Bitcoin Component of the Index

According to the Registration Statement, Bitcoin is a digital asset that is decentralized and issued by, and transmitted using cryptographic security through, an open source digital protocol platform known as the ''Bitcoin Network.'' The Bitcoin Network is an online end-user to end-user network that hosts the public transaction ledger, known as the ''Bitcoin Blockchain,'' and the source coding comprising the basis for the cryptographic and algorithmic protocols governing the Bitcoin Network. No single entity owns or operates the Bitcoin Network, and its infrastructure is collectively maintained by a decentralized user base. Bitcoin may be converted into U.S. dollars, other fiat currencies, or other crypto assets, at rates determined in individual end-user-to-end-user transactions under a barter system, or on Bitcoin exchanges. They can also be used to pay for certain goods and services. The Bitcoin Network does not rely on either governmental authorities or financial institutions to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a ''mining'' process subject to a strict issuance schedule. The value of Bitcoin is determined by the supply of and demand for Bitcoin on Bitcoin exchanges (and in private end-user-to-end-user transactions), as well as the number of merchants that accept them. Third-party service providers such as Bitcoin exchanges and third-party payment processing services may charge significant fees for processing transactions and for converting, or facilitating the conversion of, Bitcoin to or from fiat currency.

The Bitcoin Blockchain is the digital transaction ledger on which Bitcoin is ''stored'' and reflected. The Bitcoin Blockchain is a decentralized digital file stored on the computers of each user of the Bitcoin Network. It records the transaction history of all Bitcoin in existence and allows the Bitcoin Network to verify the association of each Bitcoin with the ''digital wallet'' that owns them through transparent transaction reporting. The Bitcoin Network and Bitcoin software programs can interpret the Bitcoin Blockchain to determine the exact Bitcoin balance of any digital wallet listed in the Bitcoin Blockchain as having taken part in a transaction on the Bitcoin Network.

The Bitcoin Blockchain is made up of a digital file that is downloaded and stored, in whole or in part, on the software programs of all Bitcoin users. The file includes all blocks that have been solved by validators and it is updated to include new blocks as they are solved. As each newly solved block refers back to and ''connects'' with the solved block immediately prior to it, the addition of a new block adds to the Bitcoin Blockchain in a manner akin to a new link being added to a chain. The Bitcoin Blockchain represents a complete, transparent and unbroken history of all transactions on the Bitcoin Network.

According to the Registration Statement, generally, every Bitcoin transaction is broadcast to the Bitcoin Network and recorded in the Bitcoin Blockchain. However, there are certain ''Off-Blockchain transactions.'' These transactions involve the transfer of control or ownership of a specific digital wallet holding Bitcoin, or of the reallocation of ownership of certain Bitcoin in a pooled-ownership digital wallet. Generally, information and data regarding Off-Blockchain transactions is not publicly available. This is unlike true Bitcoin transactions, which are publicly recorded and available on the Bitcoin Blockchain. Thus, according to the Registration Statement, Off-Blockchain transactions are not truly Bitcoin transactions, as they do not involve the transfer of transaction data on the Bitcoin Network and do not reflect a movement of Bitcoin between addresses recorded in the Bitcoin Blockchain. Off-Blockchain transactions may include transactions on centralized exchanges.

Bitcoin Exchange Market

According to the Registration Statement, online Bitcoin exchanges represent a substantial percentage of Bitcoin transactional activity and thus offer the most data with respect to prevailing Bitcoin valuations. There are currently several Bitcoin exchanges operating globally. These include established trading platforms such as itBit, Coinbase Pro, Bitstamp and Kraken. These Bitcoin trading platforms provide various options for buying and selling Bitcoin. In parallel to the open Bitcoin exchanges, informal ''over-the-counter'' or ''OTC markets'' for Bitcoin trading also exist as a result of the peer-to-peer nature of the Bitcoin Network, which allows direct transactions between any seller and buyer.

Bitcoin futures contracts are traded on the CME and the Cboe Futures Exchange (''CFE'').[12] However, the Trust will not hold or trade in commodity futures contracts or other derivative contracts regulated by the Commodities Exchange Act,[13] as administered by the Commodity Futures Trading Commission.

The Bitcoin Price (*i.e.,* the Bitcoin Reference Rate)

The CME CF BRR was created to facilitate financial products based on Bitcoin.[14] It serves as a once-a-day reference rate of the U.S. dollar price of Bitcoin (USD/BTC). The CME CF BRR is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME [15] and serves as a reference rate in the settlement of financial derivatives based on the price of Bitcoin. The CME CF BRR may also serve as a reference rate in the net asset value (''NAV'') calculation of exchange traded products (''ETPs'').[16] According to the Registration Statement, the Administrator of the Trust will utilize the CME CF BRR when valuing the Bitcoin held by the Trust.

The CME CF BRR, which has been calculated and published since November 2016, aggregates the trade flow of several Bitcoin spot exchanges (the ''Constituent Platforms''), during a calculation window into the U.S. dollar price of one Bitcoin as of 4:00 p.m. London time. Specifically, the CME CF BRR is calculated based on the ''Relevant Transactions'' (as defined below) of all Constituent Platforms, as follows: [17]

[12] CFE recently announced that, effective March 2019, it would no longer list additional Cboe Bitcoin (USD) futures contracts for trading. *See http://markets.cboe.com/resources/product_update/2019/New-CFE-Products-Being-Added-in-March-2019-Update.pdf.*

[13] 7 U.S.C. 1.

[14] Andrew Paine and William J. Knottenbelt, *Analysis of the CME CF Bitcoin Reference Rate and Real Time Index,* Oct. 2016, available at *https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf,* Section 2 (''Paine & Knottenbelt'').

[15] While the Trust uses the CME CF BRR to calculate the value of its bitcoin assets, in no event will the Trust be trading in Bitcoin futures contracts.

[16] *See https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.*

[17] For a description of the CME CF BRR methodology, *see https://www.cmegroup.com/*

1. All Relevant Transactions are added to a joint list, recording the trade price and size for each transaction.

2. The list is partitioned into a number of equally-sized time intervals.

3. For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.[18]

4. The CME CF BRR is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The CME CF BRR does not include any futures prices in its methodology. A ''Relevant Transaction'' is any ''cryptocurrency versus legal tender spot trade that occurs during the ''Time Weighted Average Price (''TWAP'') Period'' on a Constituent Platform in the BTC/USD pair that is reported and disseminated by the calculation agent for the CME CF BRR (the ''BRR Calculation Agent''). The CME CF BRR is administered by the administrator for the CME CF BRR (the ''BRR Administrator''). The mathematical representation of the CME CF BRR Methodology is attached [sic] as Exhibit 3A.

Calculation of Net Asset Value

The Trust's NAV will be determined daily by the Administrator at 4:00 p.m., E.T. on any Business Day or as soon thereafter as practicable. The NAV of the Trust will equal the value of the total assets of the Trust, including Bitcoin, T-Bills and U.S. dollars, less the liabilities and expenses of the Trust. The NAV per Share will be equal to the Trust's NAV divided by the number of outstanding Shares. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.

In accordance with the Trust's valuation policy and procedures, the Administrator will determine the price of the Trust's Bitcoin by reference to the Bitcoin Reference Rate (as described below), which is published between 4:00 p.m. and 4:30 p.m., London time, on every day of the year, including weekends. Similarly, the Administrator will determine the fair value of T-Bills based on the price of each T-Bill held by the Trust plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T., on any Business Day. The Trust's NAV will be determined by the Administrator on a GAAP basis. Because the Trust rebalances monthly, in the periods between such monthly rebalancing, as a result of changes in the value of Bitcoin, among other factors, the value of Bitcoin relative to the value of the other assets of the Trust may diverge from the Index. Accordingly, the Trust's NAV and NAV per Share are tracked, in part, by reference to the Bitcoin Reference Rate.

Indicative Fund Value

In order to provide updated information relating to the Trust for use by investors and market professionals, an updated ''Indicative Fund Value'' (''IFV'') will be calculated by using the prior day's closing net assets of the Trust as a base and updating throughout the Exchange's Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the assets of the Trust.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.[19]

Creation of Shares

The Shares shall represent beneficial interests in, and ownership of, the Trust. The Sponsor shall have the power and authority, in its sole discretion, without action or approval by the Shareholders, to cause the Trust to issue Shares from time to time. The Trust shall issue Shares solely in exchange for cash in U.S. Dollars.

The Trust may offer and sell Shares of the Trust from time to time through (1) underwriters, placement agents or distributors (each, a ''Share Placement'') or such other means as the Sponsor may determine or (2) through subscription agreements. The Trust may not issue additional Shares unless the net proceeds per Share to be received by the Trust are not less than 100% of the most recently calculated NAV per Share immediately prior to, or upon, the determination of the pricing of such issuance.

Any net proceeds received in connection with the offer and sale of Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the allocation of the Bitcoin Holdings and the Treasury and Cash Holdings of the Trust, as of the applicable date of sale. For this purpose, ''Bitcoin Holdings'' shall mean the sum of the value of the Bitcoin held by the Trust, and ''Treasury and Cash Holdings'' shall mean the value of the T-Bills and U.S. dollars held by the Trust. In the event that the Trust has no assets at the time of the sale of the initial Shares under the Registration Statement, then any net proceeds received in connection with the offer and sale of such initial Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the weighting of the Bitcoin Component and the Treasury Component of the Index as of the date of such sale.

Redemption of Shares

According to the Registration Statement, upon at least five (5) Business Days' prior written notice, a shareholder may redeem all or a portion of its Shares on the last Business Day of each calendar month. All redemptions will be based on the NAV of Shares submitted for redemption, determined as of the last Business Day of the applicable calendar month.

In general, redemptions will be deemed to occur on a ''first-in first-out'' basis among Shares held by a particular shareholder. A redemption notice is irrevocable unless otherwise agreed by the Sponsor in writing.

In general, the final redemption of Shares will be paid in cash within five (5) Business Days after the applicable redemption date. Shareholders will be entitled to receive their applicable redemption amount in cash, which is the NAV of the Shares, determined as of the applicable redemption date. The Administrator shall calculate the applicable redemption amount and instruct the Cash and Treasury Custodian to pay from the Cash Account the applicable redemption amount to each redeeming Shareholder.

Potential Manipulation in the Bitcoin Market

In prior orders relating to the listing of certain ETPs on U.S. exchanges, the Commission Staff expressed its concern that the world-wide market for Bitcoin may be subject to potential manipulation.[20]

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*education/bitcoin/cme-cf-cryptocurrency-reference-rate-methodology.html#2-overview* (''BRR Methodology'').

[18] *See* Paine & Knottenbelt, Section 2.2.2 (''Volume-weighting of medians filters out high numbers of small trades that may otherwise dominate a non-volume-weighted median.''). This assists in mitigating any series of small, frequent trades placed on any of the Constituent Platforms that could be used to manipulate the price of Bitcoin. *See* BRR Methodology, Section 7.

[19] Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[20] *See* Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR–BatsBZX–2016–30) (Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based

Continued

The Sponsor acknowledges that, numerous markets, commodity or otherwise, have historically been subject to manipulation.[21] According to the Registration Statement, the Trust's structure, together with the use of the CME CF BRR will provide investors with exposure to the Bitcoin market without a number of the risks from which other Bitcoin related products previously submitted for registration have suffered, and particularly mitigate the effects of potential manipulation of the Bitcoin market.

In order for this proposed rule change to be approved, the Commission must determine that the proposal is consistent with the requirements of Section 6(b)(5) of the Act and that the Exchange's rules are designed to prevent fraudulent and manipulative acts and practices.[22] The Commission has previously stated that such a proposed rule change must offer evidence to demonstrate that either (i) the Bitcoin market is inherently resistant to fraud and manipulation, or (ii) the Exchange must have surveillance-sharing agreements with significant markets for trading the underlying commodity or derivatives on that commodity and those markets must be regulated.[23]

As discussed in more detail below, the Sponsor believes that the CME CF BRR is inherently resistant to manipulation. In addition, as discussed below, significant regulated markets for trading Bitcoin derivatives are members of the Intermarket Surveillance Group (''ISG'') and the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, may communicate with such markets as necessary in conducting market surveillance.

As the Commission has previously acknowledged, trading in a Bitcoin-based ETP on a national securities exchange may provide additional protection to investors,[24] as opposed to trading in an unregulated Bitcoin spot market. The Sponsor also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to Bitcoin within a regulated environment.

The Resistance of the CME CF BRR to Market Manipulation

As noted above, one of the ways that the requirements of Section 6(b)(5) of the Exchange Act can be met is by demonstrating that the applicable market is inherently resistant to fraud and manipulation.[25]

The Sponsor notes that, in connection with the Commission's analysis of whether a market is inherently resistant to manipulation, the Commission has in certain circumstances focused not on the market as a whole but instead on the significant subset of the market that has a meaningful impact on the particular ETP. For instance, orders approving listing applications of ETPs that invest in gold bullion focused on the spot and futures market,[26] even though gold is traded on a number of different market segments. Focusing on the spot market is appropriate because the spot market is the market to which the particular ETP would look to determine its NAV. Using the example of gold, it would not be proper to use the price of gold in the jewelry market or gold coin market to value the NAV of a gold bullion ETP, even though by volume gold bought in such markets equals or surpasses gold purchased in all other segments of the market, including investment and ''Central Banks,'' which are more likely to purchase gold at the spot market.[27]

The Trust utilizes the CME CF BRR to determine the NAV of the Bitcoin held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Since (i) the Trust uses the CME CF BRR to determine its NAV, (ii) the CME CF BRR is what determines the ratio of Bitcoin to Treasuries held by the Trust, and (iii) the CME CF BRR is determined based on the price of Bitcoin on the Constituent Platform and no other exchanges, the Sponsor maintains that the proper ''market'' that one should evaluate to determine whether the ''market'' is inherently resistant to manipulation is the segment of the market formed by the Constituent Platforms.

The Sponsor found that price discovery is substantially similar among each of the Constituent Platforms.[28] As shown in the chart included as Exhibit 3B to this proposed rule change, none of the Constituent Platforms exhibit a statistically significant average difference from the CME CF BRR. During the 3:00 p.m. to 4:00 p.m. London time CME CF BRR observation window, volume of Bitcoin trading among the four Constituent Platforms

Trust Shares, To List and Trade Shares Issued by the Winklevoss Bitcoin Trust) (''*Winklevoss I*''); and Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust) (''*Winklevoss II*''); *see also* Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E).

[21] Spot and futures markets for other well-established commodities have previously been subject to manipulation concerns. *See CFTC* v. *Amaranth Advisors, LLC,* et al., 07–cv–6682 (S.D.N.Y. 2007); *see also* CFTC Press Release 5692–09, August 12, 2009 (available at: *www.cftc.gov/PressRoom/PressReleases/pr5692-09*) (Amaranth Advisors, LLC, and Amaranth Advisors (Calgary) ULC, entered into a consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on February 24, and April 26, 2006); *see* CFTC Press Release 7000–14, September 15, 2014 (available at: *www.cftc.gov/PressRoom/PressReleases/pr7000-14*) (Consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the NYMEX on February 24, and April 26, 2006); *see* Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017) (explaining that ''[t]he subject of market manipulation has bedeviled commodity markets since the dawn of futures trading'') (''Pirrong'').

[22] 15 U.S.C.S. § 78f (LEXIS through Pub. L. No. 116–8); 17 CFR 240.6a–1.

[23] *See Winklevoss II,* at 37580 and 37581 (noting that ''. . . if BZX had demonstrated that Bitcoin and Bitcoin markets are inherently resistant to fraud and manipulation, comprehensive surveillance-sharing agreements with significant, regulated markets would not be required, as the function of such agreements is to detect and deter fraud and manipulation.''). *See* Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017), generally, for a discussion of the economics of commodity market manipulation. For a discussion of commodity market manipulation in the U.S. historical context, *see* Philip M. Johnson, Commodity Market Manipulation, 38 Wash. & Lee L. Rev. 725 (1981).

[24] *See* Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–001) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF). *See also,* Hester M. Pierce, U.S. Sec. Exch. Comm'n, Dissent of Commissioner Hester M. Pierce to Release No. 34–83723 (July 26, 2018), *https://www.sec.gov/news/public-statement/peirce-dissent-34-83723* (''An ETP based on bitcoin would offer investors indirect exposure to bitcoin through a product that trades on a regulated securities market and in a manner that eliminates some of the frictions and worries of buying and holding bitcoin directly. If we were to approve the ETP at issue here, investors could choose whether to buy it or avoid it.'').

[25] *See Winklevoss II,* at 37580.

[26] *See, e.g.,* Securities Exchange Act Release No. 51058 (January 19, 2005) 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (iShares COMEX Gold Trust I).

[27] *See* World Gold Council, Goldhub, Gold supply and demand statistics, available at *https://www.gold.org/goldhub/data/gold-supply-and-demand-statistics.*

[28] All statistical analysis provided herein was performed solely by the Sponsor. The Sponsor did not engage any third-parties in connection with such statistical analysis in an effort to insure quality and integrity. Any data utilized for any statistical analysis provided in this proposal will be made available to the Commission upon request.

was split as follows: 13.3% of the Bitcoin volume was on itBit, 21.2% of the Bitcoin volume was on Kraken, 28.4% of the Bitcoin volume was on Bitstamp and 37.1% of the Bitcoin volume was on Coinbase.[29] The Constituent Platforms also show a substantially similar degree of price volatility, with the standard deviation of the difference of 4:00 p.m. London time exchange prices from the CME CF BRR being 1.12–1.13%.[30] When the 4:00 p.m. London time snapshot prices do deviate from the CME CF BRR, they are generally in the same direction (occurring 87.4% of the time).[31] The Sponsor maintains that the foregoing data also supports the conclusion that robust arbitrage trading and liquidity provision occurs among the Constituent Platforms.

An independent examination of the methodology (Paine & Knottenbelt) of the CME CF BRR, supports the Sponsor's assertion that the CME CF BRR is not susceptible to manipulation.[32] The use of a volume-weighted average median price determined over twelve five-minute windows in a specific 60-minute period over any Constituent Platform makes any attempt to manipulate the CME CF BRR unlikely. Further, the capital necessary to maintain a significant presence on any Constituent Platform makes manipulation of the CME CF BRR unlikely. The linkage between the Bitcoin markets and the presence of arbitrageurs (as evidenced in the data set forth above) in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

The Presence of Surveillance Sharing Agreements

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the Bitcoin market could be subject to manipulation.[33] In these orders, the Commission cited numerous precedents [34] in which 19b–4 listing applications were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a market of significant size.[35] The Commission noted that, for commodity-trust ETPs ''there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.'' [36]

The CME [37] is a member of the ISG, the purpose of which is ''to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses.'' [38] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[39]

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance-sharing agreement must be with a market of significant size.[40] The Commission has provided an example of how it interprets the terms ''significant market'' and ''market of significant size,'' though that definition is meant to be illustrative and not exclusive: ''The terms 'significant market' and 'market of significant size' . . . include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.'' [41]

As discussed below, the Sponsor maintains that the CME, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size'' as it satisfies both elements of the example provided by the Commission.

Reasonable Likelihood That a Person Manipulating the ETP Would Have To Trade on the Market

The first element of what constitutes a ''significant market'' or ''market of significant size'' is that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on a market (or group of markets) to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct.

The Sponsor concludes that the CME meets this element in two ways. First, it is the sole market for Bitcoin futures,

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[29] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[30] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[31] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[32] ''The chosen specification makes the BRR highly resistant against manipulation. The use of medians likely reduces the effect of outlier prices on one or more exchanges. Volume-weighting of medians filters [out high numbers of small trades] that may otherwise dominate a non-volume-weighted median. The use of 12 non-weighted partitions assures that price information is sourced equally over the entire observation period. Influencing the BRR would therefore require price manipulation. . .over an extended period of time.'' Paine & Knottenbelt, Section 2.2.2.

[33] *See Winklevoss I* and *Winklevoss II, supra* note 20. The Sponsor represents that some of the concerns raised are that a significant portion of Bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of Bitcoin in the hands of a small number of holders. However, these aspects are not unique to Bitcoin and are present in a number of commodity and other markets. For instance, some gold bullion trading takes place on unregulated OTC markets and a significant percentage of gold is held by a relative few (according to estimates of the World Gold Council, approximately 21.3% of total above-ground gold stocks are held by private investors and 17.2% are held by foreign governments; by comparison, 15.7% of Bitcoin are held by the 100 largest Bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms). *See https://www.gold.org/goldhub/data/above-ground-stocks* for gold data cited in this note and *https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html* for Bitcoin data.

[34] For an extensive listing of such precedents, *see Winklevoss I,* at 14083 n.96.

[35] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for Bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.*

[36] *See Winklevoss II,* at 37594.

[37] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the Bitcoin market since Bitcoin has been designated as a commodity by the CFTC. *See* A CFTC Primer on Virtual Currencies (October 17, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf* (the ''CFTC Primer on Virtual Currencies'') (''The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.''). *See also* 7 U.S.C. Sec. 7(d)(3) (''The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.'').

[38] *https://www.isgportal.org/isgPortal/public/overview*.htm.

[39] *See, e.g., Winklevoss II,* at 37594.

[40] *See, e.g., Winklevoss II,* at 37589–90.

[41] *See, e.g., Winklevoss II,* at *37594;* and *see* Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (GraniteShares Bitcoin ETF and GraniteShares Short Bitcoin ETF), n. 85 and accompanying text.

and compares favorably with other markets that were deemed to be markets of significant size in precedents. One particularly salient group of precedents are prior orders approving the listing of ETPs that invest in gold bullion, since the gold market exhibits a number of similarities with the market for Bitcoin. The Sponsor maintains that, like Bitcoin, the primary markets for gold bullion are unstructured OTC markets [42] and the futures market.

As with the OTC gold market, it is not possible to enter into an information sharing agreement with the OTC Bitcoin market.[43] When the Commission approved the listing of gold ETPs and other commodity-trust ETPs, rather than surveillance sharing agreements with the relevant OTC markets, there have been surveillance sharing agreements between the listing exchange and ''regulated markets for trading futures on the underlying commodity.'' [44] It has been widely discussed that manipulating the market for a commodity often involves the futures market for that commodity.[45]

The CME is a member of ISG, is regulated by the CFTC, and is situated very much like the COMEX division of NYMEX is with respect to gold ETPs.[46] The CME is subject to a surveillance-sharing agreement arrangement pursuant to which the Exchange can obtain data from the CME.

Additionally, the Sponsor found that the Bitcoin futures market is larger in size (as a percentage of spot trading) than the size of the gold futures markets are in relation to the gold OTC market (expressed as a percentage).[47] Using the most recent data cited by the World Gold Council, an affiliate of the SPDR Gold Shares (GLD), for 2016, the ratio of daily trading volume of Gold futures on COMEX ($28.9 billion) to daily trading volume on gold OTC markets ($167.9 billion, which is the midpoint of the estimated high and low points by the World Gold Council) is approximately 17.2%.[48] In comparison, using data from the CME and the four CME CF BRR Constituent Platforms over the 6-month period of October 1, 2018 to March 31, 2019, the ratio of daily trading volume of BTC futures on the CME ($90.4 million) to the daily trading volume of BTC/USD spot ($131.6 million) is approximately 68.7%.[49]

The Sponsor maintains that another way that the CME meets the first element arises from the fact that the value of the Bitcoin assets held by the Trust is based on the CME CF BRR. Anyone attempting to manipulate the Trust would need to place numerous large sized trades on any of the Constituent Platforms that are used to calculate the CME CF BRR,[50] and if such an attempt was made the BRR Administrator and the CME would be able to detect such manipulative trading patterns.[51] In addition, any platform that is accepted by the CME to become part of the constituent trading platforms that are used to calculate the CME CF BRR, including the Constituent Platforms, (1) must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries and investigations of regulators and the BRR Administrator and (3) must submit each of its clients to its Know-Your-Customer (''KYC'') procedures; [52] therefore, the CME and the Exchange would be able, in the case of any suspicious trades, to discover all material trade information including the identities of the customers placing the trades.

The CME Has Rigorous Criteria for Constituent Platforms Which It Monitors Regularly

The Sponsor notes that the CME's criteria for each of the Constituent Platforms requires that the platform facilitates spot trading of the relevant cryptocurrency against the corresponding fiat currency (the ''Relevant Pair'') and makes trade data and order data available through an API with sufficient reliability, detail and timeliness. In addition, (1) the platform's Relevant Pair spot trading volume must meet the minimum thresholds as detailed in the CME CF Cryptocurrency Indices Methodology Guide; (2) the platform must publish policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair or manipulative trading practices; (3) the platform must not impose undue barriers to entry or restrictions on market participants, and utilizing the platform must not expose market participants to undue credit risk, operational risk, legal risk or other risks; (4) the platform must comply with applicable law and regulation, including, but not limited to capital markets regulations, money transmission regulations, client money custody regulations, KYC regulations and anti-money-laundering (AML) regulations; and (5) the platform must cooperate with inquiries and investigations of regulators and the BRR Administrator upon request and must execute data sharing agreements with CME.[53]

[42] ''The OTC market has no formal structure and no open-outcry meeting place.'' Securities Exchange Act Release No 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (streetTRACKS Gold Shares) (''streetTRACKS'').

[43] ''It is not possible, however, to enter into an information sharing agreement with the OTC gold market.'' streetTRACKS, at 64619. *See also* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38); and Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR–NYSEArca–2009–94) (ETFS Palladium Trust).

[44] *See Winklevoss II,* at 37591.

[45] *See, e.g.,* Frank Easterbrook, *Monopoly, Manipulation, and the Regulation of Futures Markets,* 59 J. of Bus. S103, S103–S127 (1986); William D. Harrington, *The Manipulation of Commodity Futures Prices,* 55 St. Johns L. Rev. 240, 240–275 (2012); Robert C. Lower, *Disruptions of the Futures Market: A Comment on Dealing With Market Manipulation,* 8 Yale J. on Reg. 391, 391–402 (1991).

[46] Other applicants have made similar arguments in their respective 19b–4 applications. *See* VanEck SolidX Bitcoin Trust, Securities Exchange Act Release No. 34–85119 (February 13, 2019), 84 FR 5140 (February 20, 2019) (SR–CboeBZX–2019–004), n. 11 (''VanEck'').

[47] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot.

[48] Data available at *https://www.gold.org/goldhub/data*.

[49] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot. The Sponsor represents that the volume of the bitcoin futures market is also comparable with volumes on other markets deemed to be markets of significant size in a previous Commission approval order. *See* VanEck, at 5143 (comparing the bitcoin futures market favorably with the freight futures market).

[50] Because the CME CF BRR is calculated based solely on the price data from the Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms.

[51] The BRR Calculation Agent receives trading data from the Constituent Platforms through its Automatic Programming Interface (''API''). *See https://www.cmegroup.com/education/bitcoin/pricing-products-practice-standards.html* (''''The [BRR] Administrator will have primary responsibility for all of the following in respect of Bitcoin Pricing Products: . . .Establishing appropriate monitoring processes and procedures designed to identify any breaches of these Practice Standards and any attempted manipulation or manipulative behavior and reporting any such incidents to the Oversight Committee in a timely manner.'')

[52] *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html*.

[53] *See https://www.cmegroup.com/education/constituent-exchanges-criteria.html*. The CME monitors the Constituent Platforms to ensure compliance with its criteria and removed two platforms in April 2017 for failing to meet its criteria. *See* Minutes of the CME CF BRR and BRTI Oversight Committee Meeting for BRR and BRTI held via conference call on 7th June 2017, available at *https://www.cmegroup.com/education/bitcoin/cme-cf-brr-and-brti-oversight-meeting-minutes-2017-06.html*.

Each of the Constituent Platforms Is Subject to Oversight by Federal and State Financial Regulators

Each of the Constituent Platforms are (i) registered with, and licensed by, the relevant financial authorities, (ii) subject to compliance with the rigorous requirements of the U.S. Bank Secrecy Act (''BSA'') and implementing AML regulations, and (iii) subject to the examination and enforcement authority of both federal and state regulators.[54]

Under applicable FinCEN guidance, virtual currency exchanges such as the Constituent Platforms are considered ''money transmitters'' for the purposes of federal AML law and must be registered with FinCEN.[55] As a result, the Constituent Platforms must fully comply with BSA and AML requirements, which include developing, implementing, and maintaining an effective AML program.[56] In general, an effective AML program requires the Constituent Platforms to, among other things:

- Perform a comprehensive money laundering risk assessment;
- Designate a qualified AML compliance officer with reporting lines to the board of directors;
- Implement AML procedures, such as a customer identification program to identify customers and the source of virtual currency;
- Perform customer due diligence or enhanced due diligence;
- Monitor transactions and file suspicious activity reports;
- File currency transaction reports and reports of foreign bank and financial accounts;
- Keep records of transactions for inspection by authorities;
- Screen transactions to ensure that they do not violate sanctions imposed by the Treasury Department;
- Perform independent testing of the AML compliance program; and
- Conduct continuing employee education and training.

Further, most states require money transmitters to obtain a license before offering money transmission services in that state. In order to obtain such state licenses, a money transmitter must implement an AML policy and comply with applicable state AML laws.[57]

Since each Constituent Platform must have AML and KYC procedures in place, and anyone intending to trade on that platform must complete the KYC on-boarding process, each of the Constituent Platforms has information that identifies anyone who makes a trade on that platform, meaning that no trades are anonymous or ''pseudonymous.'' [58] As a result of such AML and KYC procedures, together with the data sharing agreements that each of the Constituent Platforms enters into with CME, the CME and the Exchange will be able to ascertain all necessary information about any suspicious trades on each of the Constituent Platforms, including the identity of the customer(s) placing such trades.

Trading in the ETP Will Not Be the Predominant Influence on Prices in That Market

The second element to determine whether a market or group of markets is of ''significant size'' requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. As discussed in more detail below, the Sponsor concludes that, given the nature of the Trust and the composition of its assets, trading in the Trust would not be the predominant influence on prices (i) that make up the CME CF BRR, (ii) in the Bitcoin futures market on the CME, or (iii) in the USD/BTC spot market on the Constituent Platforms.

Due to the structure of the Trust, the Trust will only purchase Bitcoin if (1) required to as a result of the monthly rebalancing of its assets or (2) if it sells Shares to new investors. Conversely, the Trust will only sell Bitcoin if required to as a result of the monthly rebalancing of its assets. This means that trading in the Shares will not cause the Trust to purchase or sell Bitcoin and will therefore not influence the price of Bitcoin.

Even though the Trust may purchase Bitcoin from one or more of the Constituent Platforms [59] in connection with the issuance of Shares or a monthly rebalancing of its assets, such purchases will take place only on limited occasions and will not be the ''predominant influence'' on the market. As noted previously, in no event will the Trust be trading in Bitcoin futures contracts and therefore the purchase or sale of Bitcoin by the Trust will not be the predominant influence on prices in the Bitcoin futures market.

In addition, the Trust's assets consist of (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index. The Sponsor notes that, because Bitcoin is not the sole asset of the Trust, even if it were possible to influence the price of Bitcoin or the CME CF BRR through trading shares of the Trust, the influence of such trades would be muted by the presence of the T-Bills held by the Trust, and therefore such trading would not be the predominant influence on Bitcoin prices in such market.

Unique Aspects of the Trust Enhancing the Trust's Resistance to Market Manipulation and Volatility

According to the registration statement, the Trust was created as a way for market participants to gain reasonable exposure to Bitcoin through a vehicle that mitigates the volatility that has historically been associated with Bitcoin.[60] According to the

[54] All of the Constituent Platforms are registered with FinCEN as a money services business. Additionally, three of the four Constituent Platforms have obtained state money transmitter licenses, as applicable, and the fourth Constituent Platform is operated by a trust company chartered by the state of New York, which subjects it to New York AML requirements and enables it to operate in other states without a separate money transmitter license. *See* 3 NYCRR 504.

[55] FinCEN, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN–2013–G0001, (Mar. 18, 2013), *https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf.* FinCEN has prosecuted entities that omit to register with it as a Money Services Business (''MSB'') or fail to comply with its regulations aggressively. *See, e.g.,* Release by Office of Public Affairs, Department of Justice, *Ripple Labs Inc. Resolves Criminal Investigation,* available at *https://www.justice.gov/opa/pr/ripple-labs-inc-resolves-criminal-investigation; see also* Consent to the Assessment of a Civil Money Penalty, In the Matter of Eric Powers, U.S. Dep't of Treas., No. 2019–01 (Apr. 18, 2019) (enforcement action against a peer-to-peer cryptocurrency exchanger by FinCEN).

[56] *See* 31 CFR part 1022. The effectiveness of AML procedures was noted by FinCEN Director Kenneth A. Blanco. See Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the 2018 Chicago-Kent Block (Legal) Tech Conference, Aug. 09, 2018, available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-2018-chicago-kent-block* (reporting that FinCEN now receives over 1,500 SARs per month describing suspicious activity involving virtual currency, with reports coming from both MSBs in the virtual currency industry itself and other financial institutions).

[57] The Sponsor concludes that the presence of robust AML and KYC policies and procedures, among other things, should lead to robust trading data and may inhibit trades placed with the intent of facilitating manipulation of the Bitcoin Price.

[58] The Sponsor notes that all Bitcoin trades are visible publicly, but because trades are made from and to electronic wallets, only the electronic ''addresses'' of these wallets are available publicly. This form of trading has been called ''pseudonymous'', meaning that while the wallet addresses are discernable, the identity of the wallet owners is not. Because each Constituent Platform knows the identity of its customers and the wallet addresses they use to trade on the platform, the Constituent Platform can ascertain the identity of the customer making each trade on that platform.

[59] None of the transaction documents relating to the Trust, nor the Trust's or the Sponsor's internal policies, require the Trust to purchase Bitcoin from any of the Constituent Platforms.

[60] *See, e.g.,* Statement on Cryptocurrencies and Initial Coin Offerings by Chairman Jay Clayton, Dec. 11, 2017, n. 7; and CFTC Primer on Virtual Currencies pp. 7 and 19 (noting that trading in virtual currencies may involve significant speculation and volatility risk and that the virtual

Continued

registration statement, the Trust is designed to utilize a passive rules-based methodology without the use of derivatives or leverage in order to avoid complexity and confusion (often associated with those methods) and to provide for increased transparency to shareholders.

According to the Registration Statement, the Trust will have no assets other than (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index, which is calculated and published by Solactive AG.

T-Bills are among the most liquid and widely traded assets in the world and are deemed to be risk free. The Sponsor believes that its selection of T-Bills as a constituent of the Trust will dampen the volatility of Bitcoin as it relates to the Trust, and consequently the Shares.

In addition, based on the passive rules-based methodology noted above, as the CME CF BRR becomes more volatile, the Index, and thus the Trust, will have less exposure to Bitcoin and more exposure to T-Bills, and conversely, when the CME CF BRR becomes less volatile, the Index, and thus the Trust, will have more exposure to Bitcoin and less exposure to T-Bills. Therefore, the monthly rebalancing of the Trust's assets will also reduce the effects of Bitcoin volatility on the Trust and the Shares.

The Sponsor maintains that, in contrast to other Bitcoin-related ETP Rule 19b–4 filings previously submitted, because Bitcoin is not the only constituent of the Trust (with the other constituent—T-Bills—being historically stable and risk-free), any potential manipulation of the Trust and the Shares would be extremely difficult and therefore unlikely.

Availability of Information

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

The Index value and price information for T-Bills is available from major market data vendors. The CME CF BRR value is available on the CME website and from major market data vendors. The spot price of Bitcoin also is available on a 24-hour basis from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[61] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 [62] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[63] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may

currency marketplace has been subject to substantial volatility and price swings).

[61] *See* NYSE Arca Rule 7.12–E.

[62] 17 CFR 240.10A–3.

[63] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').[64] The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares; (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Rule 9.2–E(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to [sic]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[65] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E.

Investing in the Trust will provide investors with exposure to Bitcoin in a manner that is efficient and convenient, while also reducing the volatility typically associated with Bitcoin. The Trust uses the CME CF BRR to determine the value of its Bitcoin assets, its NAV and the ratio of Bitcoin to T-Bills held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Therefore, use of the CME CF BRR would mitigate the effects of potential manipulation of the Bitcoin market. Additionally, the capital necessary to maintain a significant presence on any Constituent Platform would make manipulation of the CME CF BRR unlikely. Bitcoin trades in a well-arbitraged and distributed market. The linkage between the Bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

In addition, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services. In addition, the Trust's website will display the applicable end of day

[64] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[65] 15 U.S.C. 78f(b)(5).

closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares and of the suitability requirements of NYSE Arca Rule 9.2–E(a). The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of Commodity-Based Trust Share based in part on the price of Bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based in part on the price of Bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–39 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–39. 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–NYSEArca–2019–39, and should be submitted on or before July 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–13925 Filed 6–28–19; 8:45 am]

**BILLING CODE 8011–01–P**

[66] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86194; File No. SR–BX–2019–011]

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent the Pilot Program for the Exchange's Retail Price Improvement Program, Rule 4780, Which Is Set To Expire on June 30, 2019, Notice of Filing of Amendment No. 1, and Order Granting Limited Exemption Pursuant to Rule 612(c) of Regulation NMS

June 25, 2019.

### I. Introduction

On April 26, 2019, Nasdaq BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent Exchange Rule 4780, governing the Exchange's Retail Price Improvement Program (''Program'').[3] The proposed rule change was published for comment in the **Federal Register** on May 15, 2019.[4] The Commission has not received any comment letters regarding the proposed rule change. On June 21, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[5] In connection with the proposed rule change, as modified by Amendment No. 1, the Exchange requests exemptive relief from Rule 612 of Regulation NMS,[6] which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01 (''Sub-Penny Rule'').[7] The Commission is issuing this order approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, soliciting comments on Amendment No. 1 from interested persons, and issuing an order granting to the Exchange limited exemptive relief pursuant to Rule 612(c) of Regulation NMS.

### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to make the Program permanent. In the Notice and Amendment No. 1, the Exchange set forth and discussed its analysis of the Program and basis for proposing permanent approval.

*Overview of the Program*

The stated purpose of the Program is to attract retail order flow to the Exchange with the potential of such order flow receiving price improvement.[8] All Regulation NMS securities traded on the Exchange are eligible for the RPI Program. The Program is limited to trades occurring at prices equal to or greater than $1.00 per share.[9]

Exchange Rule 4780 sets forth the rules governing the Program. Exchange Rule 4780(a) contains the defined terms for the Program. It defines a ''Retail Member Organization'' (or ''RMO'') as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. Under Exchange Rule 4780(b)(1), to qualify as an RMO, a Member of the Exchange must conduct a retail business or route retail orders on behalf of another broker-dealer. Exchange Rule 4780(b)(2) sets forth the process for a Member to apply to become an RMO, which includes an attestation from the Member that substantially all orders that it submits as Retail Orders will qualify as such. Exchange Rule 4780(c) sets forth when and how the Exchange would remove a Member's RMO Status (*i.e.,* disqualification), and Exchange Rule 4780(d) sets forth the process for a Member to appeal a disapproval of its RMO application or an RMO disqualification under Exchange Rule 4780(c).

Exchange Rule 4780(a) references the Exchange's order type rules under Exchange Rule 4702 to define the terms ''Retail Order'' [10] and ''Retail Price Improvement Order'' (''RPI Order'' or collectively, ''RPI Interest'').[11] Both Retail Orders and RPI Orders are non-display orders. A Retail Order must be submitted by an RMO, and an RPI Order must provide price improvement of at least $0.001 to Retail Orders. RPI Orders may only execute against Retail Orders, and an RPI Order may only execute against a Retail Order if it provides price improvement of at least $0.001 better than the national best bid or offer (NBBO).[12]

Under Exchange Rule 4780(e), BX disseminates an identifier when RPI interest priced at least $0.001 better than the Exchange's Protected Bid or Protected Offer for a particular security is available in the System (''Retail Liquidity Identifier''). The Retail Liquidity Identifier is disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS, for Tape A and Tape B securities, and The Nasdaq Stock Market, LLC (''Nasdaq'') UTP Plan for Tape C securities) as well as through proprietary Exchange data feeds. The Retail Liquidity Identifier reflects the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest.

Under Exchange Rule 4780(f), an RMO can designate how a Retail Order interacts with available contra-side interest as provided in the order type Exchange Rule 4702. Under Exchange Rule 4702(b)(6), Retail Orders can be designated as either Type-1 or Type-2. A Type 1-designated Retail Order will attempt to execute against RPI Orders and any other orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-1 Retail Order and (ii) at least $0.001 better than the NBBO. A Type-1 Retail Order is not routable and will thereafter be cancelled. A Type 2-designated Retail Order will first attempt to execute

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In November 2014, the Commission approved the Program on a pilot basis. *See* Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR–BX–2014–048) (''RPI Approval Order'').

[4] *See* Securities Exchange Act Release No. 85811 (May 9, 2019), 84 FR 21868 (''Notice'').

[5] Amendment No. 1, which is discussed further below, is a partial amendment in which the Exchange adds further analysis to support its conclusion that the Program did not have a negative impact on market quality. Amendment No. 1 may be found at *https://www.sec.gov/comments/sr-bx-2019-011/srbx2019011-5723206-186048.pdf.*

[6] 17 CFR 242.612(c).

[7] *See* note 12 *infra.*

[8] *See* Notice, *supra* note 4, at 21868.

[9] *See* Exchange Rule 4780(h).

[10] Under Exchange Rule 4702(b)(6), a ''Retail Order'' is defined as an order type with a non-display order attribute submitted to the Exchange by an RMO. A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

[11] Under Exchange Rule 4702(b)(5), an RPI Order is defined as an order type with a non-display attribute that is held on the Exchange Book in order to provide liquidity at a price at least $0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of $0.001.

[12] In the RPI Approval Order, the Commission also granted the Exchange's request for exemptive relief from the Sub-Penny Rule. *See* RPI Approval Order, *supra* note 3, at 72053. In conjunction with this proposal to make the Program Permanent, the Exchange has submitted a separate written request for exemptive relief from the Sub-Penny Rule. *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Exchange, to Eduardo A. Aleman, Deputy Secretary, Commission dated April 26, 2019.

against RPI Orders and any other orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-2 Retail Order and (ii) at least $0.001 better than the NBBO and will then attempt to execute against any other order on the Exchange Book with a price that is equal to or better than the price of the Type-2 Retail Order, unless such executions would trade through a Protected Quotation. A Type-2 Retail Order may be designated as routable.

Exchange Rule 4780(g) sets forth the priority and order allocation rules for how RPI Orders are ranked against both RPI and non-RPI orders when the Exchange receives a contra-side Retail Order. Competing RPI Orders in the same security are ranked and allocated according to price then time of entry into the Exchange's System, and . Executions occur in price/time priority in accordance with Exchange Rule 4757. When an RPI executes against a Retail Order, any remaining unexecuted RPI interest will be available to interact with other incoming Retail Orders if such interest is at an eligible price, but any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with its Retail Order designation under Exchange Rule 4780(f).

Exchange Rule 4780(h) currently provides that the program is a pilot set to expire the earlier of approval of this proposal or June 30, 2019. The Exchange proposes to eliminate this provision of the rule and make the Program permanent based on its analysis of the Program.

*Analysis of the Program*

As more fully set forth in the Notice, the Exchange submitted data and analysis to support its proposal for making the Program permanent.[13] The Exchange stated that the Program provided $4.3 million in price improvement to retail investors between December 1, 2014 (the start of the program) and May 2018.[14] The Exchange also asserted that the segmentation of retail order flow on BX increased competition for retail order flow, which in turn increased retail order flow to BX and creates additional price improvement opportunities for retail investors.[15] Furthermore, the Exchange concluded that it found no data or that it received no customer feedback indicating a negative impact of the Program on overall market quality or for retail investors.[16]

In addition, the Exchange undertook a difference-in-difference (''DID'') analysis to analyze the Program's impact on the broader market.[17] The Exchange noted that the Program was not initially designed to produce a DID analysis because all stocks traded on BX were eligible to receive price improvement under the Program from the start.[18] To account for this, the Exchange identified stocks with relatively high levels of participation in the Program for use as the ''treatment'' group, and used stocks with low participation in the Program as the ''control'' group.[19] The Exchange sought to enhance the validity of the DID analysis by otherwise making the treatment group and the control group as similar as possible. The Exchange divided the analysis into two parts: Active securities and less active securities. The active securities consist of stocks with consolidated average daily volume (''CADV'') of 500,000 shares or more. The less active securities consist of stocks with CADV of between 50,000 and 500,000 shares.[20] Within each subgroup, the Exchange conducted what it describes as a ''matched pair'' process to identify a smaller set of treatment and control groups that are as similar as possible across three market quality statistics: (i) Consolidated average daily share volume; (ii) average price; and (iii) average time-weighted quoted NBBO in dollars and basis points (bps).[21] To conduct the analysis of the Program's effect on overall market quality, the Exchange compared those statistics during a pre-treatment period (September 2014 to November 2014) against those statistics during calendar year 2015 and calendar years 2017–18, obtaining a set of four DID regression analyses.[22] The Exchange did not see sufficient consistency across the four DID regressions to conclude that the introduction of the Program caused spreads to widen.[23]

Based on results for each sample group in the Exchange's regression analysis, the Exchange concluded that the overall results were not statistically significant to support a conclusion that the introduction of the Program caused spreads to widen.[24] The Exchange's regressions suggested some increases in spreads of the treatment stocks between the pretreatment period and the post treatment periods.[25] In Amendment No. 1, however, the Exchange provided more depth to its regression analysis by noting that a single treatment stock's bps spread increased twelvefold while its price dropped by 25% during the treatment period.[26] The Exchange represented that when this stock and its matched-sample control were removed from the treatment group, the difference in spreads demonstrated by the regression analysis is not statistically significant and demonstrated how sensitive the data sample is to a single outlier data point.[27] Based on a lack of consistent statistical evidence of any impact and the small size of the Program, the Exchange concluded that the Program did not have a negative impact on market quality.[28]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal, as modified by Amendment No. 1, to make permanent the Program, Exchange Rule 4780, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) [30] and 6(b)(8) [31] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable

[13] *See* Notice, *supra* note 4, at 21872–21888.

[14] *See id.* at 21872.

[15] *See id.* at 21887.

[16] *See id.* at 21875.

[17] A DID statistical technique allows studying the differential effect of a treatment on data measured between a treatment group and a control group. The two groups are measured during two or more different time periods, usually a period before ''treatment'' and at least one time period after ''treatment,'' that is, a time period after which the treatment group is impacted but the control group is not. For each group, the difference between a measure in the pre-treatment and the treatment period is computed. Those differences for a measure for the two groups are then compared to each other by taking the difference between them.

[18] *See* Notice, *supra* note 4, at 21876.

[19] *See id.* at 21876–21879 for a full description of the Exchange's methodology.

[20] *See id.*

[21] *See id.*

[22] *See id.,* at 21878–21886 (Regression Results, Analysis Sample Table, and Tables 1A–4B).

[23] *Id.,* at 21879.

[24] *See id.*

[25] *See id.,* at 21878.

[26] *See* Amendment No. 1.

[27] In addition, in Amendment No. 1, the Exchange noted that one of the analyses indicated increases in dollar quoted and effective spreads of about 1½ cents that were statistically significant (as compared to relative (bps) spreads increases that did not meet the standards of statistical significance). Noting that an increase in dollar spreads without an increase in bps spreads implies a general increase in the average price level of the sample stocks during the post period, the Exchange concluded that the increase in dollar spreads may be attributed to a factor unrelated to Program participation.

[28] *See id.*

[29] In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(8).

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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission approved the Program on a pilot basis to allow the Exchange and market participants to gain valuable practical experience with the Program during the pilot period, and to allow the Commission to determine whether modifications to the Program were necessary or appropriate prior to any Commission decision to approve or disapprove the Program on a permanent basis. The Program's pilot period was originally scheduled to end on December 1, 2015, and the Exchange filed to extend the operation of the pilot on several occasions.[32] The pilot is now set to expire on June 30, 2019, and the Exchange proposes to make the Program permanent.

As set forth in the RPI Approval Order, the Exchange agreed to provide the Commission with a significant amount of data to assist the Commission's evaluation of the Program prior to any permanent approval of the Program.[33] Specifically, the Exchange represented that it would ''produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [34] The Commission expected the Exchange to monitor the scope and operation of the Program and study the data produced during that time with respect to such issues.[35]

After careful consideration, the Commission believes that the Exchange's Program data and analysis about price improvement for retail investors and the DID analysis, as supplemented by Amendment No. 1, support the Exchange's conclusion that the Program provides meaningful price improvement to retail investors on a regulated exchange venue and has not demonstrably caused harm to the broader market. As noted above, the Exchange demonstrated that during the operation of the Program, retail orders received price improvement on the Exchange. Furthermore, in undertaking the DID analysis, the Exchange concluded that the spreads on the Exchange did not widen to the detriment of the broader market.[36] Based on the foregoing, and after careful consideration of the Exchange's analysis of the data generated by the Program, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act.

## IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2019–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–011. 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 this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–011 and should be submitted on or before July 22, 2019.

## V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposal by providing additional analysis of Exchange's Program data to support its conclusion that there was no harm to the overall market structure. Specifically, in Amendment No. 1, the Exchange supplements text in the original notice to further explain its regression analysis results for the DID. In the Notice, the Exchange noted that the regression analysis demonstrated that there were some increase in spreads of the treatment stocks, but the Exchange concluded, among other things, that the results were neither statistically significant or consistent enough across the sample groups to conclude that the introduction of the Program caused spreads to widen. In Amendment No. 1, the Exchange provided a more in-depth analysis by noting that a single treatment stock's bps spread increased twelvefold while its price dropped by 25% during the treatment period. The Exchange represented that when this stock and its matched-sample control were removed from the treatment group, difference in spreads demonstrated by the regression analysis is not statistically significant. Amendment No. 1 does not contain any proposed revisions to the Program itself or its rule text.

[32] *See* Securities Exchange Act Release Nos. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR–BX–2015–073); 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR–BX–2016–065); 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR–BX–2017–055); 83539 (June 28, 2018), 83 FR 31203 (July 3, 2018) (SR–BX–2018–026); and 84847 (Dec. 18, 2018), 83 FR 66326 (Dec. 26, 2018) (SR–BX–2018–063).

[33] *See* RPI Approval Order, *supra* note 3, at 72053.

[34] *See id.*

[35] *See id.*

[36] The Commission notes that it recently approved on a permanent basis another exchange's substantially similar retail price improvement program based on a similar type of DID analysis. *See* Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR–NYSE–2018–28) (approving the New York Stock Exchange's Retail Liquidity Program on a permanent basis and granting a limited exemption to the Sub-Penny Rule).

The Exchange's DID analysis, as supplemented by Amendment No. 1, assisted the Commission in evaluating the Program's impact and in determining that permanent approval of the Program, Exchange Rule 4780. The Commission finds that Amendment No. 1 is reasonably designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory, or impose an unnecessary or inappropriate burden on competition. Accordingly, pursuant to Section 19(b)(2) of the Act,[37] the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## VI. Limited Exemption From the Sub-Penny Rule

Pursuant to its authority under Rule 612(c) of Regulation NMS,[38] the Commission hereby grants the Exchange a limited exemption from the Sub-Penny Rule to operate the Program. For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.

When the Commission adopted the Sub-Penny Rule in 2005, the Commission identified a variety of problems caused by sub-pennies that the Sub-Penny Rule was designed to address:

• If investors' limit orders lose execution priority for a nominal amount, investors may over time decline to use them, thus depriving the markets of liquidity.

• When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule [39] could be undermined.

• Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.

• Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.

• Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[40]

The Commission believes that the limited exemption granted today should continue to promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and its reduced depth at the inside quotation.

Furthermore, the Commission does not believe that granting this limited exemption and approving the proposal would reduce incentives for market participants to display limit orders. As noted in the RPI Approval Order, market participants that displayed limit orders at the time were not able to interact with marketable retail order flow because that order flow was almost entirely routed to internalizing OTC market makers that offered sub-penny executions,[41] and, as noted by the Exchange, the Program has attracted a small volume from the OTC market makers.[42] As a result, enabling the Exchange to continue to compete for retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders on a public national securities exchange. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

This permanent and limited exemption from the Sub-Penny Rule is limited solely to the operation of the Program by the Exchange. This exemption does *not* extend beyond the scope of Exchange Rule 4780. In addition, this exemption is conditioned on the Exchange continuing to conduct the Program, in accordance with Exchange Rule 4780 and any other Exchange Rules referenced therein, and substantially as described in the Exchange's request for exemptive relief and the proposed rule change, as modified by Amendment No. 1.[43] Any changes in Exchange Rule 4780 may cause the Commission to reconsider this exemption.

## VII. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–BX–2019–011), as modified by Amendment No. 1, be, and it hereby is, *approved* on an accelerated basis.

*It is further ordered* that, pursuant to Rule 612(c) under Regulation NMS, that the Exchange shall be exempt from Rule 612(a) of Regulation NMS with respect to the operation of the Program as set forth in Exchange Rule 4780 as described herein.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–13924 Filed 6–28–19; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 242.612(c).

[39] *See* Financial Industry Regulatory Authority Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

[40] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[41] *See* RPI Approval Order, *supra* note 3, at 72053.

[42] *See* Notice, *supra* note 4, at 21872–86.

[43] *See supra* Section III.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(83).

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent To Rule on a Land Release Request at North Central West Virginia Airport (CKB), Clarksburg, WV

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

**ACTION:** Notice and request for comment.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application for a land release of 4.09 acres of federally obligated airport property at North Central West Virginia Airport (CKB), Clarksburg, WV, from the conditions, reservations and restrictions contained in Airport Improvement Program grants that restrict the use of said land to aeronautical purposes. This acreage was originally purchased with federal financial assistance through the Airport Improvement Program. The release will allow the airport to generate revenue through the lease of a logistics and storage park that is proposed for construction. The proposed use of land after the release will not interfere with the airport or its operation.

**DATES:** Comments must be received on or before July 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Comments on this application may be mailed or delivered to the FAA at the following address: Matthew DiGiulian, Manager, Beckley Airports Field Office, 176 Airport Circle, Room 101, Beaver, WV 25813, (304) 252–6216.

In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Rick Rock, Airport Director, North Central West Virginia Regional Airport, 2000 Aviation Way, Bridgeport, West Virginia 26330, (304) 842–3400.

This land release request may be reviewed in person at the Beckley Airports Field Office located at 176 Airport Circle, Room 101, Beaver, WV 25813. Please contact Connie Boley-Lilly, Airports Program Specialist, Beckley Airports Field Office, location listed above. (304) 252–6216 ext. 125 for more information.

**SUPPLEMENTARY INFORMATION:** In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by grant agreement. The following is a brief overview of the request: The Benedum Airport Authority has submitted a land release request seeking FAA approval for the release of approximately 4.09 acres of federally obligated airport property for non-aeronautical use. The purpose of the release is to enable the airport to earn revenue from airport property that does not have an aeronautical use by allowing it to be used for non-aeronautical purposes. The airport will retain ownership of the property and lease it out. The property will be turned into a logistics and storage park that will house up to 4 buildings, parking, and an entrance road off of Route 50. The airport has received a United States Economic Development Authority (USEDA) grant to construct the logistics and storage facilities. The total project cost is $2,124,000 with the USEDA contributing $1,704,000 and a local match of $420,000.

The 4.09 acres of land to be released from aeronautical use, was originally purchased with federal financial assistance through the AIP program under Grant Agreement 3–54–0005–16–1996 as part of a larger purchase totaling approximately 120 acres. The purchase of the entire 120 acres was performed to accommodate a proposed runway extension. The subject area to be released is located off the south east corner of the runway and is well below the elevation of the movement area of the airport. It is also completely segregated from the terminal area and the facilities that serve airport users, such as Terminal Parking and Fixed Base Operator (FBO) services. Therefore, the elevation difference and location of the property make if unusable for aeronautical purposes. Furthermore, the property is not located within the RPZ, will not result in any obstructions to part 77 surfaces, and has not been identified as needed for current or future airport development in the current Airport Master Plan or ALP. The rental income will be devoted to airport operations and capital projects. The proposed use of the property will not interfere with the airport or its operation; and will thereby, serve the interests of civil aviation.

Issued in Beaver, West Virginia.

**Matthew DiGiulian,**

*Manager, Beckley Airports Field Office.*

[FR Doc. 2019–13995 Filed 6–28–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Solicitation of Nomination for Appointment to the Advisory Committee on Women Veterans

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for membership on the Advisory Committee on Women Veterans (''the Committee'') for the 2019 membership cycle.

**DATES:** Nominations for membership on the Committee must be received by August 1, 2019, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nomination packages should be sent to the Advisory Committee Management Office by email (recommended) or mail. Please see contact information below.

Advisory Committee Management Office (00AC), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *vaadvisorycmte@va.gov.*

**SUPPLEMENTARY INFORMATION:** In carrying out the duties set forth, the Committee responsibilities include, but are not limited to provides a Congressionally-mandated report to the Secretary each even-numbered year, which includes:

(1) An assessment of the needs of women Veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by VA;

(2) A review of the programs and activities of VA designed to meet such needs; and

(3) Proposing recommendation (including recommendations for administrative and legislative action) as the Committee considers appropriate. The Committee reports to the Secretary, through the Director of the Center for Women Veterans.

*Authority:* The Committee is authorized by 38 U.S.C. 542, to provide advice to the Secretary of Veterans Affairs (Secretary) on: The administration of VA's benefits and services (health care, rehabilitation benefits, compensation, outreach, and other relevant programs) for women Veterans; reports and studies pertaining to women Veterans; and the needs of women Veterans. In accordance with the Statute and the Committee's current charter, the majority of the membership shall consist of non-Federal employees appointed by the Secretary from the general public, serving as special government employees.

The Secretary appoints Committee members, and determines the length of terms in which Committee members serve. A term of service for any member may not exceed 3 years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

*Membership Criteria:* The Committee is currently comprised of 12 members. By statute, the Committee consists of members appointed by the Secretary from the general public, including: Representatives of women Veterans; individuals who are recognized authorities in fields pertinent to the needs of women Veterans, including the gender specific health-care needs of women; representatives of both female and male Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and women Veterans who are recently separated from service in the Armed Forces. Non-Veterans are also eligible for nomination.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties. A copy of the Committee's most recent charter and a list of the current membership can be found at *www.va.gov/ADVISORY/* or *www.va.gov/womenvet/.*

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory committees in an individual capacity. Additional information regarding this issue can be found at *www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions* .

*Requirements for Nomination Submission:* Nomination packages must be typed (12-point font) and include: (1) A cover letter from the nominee, and (2) a current resume that is no more than four pages in length. The cover letter must summarize: The nominees' interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, or any other factors that may give you a diverse perspective on women Veterans matters. Finally, the cover letter *must* include the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional and/or work experience, and Veterans service involvement—especially service that involves women Veterans' issues.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals must accompany the package, when it is submitted. Letters of nomination submitted without a complete nomination package *will not* be considered. Do not submit a package, without the nominee's consent or awareness.

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex issues, experience running large organizations, and ability to contribute to the gender-specific health care and benefits needs of women Veterans.

Dated: June 26, 2019.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Office.*

[FR Doc. 2019–14015 Filed 6–28–19; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0565]**

## Agency Information Collection Activity: State Application for Interment Allowance

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 30, 2019.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or Nancy Kessinger, Veterans Benefits Administration (20M3), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0565'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Danny S. Green at (202) 421–1354).

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** 38 U.S.C. 2302 and 2303.

*Title:* State Application for Interment Allowance Under 38 U.S.C. Chapter 23, VA Form 21P–530a.

*OMB Control Number:* 2900–0565.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries.

Information is requested by this form under the authority of 38 U.S.C. 2302 and 2303.

VA Form 21P–530A is used to gather the information required to determine whether a State is eligible for interment allowances for eligible Veterans who have been buried in a State Veterans' cemetery. Without this information, VBA would be unable to properly determine eligibility and pay benefits due to a State.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 3,875 hours.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 46,500.

By direction of the Secretary.

**Danny S. Green,**

*Interim VA Clearance Officer, Office of Quality, Performance, and Risk, Department of Veterans Affairs.*

[FR Doc. 2019–13994 Filed 6–28–19; 8:45 am]

**BILLING CODE 8320–01–P**

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Part II

# Department of Education

34 CFR Parts 600 and 668
Program Integrity: Gainful Employment; Final Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 600 and 668**

**[Docket ID ED–2018–OPE–0042]**

**RIN 1840–AD31**

## Program Integrity: Gainful Employment

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary of the Department of Education (Department) amends the regulations on institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions to rescind the Department's gainful employment (GE) regulations (2014 Rule).

**DATES:**

*Effective date:* These regulations are effective July 1, 2020.

*Implementation date:* For the implementation date of these regulatory changes, see the *Implementation Date of These Regulations* section of this document.

**FOR FURTHER INFORMATION CONTACT:** Scott Filter, U.S. Department of Education, 400 Maryland Avenue SW, Room 290–42, Washington, DC 20202. Telephone (202) 453–7249. Email: *scott.filter@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Purpose of This Regulatory Action:* This regulatory action rescinds the GE regulations and removes and reserves subpart Q of the Student Assistance General Provisions in 34 CFR part 668. This regulatory action also rescinds subpart R of the Student Assistance and General Provisions in 34 CFR part 668.

As discussed in the sections below, the Department has determined that the GE regulations rely on a debt-to-earnings (D/E) rates formula that is fundamentally flawed and inconsistent with the requirements of currently available student loan repayment programs, fails to properly account for factors other than institutional or program quality that directly influence student earnings and other outcomes, fails to provide transparency regarding program-level debt and earnings outcomes for all academic programs, and wrongfully targets some academic programs and institutions while ignoring other programs that may result in lesser outcomes and higher student debt. Although the GE regulation applies to less-than-degree programs at non-profit institutions, this represents a very small percentage of academic programs offered by non-profit institutions.

TABLE 1–1—REPORTING OVERVIEW OF GAINFUL EMPLOYMENT PROGRAMS

| School classification | GE Programs qualifying for calculation (based on NSLDS reporting) | GE programs published | Percent of GE programs published (%) | GE programs not published | Percent of GE programs not published (%) | Failing GE programs | Failure rate (%) |
|---|---|---|---|---|---|---|---|
| Proprietary | 9,838 | 5,676 | 57.70 | 4,162 | 42.30 | 727 | 12.80 |
| Non-profit | 18,962 | 2,956 | 15.60 | 16,006 | 84.40 | 16 | 0.50 |
| Foreign | 17 | 5 | 29.40 | 12 | 70.60 | 0 | 0.00 |
| Total | 28,817 | 8,637 | 30.00 | 20,180 | 70.00 | 743 | 8.60 |

Data from Federal Student Aid.

As table 1–1 shows only 16 percent (2,956) of the 18,962 GE programs at non-profit institutions meet the 30-student cohort size requirement. Therefore, only a small minority of those programs are subject to the D/E rates calculation and certain reporting requirements. On the other hand, all programs at proprietary institutions—including undergraduate, graduate, and professional programs—are considered to be GE programs, and 58 percent (5,676) of programs meet the minimum student threshold to report outcomes to the public. As a result, the GE regulations have a disparate impact on proprietary institutions and the students these institutions serve. The regulations also fail to provide transparency to students enrolled in poorly performing degree programs at non-profit institutions and fail to provide comparison information for students who are considering enrollment options at both non-profit and proprietary institutions. Specifically, the Department's review of research findings published subsequent to the 2014 Rule, our review of the 2015 Final GE rates (published in 2017),[1] and our review of a sample of GE disclosure forms published by proprietary and non-profit institutions, has led the Department to conclude the following: (1) As a cornerstone of the GE regulations, the D/E rates measure[2] is an inaccurate and unreliable proxy for program quality and incorporates factors into the calculation that inflate student debt relative to actual repayment requirements; (2) the D/E rates thresholds, used to differentiate between ''passing,'' ''zone,'' and ''failing'' programs, lack an empirical basis; and (3) the disclosures required by the GE regulations include some data, such as job placement rates, that are highly unreliable and may not provide the information that students and families need to make informed decisions about higher education options.

In addition, since the Social Security Administration (SSA) has not signed a new Memorandum of Understanding (MOU) with the Department to share earnings data, the Department is currently unable to calculate D/E rates, which serve as the basis of the 2014 Rule's accountability framework.[3] The GE regulations specify that SSA data must be used to calculate D/E rates, meaning that other government data sources cannot be used to calculate those rates. Because the Department was

[1] ''Gainful Employment Information,'' Federal Student Aid, *studentaid.ed.gov/sa/about/data-center/school/ge?src=press-release.*

[2] *Note:* The term ''D/E rates measure'' is used in the 2014 Rule. Although the Department views this term as redundant, we use it here for clarity and consistency.

[3] ''Amended Information Exchange Agreement Between the Department of Education and the Social Security Administration for Aggregate Earnings Data, ED Agreement No. 10012, SSA IEA No. 325,'' *www.warren.senate.gov/imo/media/doc/ED%20Agreements1.pdf.*

unaware at the time of negotiated rulemaking and publication of the notice of proposed rulemaking (NPRM) (83 FR 40167) that SSA would not renew the MOU, we did not address this issue, nor did we suggest, or seek comment on, the potential use of earnings data from the Internal Revenue Service (IRS) or the Census Bureau to calculate D/E rates. Therefore, switching to IRS or Census Bureau data for the purpose of calculating D/E rates would require additional negotiated rulemaking. However, since the Department has decided to rescind the GE regulations, the data source for calculating D/E rates is moot.

The 2014 Rule was developed in response to concerns about poor outcomes among GE programs that left students with debt that was outsized, relative to student earnings in the early years of student loan repayment. For example, the Department pointed to cohort default rates (CDRs) that were disproportionately high among students who enrolled at or completed their educational programs at proprietary institutions as an indication that the education provided was of lower quality.[4]

However, research published in 2014—and discussed throughout this document—but not considered during the Department's development of the 2014 Rule, confirms that CDRs are largely influenced by the demographics and socioeconomic status of borrowers, and not necessarily institutional quality.[5] This makes CDRs a poor proxy for institutional quality, and therefore insufficiently justifies the GE regulations.

The 2014 paper also shows that CDRs disproportionately single-out institutions that serve larger percentages of African-American students or single mothers, since these demographic groups default at higher rates and sooner after entering repayment than other borrowers.[6] The authors of this study point to reduced parental wealth transfers to minority students as the reason that defaults are higher among this group. As a result, institutions that serve larger proportions of minority students will likely have higher CDRs than an institution of equal quality that serves mostly white or more socioeconomically advantaged students. Thus, higher CDRs among minority students may be a strong sign of lingering societal inequities among different racial groups, but not conclusive evidence that an institution is failing its students. The Department now recognizes that a number of studies used to support its earlier rulemaking efforts relied on comparisons between costs and debt levels among students who enrolled at community colleges and those who enrolled at proprietary institutions. However, this is an illegitimate comparison since in 2014, 53 percent of proprietary institutions were four-year institutions, and 63 percent of students enrolled at proprietary institutions were enrolled at four-year institutions.[7] Therefore, with regard to costs and student debt levels, comparisons with four-year institutions are more appropriate.

Comparisons between students who attend community colleges and those who attend proprietary institutions may be appropriate, especially since both are generally open-enrollment institutions. However, research published by the Brown Center in 2016 shows that there are considerable differences between the characteristics of students who enroll at proprietary institutions and those who enroll at two-year public institutions.[8] Students who enroll at proprietary institutions are far more likely to be financially independent (80 percent vs. 59 percent); part of an underrepresented minority group (52 percent vs. 44 percent); or a single parent (33 percent vs. 18 percent) than students enrolled at community colleges. Students enrolled at proprietary institutions are also slightly less likely to have a parent who completed high school (84 percent vs. 87 percent); and are much less likely to have a parent who completed a bachelor's degree or higher (22 percent vs. 30 percent). These differences in characteristics may explain disparities in student outcomes, including higher borrowing levels and student loan defaults among students who enroll at proprietary institutions.

Research published in 2015 by Sandy Baum and Martha Johnson pointed to student and family demographics, as well as length of time in school, as key determinants of borrowing.[9] Therefore, research published subsequent to promulgation of the 2014 Rule showed that differences in borrowing levels and student outcomes may well be attributable to student characteristics and may not accurately indicate institutional quality or be influenced by institutional tax status.

The Department has also come to realize that unlike CDRs that measure borrower behavior in the first three years of repayment, lifecycle loan repayment rates more accurately illustrate the challenges that the majority of students are having in repaying their student loan debt and the need to look beyond one sector of higher education to solve this problem. In 2015, the Department began calculating institution-level student loan repayment rates in order to include those rates in its newly introduced College Scorecard and reported that the majority of borrowers at most institutions were paying down their principal and interest.

However, in January 2017, the Department reported that it had discovered a coding error, making the repayment data it had published earlier incorrect.[10] Though the Department's announcement downplayed the magnitude of this error, both Robert Kelchen, assistant professor of higher education at Seton Hall, and Kim Dancy, a New America policy analyst, independently found that the error was significant.[11]

Prior to correcting the error, it was determined that three years into repayment, 61 percent of borrowers were paying down their loans—meaning that these borrowers had reduced their principal by at least one dollar. This reinforced the belief that only a

[4] 79 FR 64908.

[5] Lance Lochner and Alexander Monge-Naranjo, ''Default and Repayment Among Baccalaureate Degree Earners, National Bureau of Economic Research,'' NBER working paper 19882, Revised, March 2014, *www.nber.org/papers/w19882.*

[6] Lance Lochner and Alexander Monge-Naranjo, ''Default and Repayment Among Baccalaureate Degree Earners, National Bureau of Economic Research,'' NBER working paper 19882, Revised, March 2014, *www.nber.org/papers/w19882;* see also: Government Accountability Office, ''Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid,'' August 2009, *www.gao.gov/new.items/d09600.pdf.*

[7] Stephanie Riegg Cellini and Rajeev Davolia, Different degrees of debt: Student borrowing in the for-profit, nonprofit, and public sectors. Brown Center on Education Policy at Brookings. June 2016.

[8] Stephanie Riegg Cellini and Rajeev Davolia, Different degrees of debt: Student borrowing in the for-profit, nonprofit, and public sectors. Brown Center on Education Policy at Brookings. June 2016.

[9] Sandy Baum and Martha Johnson. Student Debt: Who Borrows Most? What Lies Ahead? Urban Institute, April 2015, *www.urban.org/sites/default/files/alfresco/publication-pdfs/2000191-Student-Debt-Who-Borrows-Most-What-Lies-Ahead.pdf.*

[10] ''Updated Data for College Scorecard and Financial Aid Shopping Sheet,'' Published: January 13, 2017, *ifap.ed.gov/eannouncements/011317UpdatedDataForCollegeScorecardFinaidShopSheet.html;* Dancy, Kim and Ben Barrett, ''Fewer Borrowers Are Repaying Their Loans Than Previously Thought,'' New America, January 13, 2017, *www.newamerica.org/education-policy/edcentral/fewer-borrowers-are-repaying-their-loans-previously-thought/;* Kelchen, Robert, ''How Much Did A Coding Error Affect Student Loan Repayment Rates?'' Personal Blog Post, January 13, 2017, *robertkelchen.com/2017/01/13/how-much-did-a-coding-error-affect-student-loan-repayment-rates/.*

[11] Paul Fain, ''College Scorecard Screwup,'' *Inside Higher Ed,* Published: January 16, 2017, *www.insidehighered.com/news/2017/01/16/feds-data-error-inflated-loan-repayment-rates-college-scorecard; see also:* Robert Kelchen, *Higher Education Accountability* (Baltimore: John Hopkins University Press, 2018), 54–55.

minority of borrowers were struggling to repay debt—such as borrowers who attended proprietary institutions.

However, once the error was corrected, it became clear that repayment rates were actually much lower. The corrected data reveals that only 41 percent of borrowers in their third year of repayment were paying down their loan balances by at least one dollar. As noted by Dancy, ''the new data reveal that the average institution saw less than half of their former students managing to pay even a dollar toward their principal loan balance three years after leaving school.'' [12]

The 2017 corrected repayment rate data led the Department to conclude that the transparency and accountability frameworks created by the GE regulations were insufficient to address the student borrowing and under-payment problem of this magnitude, as the GE regulations apply to only a small proportion of higher education programs.[13] In order to enable all students to make informed enrollment and borrowing decisions, the Department sought an alternative to the GE regulations that would include all title IV-eligible institutions and programs.

The GE regulations failed to equitably hold all institutions accountable student outcomes, such as student loan repayment. However, the Department could not simply expand the GE regulations to include all title IV programs since the term ''gainful employment'' is found only in section 102 of the HEA. This section extends title IV eligibility to non-degree programs at non-profit and institutions and all programs at proprietary institutions, and at the same time restricts the application of the GE regulations to those same programs and institutions. Therefore, without a statutory change, there was no way to expand the GE regulations to apply to all institutions.

As a result, the Department engaged in negotiated rulemaking to evaluate the accuracy and usefulness of the GE regulations and to explore the possibility of creating a ''GE-like'' regulation that could be applied to all institutions and programs. The Department sought to develop a new transparency and accountability framework that would apply to all institutions and programs, likely through the Program Participation Agreement (PPA).

Unfortunately, negotiations ended having failed to reach consensus on how to improve the accuracy, validity, and reliability of the GE regulations, and having failed to develop a valid GE-like standard that could serve as the basis for an appropriate and useful accountability and transparency framework for all title IV-participating programs.

In 2018, the Department's office of Federal Student Aid (FSA) determined that the student loan repayment situation was more dire than we originally thought. Analysis of 2018 third quarter data showed that only 24 percent of loans, or $298 billion, are being reduced by at least one dollar of principal plus interest, and that 43 percent of all outstanding loans, or $505 billion, are in distress, meaning they are at risk, either through negatively amortizing Income-Driven Repayment (IDR) plans, 30 plus days delinquent, or in default.[14] These data reinforce the need for an accountability and transparency framework that applies to all title IV programs and institutions.

Failing to have reached consensus during negotiations, the Department determined that the best way to improve transparency and inform students and parents was through the development of a comprehensive, market-based, accountability framework that provides program-level debt and earnings data for title IV programs. The College Scorecard was selected as the tool for delivering those data, and by expanding the Scorecard to include program-level data, all students could make informed enrollment and borrowing decisions.

Given the Department's general authority to collect and report data related to the performance of title IV programs, the Department is not required to engage in rulemaking to modify the College Scorecard. However, to address concerns that by rescinding the 2014 Rule some students would be more likely to make poor educational investments, the Department describes in this document our preliminary plans for the expansion of the College Scorecard.

As outlined in President Trump's Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,[15] the Department plans to expand the College Scorecard to include the following program-level data: (1) Program size; (2) the median Federal student loan debt and the monthly payment associated with that debt based on a standard repayment period; (3) the median Graduate PLUS loan debt and the monthly payment associated with that debt based on a standard repayment period; (4) the median Parent PLUS loan debt and the monthly payment associated with that debt based on a standard repayment period; and (5) student loan default and repayment rates.

In addition to the information above, College Scorecard will continue to include institution-level data, such as admissions selectivity, student demographics, and student socioeconomic status. This information will provide important context to help students compare outcomes among institutions that serve demographically matched populations or that support similar educational missions.

The College Scorecard ensures that accurate and comparable information is disclosed about all programs and institutions. It provides a centralized access point that enables students to compare outcomes easily without visiting multiple institution or program websites and with the certainty that the data they are reviewing were produced by a Federal agency. This eliminates the potential for institutions to manipulate or exaggerate data, which is possible when data are self-reported by institutions.

As a result of these changes, students and parents will have access to comparable information about program outcomes at all types of title IV-participating institutions, thus expanding higher education transparency. Students will be able to make enrollment choices informed by debt and earnings data, thus enabling a market-based accountability system to function. These changes will also help taxpayers understand where their investments have generated the highest and lowest returns.

*Summary of the Major Provisions of This Regulatory Action:* The Department rescinds 34 CFR part 668, subpart Q—Gainful Employment Programs.[16] The

[12] Dancy and Barrett, *www.newamerica.org/education-policy/edcentral/fewer-borrowers-are-repaying-their-loans-previously-thought/.*

[13] *www.higheredtoday.org/2018/01/12/increasing-community-college-completion-rates-among-low-income-students//.*

[14] ''U.S. Secretary of Education Betsy DeVos Warns of Looming Crisis in Higher Education,'' Published: November 27, 2018, *www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-warns-looming-crisis-higher-education;* Analysis of FSA Loan portfolio with NSLDS Q12018, Federal Reserve Economic Data (Credit card delinquencies average for all commercial banks).

[15] *www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/*

[16] *Note:* Agencies ''obviously'' have broad discretion when reconsidering a regulation. *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8 (D.C. Cir. 2017). As the Supreme Court has noted: ''An initial agency interpretation is not instantly carved in stone,'' rather an agency ''must consider varying interpretations and the wisdom of its policy on a

term ''gainful employment'' was added to the HEA in 1968 to describe training programs that gained eligibility to participate in title IV, HEA programs. The 2014 Rule defined ''gainful employment'' based on economic circumstances rather than educational goals, created a new D/E rates measure to distinguish between passing and failing programs, and established other reporting, disclosure, and certification requirements applicable only to GE programs.

By rescinding subpart Q, the Department is eliminating the D/E rates measure, which is an inaccurate and unreliable proxy for quality, including the use of the 8 percent debt-to-earnings threshold and the 20 percent debt-to-discretionary-income threshold as the requirement for continued eligibility of GE programs. By rescinding subpart Q, we also eliminate the requirement for institutions to issue warnings, including hand-delivered notifications, in any year in which a program is at risk of losing title IV eligibility based on the next year's D/E rates.

Rescinding the GE regulations also eliminates the need for institutions to report certain data elements to the Department in order to facilitate the calculation of D/E rates. It also eliminates requirements for GE programs to publish disclosures that include the following: Program length; program enrollment; loan repayment rates; total program costs; job placement rates; percentage of enrolled students who received a title IV or private loan; median loan debt of those who completed and those who withdrew from the program; program-level cohort default rates; annual earnings; whether or not the program meets the educational prerequisites for professional licensure or certification in each State within the institution's metropolitan service area or for any State for which the institution has determined that the program does not meet those requirements; whether the program is programmatically accredited and the name of the accrediting agency; and a link to the College Navigator website. The table in Appendix A compares the information that was made available to students and parents through the 2017 GE disclosure template with the information that will be provided through the expanded College Scorecard or other consumer information tools, such as College Navigator. Disclosure requirements are also being included in other rulemaking efforts, including Borrower Defense regulations and Accreditation and Innovation regulations.

In addition, by rescinding subpart Q, the Department is also eliminating requirements regarding alternate earnings appeals, reviewing and correcting program completer lists, and providing certification by the institution's most senior executive officer that the programs meet the prerequisite education requirements for State licensure or certification.

Finally, the Department rescinds 34 CFR part 668, subpart R—Program Cohort Default Rate, including instructions for calculating those rates and disputing or appealing incorrect rates provided by the Secretary. As the Department only contemplated calculating those rates as part of the disclosures under the GE regulations, we can find no compelling reason to maintain subpart R and did not identify public comments to this aspect of the proposed regulations. We note that the HEA requires the Department to calculate institutional cohort default rates, and regulations regarding the calculation of those rates are in 34 CFR 668.202.

*Authority for this Regulatory Action:* Section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e–3. Furthermore, under section 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. These authorities, together with the provisions in the HEA, permit the Secretary to disclose information about title IV, HEA programs to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. Further, section 431 of the Department of Education Organization Act provides authority to the Secretary, in relevant part, to inform the public about federally supported education programs and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs. 20 U.S.C. 1231a.

For the reasons described in the NPRM and below, the Department believes that the GE regulations do not align with the authority granted by section 431 of the Department of Education Organization Act since the D/E rates measure that underpins the GE regulations does not provide an objective measure of the effectiveness of such programs.

*Costs and Benefits:* The Department believes that the benefits of these final regulations outweigh the costs. There will be one primary cost and several outweighing benefits associated with rescinding the GE regulations. The primary cost is that some programs that may have failed the D/E rates measure, and as a result lose title IV eligibility, will continue to participate in title IV, HEA programs. In instances in which the program failed because it truly was a low-quality program, there is a cost associated with continuing to provide title IV support to such a program, especially if doing so burdens students with debt they cannot repay or an educational credential that does not improve their employability. However, there are numerous benefits associated with eliminating the GE regulations, including: (1) Programs producing poor earnings outcomes will not escape notice simply because taxpayer subsidies make the program less costly to students; (2) programs that prepare students for high-demand careers will be less likely to lose title IV eligibility just because those high-demand careers do not pay high wages; (3) students will not inadvertently select a non-GE program with less favorable student outcomes than a comparable GE program simply because non-GE programs are not subject to the GE regulations; (4) institutions will save considerable time and money by eliminating burdensome reporting and disclosure requirements; (5) all students will retain the right to enroll in the program of their choice, rather than allowing government to decide which programs are worth of a student's time and financial investment; and (6) by providing debt and earnings data for all title IV programs through the College Scorecard, all students will be able to identify programs with better outcomes or limit borrowing based on what they are likely to be able to repay. The Department believes that the benefits outweigh the costs since all students will benefit from choice and transparency.

*Implementation Date of These Regulations:* These regulations are effective on July 1, 2020. Section 482(c) of the HEA requires that regulations affecting programs under title IV of the

continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 864–865 (1984). Significantly, this is still true in cases where the agency's review is undertaken in response to a change in administrations. *National Cable & Telecommunications Ass'n.* v. *Brand X Internet Services,* 545 U.S. 967, 981 (2005).

HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier, as well as the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the regulatory changes to subpart Q and subpart R of the Student Assistance General Provisions at title 34, part 668, of the Code of Federal Regulations, included in this document, for early implementation beginning on July 1, 2019, at the discretion of each institution.

*Public Comment:* In response to our invitation in the NPRM, 13,921 parties submitted comments on the proposed regulations. In this preamble, we respond to those comments, which we have grouped by subject. Generally, we do not address technical or other minor changes.

*Analysis of Public Comments:* An analysis of the public comments received follows.

**Scope and Purpose**

*Comments:* Many commenters indicated they supported rescinding the GE regulations because defining ''gainful employment'' using a bright-line debt-to-earnings standard is complicated and does not accurately differentiate between high-quality and low-quality programs, or programs that do and do not meet their learning objectives. A number of commenters also supported the Department's decision to rescind the GE regulations because they believe the regulations discriminate against career and technical education (CTE) programs and the students who enroll in them. Some suggested that the GE regulations signal to students that CTE is less valuable than traditional liberal arts education since the Department, as a result of the GE regulations, was holding traditional degree programs to a lower standard. Other commenters expressed concern that the GE regulations discriminate against institutions based on their tax status.

Several commenters stated that the GE regulations threaten to limit access to necessary workforce development programs at community colleges and at proprietary schools, as a result of the increased accountability for CTE programs as compared to liberal arts and humanities programs. Another commenter expressed concern that the D/E rates measure ignores or exempts a significant number of programs with the worst outcomes, simply because those programs are offered by public and non-profit institutions or receive taxpayer subsidies in the form of direct appropriations rather than or in addition to Pell grants and title IV loans.

Multiple commenters supported the rescission of the GE regulations because, in their opinion, the GE regulations would otherwise force the closure of programs and potentially entire institutions that serve minority, low-income, adult, and veteran students.

One commenter highlighted the lack of guidance from Congress on the meaning of ''gainful employment,'' and asserted that in the absence of that guidance, the Department contrived a complicated regulation that has yielded ''a patchwork of complicated and inconsistent rules that have left schools buried in paperwork with no real measure of whether students have benefited.''

Some commenters suggested that any institution could ensure that they will pass the D/E rates measure by lowering tuition. Several commenters submitted a joint comment opposing the rescission of the 2014 Rule. They argued that the rescission is arbitrary and capricious because it ignores both the benefits of the 2014 Rule and the data analysis supporting the 2014 Rule. The commenters noted that Congress had reason to require that for-profit programs be subject to increased supervision. They cited a post on the Federal Reserve Bank of New York's blog that states that attending a four-year private for-profit college is the strongest predictor of default, even more so than dropping out.[17] They cited evidence that students who attend for-profit institutions are 50 percent more likely to default on a student loan than students who attend community colleges.[18] The commenters also argued that a rise in enrollment in the for-profit sector corresponded with reports of fraud, low earnings, high debt, and a disproportionate amount of student loan defaults. They claimed that of the 10 percent of institutions with the lowest repayment rates, 70 percent were for-profit institutions. They argued that because poor outcomes are concentrated in for-profit programs, the 2014 Rule is justified.

Commenters also noted that students enrolled in programs that close generally re-enroll in nearby non-profit or public institutions and that shifting aid to better performing institutions will result in positive impacts for students. They also cited evidence[19] that, after enrollment in for-profit programs declined in California, local community colleges increased their capacity. They argued that in light of these examples, the 2014 Rule would not reduce college access for students but would rather direct them into programs that are more beneficial in the long term.

One commenter disagreed with the Department for citing the Bureau of Labor Statistics (BLS) Job Openings and Labor Turnover Survey as evidence that certain jobs are ''unfilled due to the lack of qualified workers.''[20] The commenter also stated that there is no evidence that the job openings in the BLS survey relate in any way to GE programs. Another commenter stated that the Department should withdraw its claim based on this study because the BLS press release did not note any relation to gainful employment.

*Discussion:* The Department appreciates the support received from many commenters who agreed that the D/E rates measure is a fundamentally flawed and unreliable quality indicator and that the limited applicability of the 2014 Rule to some, but not all, higher education programs makes it an inadequate solution for informing consumer choice and addressing loan default issues. Further, the Department agrees that the formula for deriving D/E rates is complicated and that it may be difficult for students and parents to understand how it was calculated and how to apply it to their own situation to determine what their likely debt and earnings outcomes will be.

The Department shares the concern of commenters who predicted that the GE regulations would result in reduced access to certain CTE focused programs. However, since no programs have lost eligibility as of yet, it is impossible to know for certain what longer-term impacts the GE regulations would have had. That said, some commenters have pointed to programs like Harvard's graduate certificate program in theater,[21] which was discontinued in part because the university knew that

[17] Rajashri Chakrabarti, Nicole Gorton, Michelle Jiang, and Wilbert van der Klaauw, ''Who is Likely to Default on Student Loans?'' *Liberty Street Economics,* November 20, 2017, *libertystreeteconomics.newyorkfed.org/2017/11/who-is-more-likely-to-default-on-student-loans.html.*

[18] Scott-Clayton, Judith (2018). ''What accounts for gaps in student loan default, and what happens after.'' Brookings Evidence Speaks Reports, 2(57).

[19] Cellini, Stephanie Riegg (2010). ''Financial Aid and For-Profit Colleges: Does Aid Encourage Entry?'' Journal of Policy Analysis and Management. 29(3): 526–52.

[20] U.S. Department of Labor. July 2018. ''Job Openings and Labor Turnover Summary.'' *www.bls.gov/news.release/jolts.nr0.htm.*

[21] *https://www.nytimes.com/2017/07/17/theater/harvard-graduate-theater-art-paulus.html.*

the program would not pass the D/E rates measure, and large closures among art and design or culinary schools as evidence that some schools voluntarily discontinued programs in order to avoid sanctions under the GE regulations.

The Department agrees with commenters that the D/E rates measure does not accurately differentiate between high- and low-quality programs or eliminate programs that produce the worst outcomes, since programs that generate much lower earnings can pass the D/E rates measure simply because taxpayers rather than students pay some of the cost of the education provided, thus reducing the price students pay.

For example, a Colorado public community college's massage therapy program passed the D/E rates measure despite having mean annual earnings of $9,516, whereas a comparable program at a Colorado proprietary institution that resulted in earnings of $15,929 failed the D/E rates measure. The Department understands that high student loan debt can be burdensome to students, especially to those who earn low wages. However, it is difficult to argue that the program yielding earnings of $9,516 is higher quality than one that yields earnings of $15,929. As is the case with four-year public and private institutions, tuition is higher at institutions that receive fewer public subsidies.

To provide another example, consider that in Ohio, a medical assistant program at a community college passed the D/E rates measure even though its graduates had median annual earnings of $14,742. Meanwhile, a medical assistant program at a proprietary institution in Ohio failed the D/E rates measure even though its graduates posted median earnings of $21,737. In Arizona, two proprietary institutions' interior design programs failed the D/E rates measure, despite having significantly higher median annual earnings ($31,844 and $32,046) than a nearby community college program ($19,493).

As stated by Cooper and Delisle with regard to the D/E rates measure, ''the danger here is that a program at a public institution may provide a low return on investment from a societal perspective, but pass the GE rule anyway because a large portion of the cost of providing it is not taken into account.'' [22] Cooper and Delisle state that this creates a distortion effect that may render student choices as rational for themselves, but disadvantageous to society.[23] In other words, while taxpayer subsidies to public institutions ensure that they pass the D/E rates measure, that may hide from students and taxpayers the amount of funding that is being used to administer ineffective programs and may fool students into enrolling in a program that has passing D/E rates without realizing that the earnings generated by the program do not justify the direct, indirect, or opportunity costs of obtaining that education. Although there are low-performing programs in all sectors, students have received only limited information about them because the GE regulations do not apply to programs in all sectors.

As is the case among all private institutions, the absence of State and local taxpayer subsidies means that students bear a larger portion of the cost of education, which generally means that tuition and fees are higher than at public institutions. Even at public institutions, students who are from outside of the State or the country pay tuition and fees that more closely resemble those of private institutions, thus demonstrating the impact of direct appropriations on subsidizing tuition costs for State residents. Yet title IV programs do not limit financial aid to students who select a public institution or the lowest cost institution available. Instead, title IV programs provide additional sources of aid, including additional funding programs (such as campus-based aid programs), to ensure that low-income students can pick the college of their choice, even if doing so means that the student needs more taxpayer-funded grants and loans.

Congress created the campus-based aid programs, in part, so that low-income students would not be limited to public institutions.[24] The campus-based aid programs provide the largest allocations to private, non-profit institutions that have been long-term participants in the program. Creating a system of sanctions that penalizes private institutions for charging more than public institutions is contrary to the foundation of the title IV programs, which were designed to promote freedom of institutional choice. Prices will vary among institutions, as will debt levels among students based on the socioeconomic status and demographics of students served.[25] But those variances do not, themselves, serve as accurate indicators or program quality.

Students make decisions about where to attend college based on many different factors, and they do so understanding that costs vary from one institution to the next. Students also make independent decisions about borrowing, and those decisions are influenced by any number of factors, including family socioeconomic status, cost of attendance, and the degree to which the student is required to support himself or herself and his or her family while enrolled in school. The Department believes that it is important to help inform those decisions so that students understand the impact of their decisions on their longer-term financial status.

The Department recognizes that over-borrowing for a low-value education that does not improve earnings is a serious challenge that could have long-term negative consequences for individual students, and it urges institutions to rein in escalating costs. However, it is unreasonable to sanction institutions simply because they serve students who take advantage of Federal Student Aid programs that Congress has made available to them, or because they operate without generous direct contributions from taxpayers.[26]

Students have the right to know what the cost of attendance is at any institution they are considering, which is already required by law.

The Department agrees with commenters who expressed concern that the GE regulations established policies that unfairly target career and technical education programs. For example, under the GE regulations, student loan debt is calculated using an amortization term that assumes these borrowers, unlike others, are required to repay their loans in 10 years if they earned an associate's degree or less, 15 years if they earned a baccalaureate or master's degree, and 20 years if they earned a doctoral or professional degree. However, the law provides for students enrolled in both GE and non-GE programs to have as many as 20 or 25 years to repay their loans, and receive loan forgiveness for the balance, if any,

[22] Cooper, Preston and Jason D. Delisle, ''Measuring Quality or Subsidy? How State Appropriations Rig the Federal Gainful Employment Test,'' American Enterprise Institute, March 2017, *www.luminafoundation.org/files/resources/measuring-quality-or-subsidy.pdf.*

[23] Ibid. *Note:* The authors also suggest that the application of the 2014 Rule to public institutions would also be insufficient. Since public institutions still benefit from direct appropriations, the uneven playing field would still exist and disadvantage some institutions over others.

[24] NASFAA Issue Brief, ''Campus-Based Aid Allocation Formula,'' January 2019, *www.nasfaa.org/issue_brief_campus-based_aid.*

[25] Sandy Baum and Martha Johnson. Student Debt: Who Borrows More? What Lies Ahead? Urban Institute, April 2015.

[26] *Note:* This is not to suggest that institutions have no role to play in establishing reasonable tuition and fee costs. Even so, many public institutions have tuition and fees dictated to them by State legislators and many private institutions establish tuition and fees based on the actual cost of providing the education as well as the many amenities today's consumers demand.

that remains at the end of the repayment period. The amortization terms used to calculate D/E rates are in direct conflict with the amortization terms made available by Congress, and the Department in the case of the Revised Pay As You Earn (REPAYE) repayment plan, to all borrowers.

Therefore, for students, especially those sufficiently distressed to provide low repayment, the GE regulations create an inconsistent standard that suggests students who enroll in GE programs should be expected to repay their student loan debts more rapidly than students who enroll in non-GE programs. Therefore, the Department agrees with commenters who expressed concern that the GE regulations send a strong message that those pursing career and technical education are less worthy of taxpayer investment, or that they have greater, or at least faster, repayment obligations than students who enroll in other kinds of programs. This contradicts the purpose of title IV, HEA programs, which were developed to expand opportunity to low-income students. These students are served disproportionately by institutions offering CTE programs.

The Administration does not believe that students who enroll at proprietary institutions are unaware that other options are available, and the assertion that they are unsophisticated is condescending and based on false stereotypes.

According to analysis provided by Federal Student Aid, in 2018, 42.2 percent of students currently enrolled at proprietary institutions had enrolled at a non-profit institution during a prior enrollment,[27] which suggests that these students are well aware that other, lower cost options exist. Perhaps better access to programs of choice, more flexible scheduling, more convenient locations, or a more personalized college experience compels students to pay more for their education. This is not unlike wealthier students who select an elite private institution over a public institution that offers the same programs at lower cost.

The Department believes it is important to provide earnings information to all students for as many title IV participating programs as possible so that no student or family—regardless of their socioeconomic status—is misled about likely earnings after completion. A program that yields low earnings is no less a problem for low- or middle-income students enrolled in a general studies or an arts and humanities program than it is for a low-or middle-income student enrolled in a CTE-focused program. While the goals of programs may differ, nearly all students who go to college today do so with the expectation of increasing their economic opportunity, and all students, regardless of institution type, are expected to repay their loans.

The Department's review of student loan repayment rates makes it clear that the problem of students borrowing more than they can repay through a standard repayment period is a problem that is not limited to students who attend proprietary institutions or who participate in CTE.

Regardless of institutional type or institutional tax status, colleges that serve large numbers and proportions of low-income students, minority students, and adult learners are likely to have outcomes that are not as strong as those of institutions that serve a more advantaged student population. Therefore, any effort to place sanctions on institutions that does not also take into account the socioeconomic status and demographics of students served unfairly targets those institutions that are expanding access and opportunity to students who are not served by more selective institutions. While the 2014 Rule emphasized that low-income and minority students who go to more elite institutions have better outcomes, it is difficult to know if that is because the institution has done something remarkable or unique, or because the selective admissions process already culls students who are less likely to succeed. Wealthy institutions that enroll small numbers of high-need students also have the ability to have devote significantly more resources to those students than an open-enrollment institution that serves large numbers of high-need students.

There are many reasons why a student might elect to attend a proprietary institution. For example, it is very possible that the insightful student selects a proprietary institution because of the more personalized learning experience and higher graduation rates than might be found at many public, open-enrollment institutions.[28] Proprietary institutions are more likely to offer accelerated programs, pre-established course sequences, more flexible class schedules and delivery models, and more personalized student services.[29] The Department is also aware of recent studies that conclude proprietary institutions are more responsive to labor market changes in comparison to community colleges, which may lead students to choose proprietary institutions over their local, public, two-year counterparts.[30]

The GE regulations also unfairly target proprietary institutions, as explained in the NPRM, because if the D/E rates measure considered the total cost of education relative to graduate earnings, a number of GE programs offered by public institutions would fail the measure.[31]

The low price of public, two-year colleges may mean that fewer students need to borrow to enroll at those schools, but lower borrowing rates may also be due to the fact that a lower proportion of community college students are Pell eligible, or financially independent students, as compared to students at proprietary institutions.[32] Despite assertions that community colleges and proprietary institutions serve the same students, as stated above, the data reveal that proprietary institutions serve a much larger population of low-income, older, and minority students.[33] It is important to consider that despite lower proportions of student borrowers, given the total size

[27] Federal Student Aid, 2018.

[28] Cellini and Davolia, ''Different degrees of debt: Student borrowing in the for-profit, nonprofit and public sectors. Brown Center on Education Policy at Brookings.''; Gilpin, G. A., Saunders, J., & Stoddard, C., ''Why has for-profit colleges' share of higher education expanded so rapidly? Estimating the responsiveness to labor market changes,'' *Economics of Education Review* 45, 2015, *scholarworks.montana.edu/xmlui/bitstream/handle/1/9186/Gilpin_EER_2015_A1b.pdf;sequence=1.*

[29] Cellini and Turner; Note: (pg. 5): ''For-profit schools may have better counseling compared to community colleges . . . the for-profit sector has been quicker to adopt online learning technologies for undergraduate education compared to less selective public colleges.''

[30] Gregory Gilpin, et al., ''Why has for-profit colleges' share of higher education expanded so rapidly? Estimating the responsiveness to labor market changes,'' *Economics of Education Review* 45 (April 2015): 53–63; See also: Grant McQueen, ''Closing Doors: The Gainful Employment Rule as Over-Regulation of For-Profit Higher Education That Will Restrict Access to Higher Education for America's Poor,'' *Georgetown Journal on Poverty Law & Policy,* Volume XIX, Number 2, Spring 2012: ''The for-profit higher education industry has filled a rapidly expanding demand for higher education in American society that public and non-profit institutions of higher education have not been able to meet.'' (pg. 330)

[31] Ibid.; also see: Schneider, Mark, ''Are Graduates from Public Universities Gainfully Employed? Analyzing Student Loan Debt and Gainful Employment,'' *American Enterprise Institute,* 2014, *www.aei.org/publication/are-graduates-from-public-universities-gainfully-employed-analyzing-student-loan-debt-and-gainful-employment/.*

[32] Jennifer Ma and Sandy Baum, Trends in Community Colleges: Enrollment, Prices, Student Debt, and Completion. College Board Research Brief, April 2016.

[33] Cellini, Stephanie and Nicholas Turner, ''Gainfully Employed? Assessing the Employment and Earnings for For-Profit College Students Using Administrative Data,'' National Bureau of Economic Research, January 2018, *www.nber.org/papers/w22287.*

of many public institutions, those institutions leave many more borrowers with debt and pose a higher aggregate loan burden and non-repayment risk to students and taxpayers. For example, a public college with 30,000 students and a 17 percent borrowing rate will produce 5,100 borrowers whereas a proprietary institution that serves 500 students and has a 90 percent borrowing rate will produce 450 borrowers. The same is true for small private, non-profit colleges that may have a higher percentage of students who need to borrow to pay tuition, but based on a small total student population, produce fewer total borrowers than public institutions that serve large numbers of students.

Unaffordable student loan debt is an issue across all sectors, including public institutions. The 2015 follow-up to the 1995–96 and 2003–04 Beginning Postsecondary Survey showed that despite the lower percentage of students who borrow at community colleges, among those who do borrow, their debts may be debilitating. For example, among borrowers who enrolled at community colleges in the 2003–04 cohort, twelve years later not only did they have a larger outstanding debt ($21,000) than students who enrolled at proprietary institutions ($14,600), but the level of debt held represented 90 percent of the original loan balance for students who enrolled at community colleges and 82 percent for those who enrolled at proprietary institutions.[34] Therefore, it is as important for students at non-GE institutions or who are enrolled in non-GE programs to understand their likely earning outcomes so that they can borrow at a level that will not leave them struggling for decades after graduation.

Also, the Department is concerned that some community colleges do not participate in the Federal Student Loan programs because of concerns that high default rates would end the institution's participation in the Pell grant program.[35] According to data from FSA, 38 community colleges do not participate in the loan programs. While this may be beneficial to students, it may also have a number of unintended consequences, including necessitating students to use more expensive forms of credit—such as credit cards and payday loans—to pay their tuition and fees. Or it may prevent low-income students from having access to higher education at lower cost institutions. An institution that elects to prevent students from taking Federal student loans will automatically pass the D/E rates measure, even if there are no earnings benefits associated with program completion. In some instances, the student may be better off in the long run by borrowing to attend a program he or she is more likely to complete, or that provides a more personalized experience, or that leads to a higher paying job. Despite the Department's interest in reducing student debt levels, it is noteworthy that a recent study showed that increased borrowing among community colleges may have a positive impact on completion and transfer to four-year institutions.[36]

Student enrollment and borrowing decisions are as complex as the decisions that graduates make about where they want to work, what they want to do for a living, and how many hours a week they want to work. Until the Department has more sophisticated analytical tools that take into account the many variables other than institutional quality that impact both cost and outcomes, it is inappropriate to develop a scheme that imposes high-stakes sanctions without understanding the longer term impact of those sanctions on students and the production of ample workers for occupations that may pay lower wages but are in high demand (such as cosmetology, culinary arts, allied health, social work, and early childhood education).

While some commenters suggested that any institution could ensure that they will pass the D/E rates measure by lowering tuition, such a view oversimplifies college financing realities. In addition to the lack of direct taxpayer subsidies, proprietary institutions may have a higher per-student delivery cost since CTE-focused education can be four or five times more expensive to administer than liberal arts or general studies education.[37] During times of high enrollment pressure or constrained resources, community colleges tend to reduce the number of vocational programs offered so that they can serve a large number of students in lower-cost general studies and liberal arts programs.[38] In addition, as noted by Shulock, Lewis, and Tan, comprehensive institutions have the added benefit of cross-subsidizing higher cost CTE programs with low-cost general studies programs that typically enroll larger numbers of students.[39] Since proprietary institutions are, for the most part, not permitted to offer lower cost general studies programs, the full cost of providing CTE is paid by the student without the benefit of cross-subsidizations from other students enrolled in lower-cost programs.

Therefore, the Department agrees with the commenter who stated that by focusing on GE programs, the Department has ignored worse outcomes generated by other programs. For example, as explained in the NPRM under ''Covered Institutions and Programs,'' numerous researchers have emphasized the importance of picking the right major in order to optimize earnings.[40] According to Holzer and Baum's 2017 publication, community college liberal arts and general studies degrees have no market value for the majority of students who earn them, but the students will never transfer to a four-year institution.[41] Nonetheless, these programs, and more at the baccalaureate level, were not covered by the GE regulations.

According to a 2018 Q3 breakdown of FSA's federally serviced portfolio, 24 percent of the dollars in the portfolio, or $272 billion, are in IDR plans that are current, but negatively amortizing. This substantial percentage of borrowers whose loans are growing rather than shrinking due to their enrollment in an IDR plan are of serious concern.[42] This is a problem of a magnitude and importance that any action the Department takes must include all borrowers at all title IV participating institutions. Of course, participation in an IDR plan may not be a sign that a student's program was of low quality but could instead be a sign that the student borrowed recklessly or made

[34] *nces.ed.gov/pubs2018/2018410.pdf.*

[35] *www.jamesgmartin.center/2017/06/colleges-allowed-limit-students-federal-loans/; www.washingtonpost.com/news/grade-point/wp/2016/07/01/the-surprising-number-of-community-college-students-without-access-to-federal-student-loans/?noredirect=on&utm_term=.cd4dd8528001.*

[36] *www.higheredtoday.org/2018/01/12/increasing-community-college-completion-rates-among-low-income-students/.*

[37] Shulock, Nancy, Jodi Lewis, and Connie Tan, ''Workforce Investments: State Strategies to Preserve Higher-Cost Career Education Programs in Community and Technical Colleges,'' Institute for Higher Education Leadership and Policy, California State University, Sacramento, August 2013, *eric.ed.gov/?id=ED574441.*

[38] Ibid.

[39] Ibid.

[40] Carnevale, Anthony, et al., ''Learning While Earning: The New Normal,'' Center on Education and the Workforce, Georgetown University, 2015, *1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/Working-Learners-Report.pdf; see also: Holzer, Harry J. and Sandy Baum, Making College Work: Pathways to Success for Disadvantaged Students* (Washington, DC: Brookings Institution Press, 2017).

[41] Holzer and Baum.

[42] Analysis of FSA Loan portfolio with NSLDS Q12018, Federal Reserve Economic Data (Credit card delinquencies average for all commercial banks).

lifestyle decisions that result in lower earnings.

Since the REPAYE program eliminates the income hardship test and allows any borrower to sign up for a student loan payment that is 10 percent of his or her income, it cannot be said that a borrower in an IDR plan is one who has been harmed by his or her program or institution. In some instances, borrowers may elect to pursue a lower paying job in order to benefit from IDR-derived loan forgiveness. Nonetheless, since so many students are enrolled in IDR programs, the Department believes that any transparency and accountability framework must apply to all title IV programs, which it plans to do through the expanded College Scorecard.

A Department review of the 2015 D/E rates shows that cosmetology and medical assisting programs were disproportionately represented among the programs that failed the D/E rates measure in the first year that D/E rates were calculated under the GE regulations.[43] Yet both of these occupations are considered by the U.S. Department of Labor to be ''bright outlook'' occupations,[44] suggesting that it is possible that GE-related program closures could reduce availability of CTE-focused programs needed to fill high-demand occupations. The Department agrees with the commenter who discussed the complicated patchwork of regulations that the Department has created, without any direction to do so by Congress. The 2015 Senate Task Force on Higher Education Regulation Report reinforces that point, and highlights the GE regulations as an example of the Department's ''us[ing] the regulatory process to set its own policy agenda in the absence of any direction from Congress, and in the face of clear opposition to that policy from one house of Congress.'' [45] By rescinding the GE regulations, we begin to correct that problem.

The Department disagrees that the BLS Job Openings and Labor Turnover Survey does not provide sufficient evidence to support the Department's assertion that many good jobs are currently unfilled, including jobs for which individuals could, in some cases, prepare for by completing a GE program. The Department pointed to the BLS survey to illustrate that the Department cannot predict the long-term impact of removing programs from title IV, including potential workforce shortages that could be caused by eliminating high-quality programs that fail the D/E rates measure for reasons beyond the control of the institution.

The Department disagrees with the commenters who said that the rescission of the GE regulations is arbitrary and capricious. Under the Administrative Procedure Act (APA), an agency ''must show that there are good reasons for the new policy.'' [46] However, ''it need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better.'' [47] (emphasis in original) Additionally, the Department provided ample evidence that any transparency and accountability framework must be expanded to include all title IV programs since student loan repayment rates are unacceptably low across all sectors of higher education and because a student may unknowingly select a non-GE program with poor outcomes because no data are available. If we want students to make informed decisions, then we need to provide information about all of the available options. Since the GE regulations cannot be expanded to include all institutions, and since negotiators could not come to consensus on a GE-like accountability and transparency framework that was substantiated by research and applicable to all title IV programs, the Department decided to take another approach.

The Department acknowledges evidence that students enrolled at proprietary institutions may be at higher risk for default and that, on average, students who attended a proprietary institution are more likely to default on their loans than students who enrolled at a community colleges. However, the Department provided ample data in the NPRM and in this document that higher defaults among students who enrolled a proprietary institution could be the result of these institutions serving higher risk students. A much higher proportion of students enrolled at proprietary colleges exhibit many more risk factors—such as being over 25, being a single parent, working full-time while being enrolled, being financially independent, and being Pell eligible—than students enrolled at other institutions, including community colleges.[48]

The Department agrees that during the Great Recession, proprietary institutions likely grew too rapidly, and some have been accused of committing fraud, but the most rapid growth in the sector was by online institutions, where relatively few programs failed the D/E rates measure. During the Great Recession, many students sought relief by enrolling in college, and the Department does not deny that some institutions took advantage of that. However, there are other mechanisms, such state attorneys general, consumer protection agencies, civil legal proceedings, internal resolution arrangements, and borrower defense to repayment regulations that enable students to take action against institutions that have committed fraud. However, a failing outcome under the D/E rates measure in no way signals, demonstrates, or proves that the institutions committed fraud.

The Department is aware of research demonstrating that as enrollments in California proprietary institutions went down, there was a commensurate increase in enrollments at local community colleges.[49] California is a State rich with community colleges, so it is not surprising that students were able to find alternatives to proprietary institutions. However, not all States and regions have as many options as those in California. In addition, a student who does not have the opportunity to attend a proprietary institution may be limited to a general studies program at a community college, which may disadvantage the student. Since, on average, graduation rates at proprietary institutions are higher than those at community colleges, a student may not be served if the lower-cost institution reduces the student's chances of completing his or her credential.

The Department agrees that some proprietary institutions serve students poorly and produce unimpressive results. However, there are institutions among all sectors that serve students poorly and produce unimpressive results, and yet the GE regulations do nothing to expose those programs or institutions or protect students from enrolling in them since the GE regulations are limited in their coverage.

[43] Federal Student Aid, ''Gainful Employment Information,'' *studentaid.ed.gov/sa/about/data-center/school/ge?src=press-release.*

[44] ONet OnLine, ''Bright Outlook Occupations,'' *www.onetonline.org/help/bright/. Note:* ''Bright Outlook'' Occupations are defined as matching at least one of the following criteria: (1) Projected to grow faster than average (employment increase of 10 percent or more) over the period 2016–2026; or (2) projected to have 100,000 or more job openings over the period 2016–2026.

[45] Task Force Report at 14.

[46] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[47] *Id.*

[48] Deming, David, Claudia Goldin, and Lawrence Katz, ''For-Profit Colleges,'' *The Future of Children,* Vol. 23, No 1, Spring 2013, *scholar.harvard.edu/files/lkatz/files/foc_dgk_spring_2013.pdf.*

[49] Cellini, Stephanie Riegg (2010). ''Financial Aid and For-Profit Colleges: Does Aid Encourage Entry?'' Journal of Policy Analysis and Management. 29(3): 526–52.

The point is not to ignore the legitimate challenges among institutions in the proprietary sector but is instead to expand the reach of a new accountability and transparency system to ensure that all students, regardless of institutional sector, can obtain information to inform their enrollment and borrowing decisions.

*Changes:* None.

**Is there a need to define gainful employment?**

*Comments:* One commenter stated that the Department must establish a definition for the term ''gainful employment in a recognized occupation,'' rather than leaving the term undefined.

Other commenters stated that the Department is violating the law by failing to differentiate between institutions that do and do not prepare students for gainful employment, and that by eliminating the GE regulations, the Department is no longer following the requirements of the HEA in differentiating between GE programs and non-GE programs.

*Discussion:* The Department does not agree that it needs to define the term ''gainful employment'' beyond what appears in statute. Since it was added to the HEA in 1968, the term ''gainful employment'' has been widely understood to be a descriptive term that differentiates between programs that prepare students for named occupations and those that educate students more generally in the liberal arts and humanities, including all degree programs offered by public and private, non-profit institutions.

Congress reaffirmed this interpretation when it added a provision to the 2008 Higher Education Opportunity Act (HEOA) that allowed a small number of proprietary institutions to offer baccalaureate degrees in liberal arts.[50] Had Congress intended the term ''gainful employment'' to mean something other than a limitation on HEA section 102 institutions from offering programs that are not CTE-focused, it would not have needed to create a statutory exception to allow some HEA section 102 institutions to offer liberal arts programs.

Therefore, contrary to suggestions by commenters that the Department needs to develop a new definition in order to enforce the law or differentiate between GE and non-GE programs, the Department confirms that it, in fact, *is* enforcing the law as written and as intended, because it disallows proprietary institutions, other than those exempted by the above-mentioned provision of the HEOA, to offer general studies, liberal arts, humanities, or other programs not intended to prepare students for a named occupation. The Department will continue to enforce the law in this regard—in the same way it enforced it between 1968 and 2011.

In promulgating the 2014 Rule, the Department cited Senate debate in the 1960s as evidence that the GE regulations are consistent with congressional intent. The Senate Report accompanying the National Vocational Student Loan Insurance Act (NVSLI), Public Law 89–287, captured testimony delivered by University of Iowa professor Kenneth B. Hoyt that supported the ''concept'' of making loans available to students pursuing vocational training. He described findings from a sample of students whose earnings data were collected two years after completing their training, and based on those data, he concluded that ''in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.''[51]

The Senate report made no mention of how quickly the student would need to repay his or her loan, and it referred to the ''concept'' of student loan repayment rather than a particular repayment amortization term or a particular debt-to-earnings threshold. Moreover, the Senate report was focused on legislation other than the HEA and the conversation had a very different focus when Congress was contemplating the inclusion of proprietary institutions in all HEA programs.

What the Department neglected to include in its recounting of the early history of student loans, is that in 1972 when the National Vocational Student Loan Insurance Act (NVSLIA) was passed, Congress decided to incorporate vocational education programs into the HEA, by allowing their participation in the Educational Opportunity Grants as well as the student loan programs. Here the House conference report is clear that the new legislation ''not only extends existing programs but creates exciting and long needed (sic) new ones. For the first time, the bill commits the Federal Government to the principle that every qualified high school student graduate, regardless of his family income, is entitled to higher education, whether in community colleges, vocational institutes or the traditional 4-year college or university.''[52] Vocational institutions in this context included proprietary colleges that would, for the first time ever, be eligible to participate in title IV grants as well as loans. The inclusion of proprietary schools in the HEA was an important step toward achieving the goals of providing equitable access to postsecondary education, for all students, regardless of whether their interests were in the traditional trades or vocations, or in typical degree programs.

The Department points out that Congress intends for all Federal student loan borrowers to repay their loans, not just those who borrow to attend ''vocational training'' programs.

However, Congress has elected to address concerns about unmanageable student loan debt by providing numerous extended repayment and income-driven repayment programs that reduce monthly and annual payments and provide loan forgiveness if, after 20 (or in some cases 25) years of income-driven repayment, an outstanding loan balance remains.

While the Department agrees that some of these repayment programs lead to undesirable outcomes for borrowers and taxpayers, in that they allow students to accumulate more debt (through negative amortization) rather than paying down their original student loan balances, the intent of Congress is clear. In fact, in introducing the Income Dependent Educational Assistance (IDEA) Act, which ultimately became the income-based repayment (IBR) program in the College Cost Reduction and Access Act of 2007 (CCRAA), Congressman Tom Petri (R–WI) stated:

> Unfortunately, little has been done by way of providing more flexible repayment options for borrowers after graduation. Traditionally it has been expected that the borrower will pay the amortized loan over a standard period, usually 10 years, with the same repayment amount on day one as on the last day. However, this model of repayment fails to take into account that students often face periods of significant unemployment or underemployment during the first years after leaving college . . . I believe the IDEA Act does just that. This legislation would allow any Stafford loan borrower the ability to consolidate into a direct IDEA loan with a repayment schedule that corresponds to the borrower's income once in repayment. This new schedule requires regular payments; however, it ensures that such payments reflect the borrowers' capacity to repay under their current income status. This feature would be particularly useful for those pursuing lower-income, public-service careers. It also would help relieve some of the stress that borrowers face during periods

[50] 20 U.S.C 1002(b).

[51] ''Gainful Employment,'' 79 FR 65035, October 31, 2014.

[52] *www.govinfo.gov/content/pkg/GPO-CRECB-1972-pt16/pdf/GPO-CRECB-1972-pt16-2-2.pdf.*

of unemployment or underemployment following graduation.[53]

Support for income-driven repayment during the 2007 HEA reauthorization was bipartisan, with Congressman George Miller (D–CA) stating that IBR was created because ''knowing that they will face a mountain of debt after graduation, some students feel compelled to major in areas that will lead to a high-paying career. The hope is that income-based repayment will encourage students to pursue their real interests, even if careers in the major of their choice don't provide a high income.'' [54]

Congressional support for IBR in the CCRAA in 2007, and for the Pay As You Earn (PAYE) income-driven repayment program in 2012, makes it clear that Congress does not wish for a student to feel compelled to select the highest paying major or job, to select the lowest cost educational opportunity, or to abandon his or her interests in lower-paying careers, such as public service careers, in order to meet student loan repayment obligations under the standard, 10-year repayment plan. Therefore, the Department's original determination the GE regulations are based upon or align with congressional intent was based on an incomplete review of the legislative record.

It should have been clear to the Department that the GE regulations did not comport with congressional intent when a bipartisan group of 113 Members of the House of Representatives, led by Congressman Alcee Hastings (D–FL), sent a letter in 2011 to President Obama asking him to withdraw the GE regulations.[55] Further, the Department should have noted that the House of Representatives passed House Amendment 94 to House Resolution 1, the Disaster Relief Appropriations Bill of 2013, with a vote of 289 to 136.[56] This amendment would have prohibited the Department from implementing the 2011 GE rule. Although the amendment was not included in the final bill, the amendment should have given the Department pause before claiming that the GE regulations were consistent with Congress' intent.

Despite numerous reauthorizations of the HEA between 1964 and 2008, Congress never attempted to define ''gainful employment'' based on a mathematical formula nor did it attempt to define the term using threshold debt-to-earnings ratios. Congress never attempted to prohibit students who attended GE programs from participating in IDR programs. In addition, the GE regulations were also identified in 2015 by the bipartisan Senate Task Force on Higher Education Regulation as a glaring example of the Department's ''increasing appetite'' for regulation.[57]

Despite previous assertions, the Department now recognizes that it had incorrectly described congressional intent and engaged in regulatory overreach, as discussed throughout these final regulations, and for those reasons, and the others described in the NPRM and these final regulations, it is rescinding the GE regulations.

*Changes:* None.

**Protecting Students**

*Comments:* A number of commenters disagreed with the Department's decision to rescind the GE regulations, arguing that minority, low-income, adult, and veteran students are particularly vulnerable and, therefore, need additional protections from unscrupulous institutions and from programs with inferior outcomes, as well as to eliminate waste, fraud, and abuse.

*Discussion:* The Department shares the concern of commenters who highlighted the need to protect low-income students and taxpayers from programs with poor outcomes, and from waste, fraud, and abuse. However, we do not believe the GE regulations are an effective tool for either of those purposes.

First, the GE regulations do not accurately identify programs with poor outcomes. Many programs that had poor earnings outcomes passed the D/E rates measure due to large public subsidies that reduce the cost of enrollment to students. At the same time, programs that resulted in much higher earnings failed the D/E rates measure since the lack of public subsidies required the students to pay the full cost.[58] The Department believes that the best way to protect all students is to acknowledge that they select their college and major based on a variety of factors, but provide clear and accurate information about debt and earnings to enable them to compare likely outcomes among the institutions and programs they are considering.

Second, although the Department acknowledges that it plays an important financial stewardship role, and has the responsibility of reducing waste, fraud, and abuse, the GE regulations did not support that goal. Many programs are not subject to the GE regulations, so the regulation would play no role in preventing waste, fraud, and abuse among those programs. The Department does not agree that by charging students for the full cost of their education, rather than accepting direct appropriations and other taxpayer subsidies, is an act of waste, fraud, or abuse. Were that the case, then the Department would need to apply the D/E rates measure to all private institutions, including private, non-profit institutions, since those institutions generally have the highest annual tuition, including for programs that result in modest earnings.

The Department is committed to ensuring that students are provided with accurate outcomes data. All students should be able to view accurate and unbiased outcomes data from a reliable source. The Department seeks to make it much more difficult for institutions to mislead students by making reliable data readily available to all students about the institutions they are considering attending or are attending.

There are many instances of fraud that would never be detected by the GE regulations, either because the programs or institutions are not subject to the GE regulations or student earnings are sufficient to mask misrepresentation that took place. Therefore, complacency based on the mistaken belief that the GE regulations will obviate the need for other efforts to detect and eliminate waste, fraud, and abuse could have serious consequences.

The Department acknowledges that it plays an important financial stewardship role, and has the responsibility of reducing waste, fraud, and abuse. However, the GE regulations did not support that goal.

Moreover, the GE regulations do not necessarily identify instances of fraud or

[53] 153 Cong. Rec. 13777 (2007).

[54] Chen, Grace, ''The College Cost Reduction and Access Act of 2007,'' Community College Review, August 7, 2018, *www.communitycollegereview.com/blog/the-college-cost-reduction-and-access-act-of-2007.*

[55] Alcee L. Hastings, ''Over 100 Members Send Bipartisan Letter to President Obama Urging Withdrawal of 'Gainful Employment' Regulation,'' April 26, 2011, *alceehastings.house.gov/news/documentsingle.aspx?DocumentID=327789.*

[56] Amendment 241 to H.R. 1 (*www.congress.gov/amendment/112th-congress/house-amendment/94*), was offered by Chairman John Kline (R–MN2) in 2011, and passed by the full House of Representatives. Amendment 241 was not included in the final Consolidated Appropriations Act (*www.congress.gov/bill/112th-congress/house-bill/2055/amendments*), *www.congress.gov/amendment/112th-congress/house-amendment/94*).

[57] Senate Task Force on Higher Education Regulations, ''Recalibrating Regulation of Colleges and Universities,'' *www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf,* pg. 13.

[58] Cooper and Delisle, *www.luminafoundation.org/files/resources/measuring-quality-or-subsidy.pdf.*

abuse since programs designed to prepare, for example, teachers, community health workers, and allied health professionals may result in low wages simply because the prevailing wages in those fields are low. Therefore, a program could fail the D/E rates measure not because of fraudulent or abusive practices on the part of institutions, but because a number of high-demand occupations pay low wages, especially in the early years of employment, or because in some occupations there is an induction period of several years before a graduate can be fully licensed or be paid at the level of experienced professionals.

There are ample examples of institutions that committed acts of fraud that would never be detected by the D/E rates measure. For example, the Nebraska Attorney General alleges that Bellevue University misrepresented the truth about the accreditation of its nursing program,[59] City Colleges of Chicago inflated their graduation rates,[60] Maricopa Community College was found guilty of falsifying student volunteer hours to allow students to receive an education award through the Americorps program,[61] and a number of law schools admitted to inflating job placement rates[62] in order to attract more students. Yet the GE regulations would identify none of these acts of misrepresentation.

The Department will continue to employ its usual fraud prevention mechanisms, such as program reviews, to identify institutions that are not abiding by title IV rules and regulations. In addition, it will continue to rely on States to execute their consumer protection functions and accrediting agencies to evaluate program quality so that the regulatory triad will retain its importance and shared responsibility in the oversight of institutions of higher education. Finally, the Department seeks to make it much more difficult for institutions to mislead students by ensuring that all students are able to view accurate and unbiased outcomes data from a reliable source, and the Department will continue to work with accreditors to try to identify and stop institutions that are reporting false outcomes data.

*Changes:* None.

**Accountability**

*Comments:* Some commenters disagreed with the Department's proposal to rescind the GE regulations, arguing that the GE regulations provide the only standard by which programs might be held accountable for outcomes. Another commenter stated that by eliminating the GE regulations, proprietary institutions would be held to a lower standard than non-GE institutions.

One commenter acknowledged that CDRs currently serve as an accountability standard for all institutions of higher education, but expressed concern that defaults are not an accurate indicator of program quality or an accurate measure of a student's or taxpayer's return on investment.

Another commenter stated that research shows that income increases with the level of degree earned. For example, the research found that students with an associate's degree saw their quarterly incomes increase by more than $2,300 for women and nearly $1,500 for men, while those with a short-term certificate saw an increase of only around $300 per quarter. The commenter also cited a study finding that among certificate holders, workers in female-dominated occupations (healthcare and education) earned less than those in male dominated occupations (technology-based).[63]

*Discussion:* The Department strongly disagrees with the commenter who suggested that by eliminating the GE regulations, there will be no more program-level accountability measures. It is the role of accreditors and States, not the Department, to evaluate program quality, and, in some instances, specialized or programmatic accreditors establish quality assurance measures, enrollment caps, and licensure pass rates that determine whether or not specific programs will continue to be accredited. The Department will continue to rely on accreditors and State authorizing agencies to evaluate program quality.

The Department also does not agree with the commenters who argued that by eliminating the GE regulations, proprietary institutions would be held to a lower standard than non-GE institutions. In addition to meeting CDR requirements like all institutions and financial responsibility standards like all non-public institutions, proprietary institutions must also meet requirements that limit title IV revenue to 90 percent of total revenue (the 90–10 Rule). The requirements regarding annual audits and the types of jobs Federal Work Study students can be placed in are also stricter for proprietary institutions. So, they remain subject to additional regulatory requirements.

As pointed out by at least one commenter, CDRs are one of the metrics that Congress has established to determine continuing eligibility for an institution, including proprietary institutions, to participate in title IV programs. We agree that CDRs are misleading indicators of program quality or the current status and risk associated with the outstanding Federal student loan portfolio. As noted earlier in this document, updated repayment rate data revealed, in January 2017, that less than half of all borrowers were paying down a dollar of principal by their third year of repayment, and more recent portfolio analysis has revealed that of the nearly $1.2 trillion in outstanding student loans, only 24 percent, or $298 billion, are in a positive repayment status, meaning that interest and principal are being paid down. The remaining loans are in post-enrollment grace, default, forbearance, deferment, or negative amortization due to income-driven repayment, and 43 percent, or $505 billion, are in distress, as previously mentioned.[64] Despite these grim statistics, it is noteworthy that the most recent CDR is only 10.8 percent (the 2018 three-year CDR for the 2015 cohort).[65] Accordingly, although the Department will continue to enforce the law by restricting title IV eligibility to those institutions, including proprietary institutions, that pass the CDR test, it also seeks to expand transparency and market-based accountability through the College Scorecard.

Regarding the comment about credential inflation, the 768 programs that failed the D/E rates measure based on the 2015 D/E rates published in 2017, more than 100 were medical assisting or similar programs and more

[59] Paul Fain, ''Nebraska AG Sues Bellevue Over Nursing Program,'' *Inside Higher Ed,* February 28, 2019, *www.insidehighered.com/quicktakes/2019/02/28/nebraska-ag-sues-bellevue-over-nursing-program.*

[60] David Kidwell, ''The Graduates*,'' *Better Government Association,* November 1, 2017, *projects.bettergov.org/the-graduates/.*

[61] Office of Public Affairs, ''Maricopa County Community College District Agrees to Pay $4 Million for Alleged False Claims Related to Award of AmeriCorps Education Awards,'' Office of Public Affairs, December 1, 2014, *www.justice.gov/opa/pr/maricopa-county-community-college-district-agrees-pay-4-million-alleged-false-claims-related.*

[62] Paul Campos, ''Served,'' *The New Republic,* April 25, 2011, *newrepublic.com/article/87251/law-school-employment-harvard-yale-georgetown.*

[63] Institute for Women's Policy Research, ''Fact Sheet: The Gender Wage Gap by Occupation 2017 and by Race and Ethnicity,'' April 2018, *iwpr.org/wp-content/uploads/2018/04/C467_2018-Occupational-Wage-Gap.pdf.*

[64] Stirgus, Eric, ''Rising Student Loan Debt a 'crisis,' DeVos Says,'' *Atlanta Journal-Constitution,* November 27, 2018, *www.ajc.com/news/local-education/rising-student-loan-debt-crisis-devos-says/kgGX56hb11yhIpOyQURlSJ/;* Analysis of FSA Loan portfolio with NSLDS Q12018, Federal Reserve Economic Data (Credit card delinquencies average for all commercial banks).

[65] Federal Student Aid, ''Official Cohort Default Rates for Schools,'' *www2.ed.gov/offices/OSFAP/defaultmanagement/index.html.*

than 90 were cosmetology/barbering programs. This suggests that these occupations may not pay a wage that is commensurate with the educational requirements for licensure or certification, but institutions do not determine or set those requirements. States and occupational licensing boards or credentialing organizations establish those requirements.

The Department agrees that the financial rewards associated with a postsecondary credential, in general, increase as the credential level increases. However, there are bachelor's, master's, and doctoral degree programs that result in relatively low earnings and that require borrowers to rely on income-driven repayment. In fact, some researchers have pointed out that it is recipients of graduate degrees who are in greatest need of, and who will benefit most from, these programs.[66] Therefore, the Department continues to believe that the best way to expand transparency and accountability to all students is to expand the College Scorecard to the program-level for all categories (GE and non-GE) of title IV programs.

*Changes:* None.

**Which institutions should be included?**

*Comments:* A number of commenters stated that they fully support the original intent of the GE regulations and that schools must be held accountable to provide equitable value to their students. However, others asserted that given the limited reach of the GE regulations, students may not have had sufficient information to accurately compare the outcomes of a GE program to a non-GE program that was not subject to the regulations. These commenters agreed with the Department that the 2014 Rule should be rescinded.

Other commenters noted that they supported the GE regulations, but indicated that all schools and programs, including proprietary institutions and non-profit institutions, should be held to the same standards and requirements. Those commenters were split on whether the Department should expand the regulations to include all institutions or rescind the regulations.

Several commenters took the position that any new regulations, whether they require a specific outcome threshold, additional disclosures, or overall transparency, should apply equally to all institutions. Of those commenters who favored uniform application of new regulations, some voiced support for a disclosure-only protocol that would provide students with program-level data about all participating institutions regardless of the type of control.

*Discussion:* The Department agrees that the same standards and reporting requirements should apply to all institutions, regardless of tax status. However, the Department could not simply expand the GE regulations to include all title IV programs since the term ''gainful employment'' is found only in section 102 of the HEA, which refers to vocational institutions and programs (meaning non-degree programs at non-profit and public institutions and all programs at proprietary institutions). Therefore, there was no way to expand the GE regulations to apply to all institutions. Moreover, although the negotiating committee considered adopting a ''GE-like'' solution that could be applied to all institutions, the negotiators were unable to reach consensus on an accurate, valid, and reliable outcomes standard that could serve as the basis for an appropriate and useful accountability and transparency framework for all title IV participating programs.

The Department agrees with the commenters that stated that the most effective method to increase accountability and transparency, under current law, for all programs is through a disclosure-only protocol, and it plans to do so using the College Scorecard to make program-level data readily available and in a format that enables easy comparative analysis. Only when students can consider comparable information about all of the institutions and programs they are considering, and that are available to them, can students begin to make data-driven decisions. Part of our goal is to end information asymmetry between institutions and students.

*Changes:* None.

**Location Matters**

*Comments:* One commenter noted that while the Department correctly cites research showing that most students do, in fact, stay close to home for college, the commenter disagrees with the assertion made in the NPRM that eliminating a failing GE program could eliminate the opportunity for a student to gain a credential if a passing program is located farther away. The commenter suggested that this research should not be used as a justification for eliminating the 2014 Rule, but rather to support keeping the GE regulations in effect in order to protect consumers.

*Discussion:* The Department does not believe that the NPRM mischaracterizes these research findings. The Department continues to believe that since location is important in influencing student enrollment decisions, a less expensive option may be of no benefit for a student who would need to travel too far from home to enroll in it. In addition, the 2015 GE data provides numerous examples of programs that pass the D/E rates measure because they are heavily taxpayer subsidized, even though they result in earnings that are substantially less than the earnings associated with programs provided by proprietary institutions that charge students the full price of educational delivery.

The Department stands by its original point, which is that location matters and that the elimination of a program that fails the D/E rates measure may not result in better long-term outcomes for students if another option doesn't exist in that place. On the other hand, a student who has only one option may decide, when better informed about debt and earnings, that it is best to forfeit that option and find a different workforce preparation pathway. The Department believes that all institutions should provide high-quality educational options to students, but without public subsidies, some of those options could result in higher tuition and fees and increased borrowing.

Regardless of whether information about program outcomes encourages program improvements, encourages institutional selectivity, or encourages students to pursue other kinds of career preparation, the Department believes that, especially when a student has very limited institutional or programmatic options, he or she needs access to data about all available options to better inform enrollment and borrowing decisions.

We are aware that the researcher who wrote the paper about the role of location in student enrollment decisions disagrees with our position on the GE regulations, and does not wish his research to be used to support our conclusions. However, we did not misrepresent his research findings and still believe that they are relevant in explaining that students with limited options in their local geographic area could be better off attending a program that results in debt but also elevates wages, as opposed to attending no postsecondary program at all.

We continue to believe that if the program in which a student is interested in enrolling loses title IV eligibility under the D/E rates measure, and there are no other options to enroll in that program within a reasonable commuting distance, the student may not be well served by the elimination of the program, even if the student would have

[66] Delisle, Jason, ''Costs and Risks in the Federal Student Loan Program,'' *American Enterprise Institute,* January 30, 2018, *www.help.senate.gov/imo/media/doc/Delisle.pdf.*

required more than 10 years to repay their student loan debt.

*Changes:* None.

**Proprietary Institution Outcomes**

*Comments:* Commenters cited a number of studies on outcomes at proprietary institutions, in support of their position that the GE regulations should not be rescinded.

One commenter provided an appendix with research citations believed to be relevant to the GE regulations. The commenter referenced research by Cellini and Turner that found that students who attend proprietary certificate programs experience small, statistically insignificant gains in annual earnings.[67] Chou, Looney, and Watson found that proprietary schools have relatively poor cohort loan repayment rates, with almost no schools in that sector having a repayment rate above 20 percent.[68] Looney and Yannelis found that between 2000 and 2011 there was substantial growth in both proprietary college enrollment and student loan default rates.[69] Armona et al. found that those who enroll in for-profit four-year institutions have the worst outcomes, including more educational debt, worse labor market outcomes, and higher default rates than students attending similarly selective public institutions.[70]

Research citations in the appendix also included work by Darolia et al. who found that employers were less likely to hire applicants with degrees from proprietary institutions, even compared to those with no degrees.[71] Chakrabarti and Jiang found that attending a proprietary college yields earnings that are 17 percent lower that earnings of those who attend private, not-for-profit four-year colleges.[72]

Commenters stated that in the 2014 Rule, the Department showed that in 27 percent of GE programs, the average graduate had an income lower than a full-time worker making the Federal minimum wage. The commenters also noted a study demonstrating that since 2014, 350,000 students graduated from certain GE programs with nearly $7.5 billion in student debt.

*Discussion:* The Department appreciates the bibliography provided by the commenter and agrees that these papers conclude that students who attend proprietary institutions, in many instances, have outcomes that are inferior to students who attend other institutions. However, the Department believes that our analysis of the outstanding student loan portfolio demonstrates that poor outcomes are not limited to these institutions or the small number, relative to total postsecondary enrollment, of students who attend them. For this reason, the Department believes that it must implement a transparency and accountability system that applies equally to all title IV programs, and that enables all students to make informed enrollment and borrowing decisions.

The Department is aware of the survey results showing that many employers ''do not prefer'' graduates of proprietary institutions,[73] or may be less likely to interview a candidate who completed an online degree at one of the well-known, large, online proprietary institutions.[74] However, the ''do not prefer'' study shows that employers similarly did not prefer to hire community college graduates over proprietary school graduates. And while employers may have been less likely to interview a candidate who attended one of the large, online, proprietary institutions, there was not an observed bias against graduates of smaller, ground-based proprietary institutions. It is difficult to know if employers were skeptical of large, online proprietary institutions because of negative experiences with prior employees, or because of negative media coverage of, and political opposition to, well-known proprietary schools.

The Department also believes that many of the studies cited have serious limitations that, in some cases, reduce the validity and reliability of their conclusions. For example, a Cellini study found that proprietary institutions are more expensive than community colleges, when tuition as well as opportunity cost is considered.[75] However, Cellini assumed in this study that it takes students the same amount of time to complete programs at proprietary institutions and community colleges, even though in subsequent publications she cites research showing that students at proprietary institutions tend to complete at higher rates and more quickly than students at community colleges. Since opportunity cost could reasonably be seen as a considerable part of the expense of attending college for adult learners who must leave the workforce or reduce the number of hours worked in order to attend college, the ability to accelerate completion could generate substantial savings compared to a lower cost program that takes longer to complete.

In her more recent work to compare pre- and post-earnings of community college and proprietary certificate programs, Cellini admits that the Great Recession could have introduced bias into her research results, and that the kinds of certificates offered by community colleges and proprietary institutions differ.[76] In other words, she was comparing what employees earn in fields that may pay very different prevailing wages. She also admits that her methodology for creating demographically matched comparison groups relied on the use of zip codes and birthdates, but every one of the same age in the same zip code is not otherwise socioeconomically and demographically matched. Moreover, she relied on a data set made available exclusively to her, meaning that it is not available for full peer review. Without the advantages of peer review and the ability of other researchers to replicate or challenge her findings, it is difficult to know how credible they are. That said, she concluded in her report that when it came to cosmetology certificates, it appeared that those who completed those certificates at

[67] Cellini, Stephanie and Nicholas Turner, ''Gainfully Employed? Assessing the Employment and Earnings for For-Profit College Students Using Administrative Data,'' National Bureau of Economic Research, January, 2018, *www.nber.org/papers/w22287.*

[68] Chou, Tiffany, Adam Looney, and Tara Watson, ''Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability,'' National Bureau of Economic Research, February, 2017, *www.nber.org/papers/w23118.*

[69] Looney, Adam and Constantine Yannelis, ''A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults,'' Brookings Papers on Economic Activity, Fall 2015, *www.brookings.edu/wp-content/uploads/2016/07/PDFLooneyTextFallBPEA.pdf.*

[70] Armona, Luis, Rajashri Chakrabarti, and Michael F. Lovenheim, ''How Does For-Profit College Attendance Affect Student Loans, Default, and Labor Market Outcomes?'' Federal Reserve Bank of New York Staff Report No. 811, September 2018, *www.newyorkfed.org/medialibrary/media/research/staff_reports/sr811.pdf?la=en.*

[71] Darolia, Rajeev, et al., ''Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from a Field Experiment,'' RAND Corporation, 2014, *onlinelibrary.wiley.com/doi/pdf/10.1002/pam.21863.*

[72] Chakrabarti, Rajashri and Michelle Jiang, ''Education's Role in Earnings Employment and Economic Mobility,'' *Liberty Street Economic Blog,* Federal Reserve Bank of New York, September 5, 2018, *libertystreeteconomics.newyorkfed.org/2018/09/educations-role-in-earnings-employment-and-economic-mobility.html.*

[73] *www.goodcall.com/news/employers-dont-prefer-for-profit-over-community-college-graduates-reveals-new-study-04948.*

[74] *www.usnews.com/news/articles/2014/10/17/employers-shy-away-from-online-for-profit-graduates.*

[75] Cellini and Turner, *www.nber.org/papers/w22287.*

[76] Cellini, S.R. and Turner, N. (January 2018). '2018 Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data' National Bureau of Economic Research working paper series. Available at: *www.nber.org/papers/w22287.*

proprietary institutions had higher earnings gains than those who completed those certificates at community colleges, which she attributes to the number of proprietary cosmetology colleges that are affiliated with high-end salons and channel graduates to jobs at those salons.

What her study fails to show, however, are earnings gains realized by students who are unable to enroll in the career and technical education program of their choice at a public institution, and instead enroll in a general studies program. Importantly, her study compared the outcomes of students who enrolled in CTE programs at public and proprietary institutions, but the study did not consider the outcomes of students who are unable to enroll in the career and technical education programs of their choice at a public institution, and instead enroll in a general studies program.

What matters to a student may not be how the earnings compare between a CTE program offered by a public and private institution, but instead how the earnings compare between the CTE program available at the private institution, and the general studies program available at the public institution. We believe that the best way to inform student choice is by providing comparable information about all of the choices a student might have. This is another reason why we are rescinding the GE regulations and proposing to expand the College Scorecard.

The Department agrees with the commenter that the GE regulations could have the unintended consequence of creating workforce shortages in occupations of high societal value. For example, according to the Department of Labor's ONET database, there were 634,000 medical assistants employed in the United States in 2016, with the projected need of almost 95,000 additional workers in this field by 2026. This makes medical assisting a ''bright outlook'' occupation, meaning that it will experience fast growth in the coming decade.

Unfortunately, medical assisting is also a field that had a median pay of $33,610 per year in 2018.[77] Yet, medical assistant program costs are rising, possibly because only medical assistants who complete a program accredited by the Accrediting Board of Health Education Schools (ABHES) or the Commission on Accreditation of Allied Health Education Programs (CAAHEP) are eligible to sit for the Certified Medical Assisting exam. Thus, programmatic accreditation may be the driver of escalating program costs given the requirements that accreditors impose on educational institutions.

It is unclear whether the relatively large number of medical assisting programs that failed the D/E rates measure did so because they are low-quality programs, they are overly expensive, high workforce demand in general results in a larger number of these programs (thus the higher failure rate is proportional to the larger number of programs offered) or if the educational requirements for entry to the field are disproportionately high relative to the wages employers pay.

The medical assisting programs that failed the D/E rates measure may be overly expensive or of low quality. However, medical assistant programs prepare students to work in a field necessary to keep our healthcare system working and where employment opportunities are readily available, although they generate low wages. While the Department agrees that a student could benefit from having access to a low-cost medical assisting program, such as by attending a program at a community college, or apprenticeships, National Center for Educational Statistics (NCES) data show that of the 103,589 medical assistants who completed programs in 2013, 84,463 or 82 percent completed programs at proprietary institutions.[78]

In response to the commenters who raised concerns about the 350,000 students who graduated from career education programs with $7.5 billion in debt, the Department shares the concern that many students take on too much debt. However, by dividing the total debt by the number of students, the average debt for each of the 350,000 students in that group would be $21,429, which is actually lower than the average loan debt for the Class of 2017 ($39,400)[79] and the Class of 2016 ($37,172).[80] Because proprietary institutions confer associate, baccalaureate, graduate, and professional degrees, comparisons of student debt levels must include not just community colleges, but also four-year and graduate institutions.

In response to the comment citing the Department's statistic from the 2014 Rule that 27 percent of GE programs resulted in lower earnings than those of a full-time worker who earns the Federal minimum wage, the Department has further considered this statistic and determined that it was based on an invalid comparison. In calculating annual earnings for minimum-wage workers, the Department assumed that minimum wage workers all work forty hours per week, fifty-two weeks per year.

However, employment statistics for low-skilled workers show that unemployment is higher among this group than others, making the full-time, year-round employment assumption overly generous. This calculation did not include part-time workers or unemployed workers in proportion to actual employment rates, but instead considered only the wage that would be earned by those who work full time. Consider that in 2017, the real median earnings for males was $44,408 and for females was $31,610, and the real median earnings for males working full time, year-round, was $52,146 and for females was $41,977. These data make clear the impact of part-time work on wages, and do not include individuals who are not in the workforce, either by choice or not.

On the other hand, the D/E rates calculation includes, not only full-time workers, but also part-time workers and those who are not in the workforce, perhaps by choice in order to raise children or care for an elderly family member. Among the 10,727,000 married couples with children under the age of 6, there are 3,811,000 in which the husband works but the wife does not but only 339,000 in which the wife works but the husband does not.[81] This demonstrates the significant impact that age and gender have on workforce participation.[82]

Additionally, as pointed out by Witteveen and Attwell in their 2017 analysis of Beginning Postsecondary Survey (BPS) data, institutional selectivity and college major, as well as student gender and socioeconomic status, have a significant impact on earnings outcomes.[83]

If the D/E rates measure, like the projected earnings of minimum wage workers, included only full-time workers, it is likely that the comparison would have yielded very different outcomes.

*Changes:* None.

[77] *www.bls.gov/ooh/healthcare/medical-assistants.htm.*

[78] *nces.ed.gov/surveys/ctes/xls/P155_2013.xls.*

[79] ''A Look at the Shocking Student Loan Debt Statistics for 2018,'' Published May 1, 2018, *studentloanhero.com/student-loan-debt-statistics/.*

[80] Zach Friedman, ''Student Loan Debt Statistics in 2018: A $1.5 Trillion Crisis,'' Published June 13, 2018, *www.forbes.com/sites/zackfriedman/2018/06/13/student-loan-debt-statistics-2018/#53efceb77310.*

[81] *www.census.gov/library/publications/2018/demo/p60-263.html.*

[82] *www.census.gov/data/tables/time-series/demo/families/families.html,* table MC–1.

[83] Dirk Wittenveen and Paul Attewell, The Earnings Payoff from Attending a Selective College, Social Science Research 66 (2017), 154–169.

**D/E Rates Thresholds and Sanctions**

*Comments:* A number of commenters supported the Department's proposal to rescind the GE regulations due to a lack of evidence that an 8 percent debt-to-income ratio sufficiently differentiates between high-quality and low-quality, or between effective and ineffective, programs. These commenters agreed that the lack of an empirical basis for the 8 percent threshold makes it inappropriate to use in determining whether or not a program should be allowed to continue participating in title IV programs. One commenter stated that currently there is not enough data to identify appropriate sanctions for any institution and that this was evident when the 2014 Rule was being negotiated.

Other commenters agreed with the Department that the GE regulations have several shortcomings, including the D/E rates thresholds, but argued that there are aspects of the GE regulatory framework that provide a reasonable and simple methodology for determining whether a program is preparing students for gainful employment. The commenter offered alternative D/E rates and thresholds for consideration, including using a 10% debt-to-income threshold with a 10-year repayment term or a 15% or 20% debt-to-income thresholds. Several commenters recommended that the Department revise the GE regulations rather than eliminate them. Another commenter asserted that sanctions should not apply only to proprietary institutions.

One commenter argued that while there is no justification for eliminating the rule, changes should be made to the measures and thresholds, with the Secretary given discretion to provide relief to programs experiencing the effects of lasting economic trends that might distort the measure or limit its reliability.

Several commenters stated that they thought efforts to reduce an institution's regulatory burden should be made, while also maintaining sanctions for poorly performing programs or, conversely, while maintaining the GE regulations. One commenter acknowledged the challenges associated with the GE regulations, but argued that these challenges are not insurmountable and that low-performing GE programs should be identified through some means and be subject to sanctions.

One commenter stated that while they understood the validity of the D/E rates measure was questionable, without it in place, low-income students would continue to be able to enroll in programs that are at high risk of not providing the students the education they deserve.

At least two commenters stated that the Department only addresses its concerns with the annual D/E rates metric but did not provide any justification for rescinding the discretionary D/E rates measure.

A few commenters were strongly in favor of retaining sanctions, including the loss of title IV program eligibility, for those programs with failing D/E rates. One of these commenters stressed that taxpayers should not pay for educational programs that ''don't work well when there are plenty of programs that do work well,'' and that it is the government's job to ''provide regulations that put the right incentives in place to protect consumers.'' Another commenter writing in favor of retaining an accountability framework inclusive of program sanctions recommended that the Department leave the 2014 Rule in place as currently written. The commenter offered that students enrolled at proprietary institutions and in other GE programs have lower employment and earnings gains than students in similar programs in other sectors and are saddled with greater debt for these high-cost programs that they cannot reasonably be expected to repay. Several commenters pointed to studies that control for student demographics, and still find that students in for-profit GE programs have lower employment and earnings outcomes than students in similar programs in other sectors.

Many commenters pointed to a blog post written by Sandy Baum as evidence that the Department mischaracterized research that she and Schwartz published as evidence that the 8 percent D/E rates threshold was an inappropriate or invalid threshold to use in establishing student borrowing limits.

*Discussion:* The Department appreciates support from the many commenters who agreed that the 8 percent threshold lacks sufficient accuracy and validity to serve as a high-stakes standard that determines whether or not a program may continue to participate in title IV programs. The Department continues to believe that our more careful recent review of the Baum and Schwartz paper confirms that the 8 percent D/E rates threshold is not appropriate to use in determining a program's continuing eligibility in title IV programs. The Department appreciates Dr. Baum's confirmation that the Department accurately reported the findings of her 2006 paper, including the recommendation that the 8 percent debt-to-income standard is a mortgage standard and one that ''has no particular merit or justification'' for use in establishing student borrowing limits.[84] The Department understands that Dr. Baum does not wish her paper to be used to support the Department's decision to rescind the GE regulations; however, the Department has never asserted that Dr. Baum supports our decision. Instead, the Department has pointed out that the source it referenced to justify the 8 percent threshold in 2010 and in 2014 is her paper, which states explicitly that 8 percent ''has no particular merit or justification'' for establishing student borrowing limits. Therefore, the Department has no empirical basis for the 8 percent threshold and will, therefore, no longer use it to determine title IV program eligibility. The Department also recognizes that in its 2011 GE regulation, it used a different set of thresholds that included 12 percent as the passing rate rather than 8 percent. This further demonstrates the absence of a reasoned methodology for distinguishing between passing and failing programs.

In the 2014 Rule, the Department failed to provide a sufficient, objective, and reliable basis for the 20 percent threshold for the debt-to-discretionary income standard. However, in 2015, the Department promulgated regulations to establish a new income-driven student loan repayment program (REPAYE), and it established 10 percent as the debt-to-discretionary income threshold that is used to determine a borrower's monthly payment obligation.[85] The REPAYE program renders the 20 percent debt-to-discretionary income threshold in the 2014 Rule obsolete since no borrower would ever be required to pay more than 10 percent of their discretionary income. Instead, REPAYE provides a longer repayment period at the 10 percent payment level in order to help borrowers manage their repayment obligations, and after 20 to 25 years (depending upon the level of the credential earned), the remaining debt is forgiven and considered taxable income.[86]

The Department agrees with the commenter who stated that all institutions should be held to the same

[84] Baum, Sandy and Saul Schwartz, ''How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt,'' The College Board, 2006, *files.eric.ed.gov/fulltext/ED562688.pdf.*

[85] ''Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program,'' 80 FR 67204, October 30, 2015.

[86] ''Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program,'' 80 FR 67205, October 30, 2015.

standards. This is why we attempted, through negotiated rulemaking, to identify thresholds that could be used to determine the continuing eligibility for all title IV programs. However, despite robust discussion and the Department's willingness to consider the use of other metrics to determine program outcomes, including a proposal from one negotiator to use a one-to-one ratio to report debt-to-earnings, there was no consensus around that proposal. Similarly, negotiators could not identify a threshold that they agreed should be used to determine title IV eligibility for all programs.

The Department appreciates the recommendations from commenters to establish a new threshold for triggering sanctions, but we are not persuaded that any of those recommendations have merit, especially because borrowers have multiple student loan repayment options that use different formulas for determining how much a borrower must pay each month. None of the sanction recommendations properly accounted for differences in repayment rates among the available repayment options.

The Department agrees that students and taxpayers should not continue investing in failing programs. However, the Department does not believe that the D/E rates measure accurately distinguishes between programs that ''do or do not work'' since the majority of title IV programs are not subject to the GE regulations. Also, it is difficult to argue that a program resulting in higher earnings does not work, simply because the cost of attending that program is paid by students rather than taxpayers, which results in higher student loan debt. The Department also believes that providing direct appropriations and other tax subsidies to low-value programs creates the same financial risks to taxpayers as student loans. Therefore, any future sanctions should also take into account the amount that taxpayers contribute through direct appropriations and preferential tax benefits to programs that do not result in better student or societal outcomes.

Our review of the 2015 D/E rates reveals that a number of programs whose graduates have exceptionally low earnings passed the D/E rates measure simply because taxpayers provide substantial subsidies to students enrolled in those programs in order to reduce the portion of program costs that students pay through tuition. For example, cosmetology programs offered by non-profit institutions in Puerto Rico, such as at Institucion Chaviano de Mayaguez and Leston College, resulted in the lowest earnings among any GE programs in that field.[87] Yet, these programs passed the D/E rates measure because the taxpayer carried most of the burden of paying the costs of program delivery. Just because the taxpayer covered the majority of the cost of the program, does not change the fact that its graduates earn exceptionally low wages. Even if these students took no loans, the taxpayer's contributions may not have been well spent and will not necessarily generate returns commensurate with investment.

The Department is not surprised that students who attend proprietary institutions accumulate more debt than those who attend public institutions because the same is also true of students who attend private, non-profit institutions versus public, non-profit institutions. In fact, national data indicate that students who attend proprietary institutions, which include four-year institutions and graduate institutions, accumulate less debt on average than those who attend private, non-profit institutions.[88]

The Department also notes that a number of GE programs offered by public institutions did not meet the minimum cohort size and, therefore, did not report outcomes. For example, as of 2017–2018 award year, 14,476 of 18,184 GE programs, or 79.6%, at public institutions have fewer than 10 graduates.

Unable to demonstrate that the D/E rates measure is an accurate indicator of program quality and unable to identify an alternative threshold that is supported by empirical evidence, the Department is rescinding the GE regulations and plans to report directly to the public the median debt and earnings of program completers. This enables students, parents, and taxpayers to evaluate program value and make informed enrollment and investment decisions.

Perhaps, in time, researchers can develop evidence-based recommendations for thresholds and sanctions that take into account all of the factors that influence program outcomes. More accurate and valid thresholds must also take into account differences in earnings among workers in different fields, the societal benefits afforded by some lower-paying occupations, the educational qualifications demanded by employers (which may exceed the level of education technically required to do a particular job), and the education requirements associated with State or professional licensure or certification.

Since the Department is rescinding the GE regulations, it will no longer use arbitrary thresholds that lack an empirical basis to establish continuing title IV eligibility. However, through the expanded College Scorecard, students and taxpayers will, for the first time, have access to debt and earnings data for the graduates of all categories of title IV programs, which will help students, families, taxpayers, and institutions, determine which investments generate the highest return.

The Department clearly stated in the NPRM that neither it nor negotiators were able to identify a D/E metric that was sufficiently valid and accurate to serve as a high-stakes quality test or to become a new, non-congressionally mandated, eligibility criteria for title IV. Regardless of whether gross income or discretionary income forms the basis of the D/E calculation, the methodology is inaccurate and fails to control for the many other factors other than program quality that influence debt and earnings.

The Department does not agree that it can overlook the limitations of the GE regulations and instead rely on the Secretary to grant relief to institutions facing particular challenges or extenuating circumstances. While identifying a more accurate metric or formula for evaluating program quality may not be insurmountable, the Department does not currently have tools that can differentiate between outcomes that are the result of program quality and outcomes that are the result of institutional selectivity or student demographics.

*Changes:* None.

**Concerns About the Validity and Complexity of the D/E Rates Calculation**

*Comments:* A number of commenters agreed with the Department's decision to rescind the GE regulations due to inaccuracies in the D/E rates formula.

Many commenters agreed with the Department's proposal to rescind the GE regulations because the D/E rates calculation is overly complicated and not easily understood by students or parents, which led those commenters to state it would be unwise to continue using those rates to determine title IV eligibility.

Another commenter said that a study used to illustrate the impact of student demographics on earnings was inappropriate since it did not isolate graduates of GE programs or distinguish them from other individuals.

*Discussion:* The Department agrees that the D/E rates calculation is too

[87] Institucion: $1,984, Leston: $2,322, per 2015 GE Final Rates.

[88] The College Board, ''Median Debt by Institution Type, 2013–2014,'' *Trends in Higher Education, trends.collegeboard.org/student-aid/figures-tables/median-debt-institution-type-2013-14.*

complicated for many students and parents to understand how to translate D/E rates into a meaningful and useful data point.

The Department referenced College Board information in their *Trends in Higher Education* research series to substantiate our claim that earnings are impacted by a number of factors, including gender, race, geographic location, and socioeconomic status.[89] The Department agrees that the research does not single out graduates of GE programs, but it need not do that to be relevant to the Department's concerns about the many factors other than institutional quality that can impact D/E rates. The data supports our position that earnings outcomes are influenced by a number of factors, which may include program quality.

*Changes:* None.

**Amortization and Interest Rates**

*Comments:* Among those who agreed with the Department that the GE regulations should be rescinded were commenters who were concerned about the use of amortization terms and interest rates that could have a significant impact on D/E rates outcomes.

A few commenters disagreed with the Department's position expressed in the NPRM that it is not appropriate to use an amortization period in the D/E rates calculation of less than 20 years for any undergraduate program or of less than 25 years for any graduate program, given that the REPAYE program provides 20- to 25-year amortization periods, depending upon the level of the credential earned. The commenters maintained that it is inappropriate to apply the 20- or 25-year amortization period associated with REPAYE to associates or certificate programs since those programs are shorter-term and should be less costly than four-year or graduate programs. However, another commenter agreed with the Department's position on the amortization period that should be used to calculate D/E rates for two-year and certificate programs, offering that though switching to a 20-year amortization period would allow some low-performing programs to pass the D/E rates measure, it is reasonable given that the Department offers a repayment plan of that length.

Another commenter strongly objected to the Department's statement in the NPRM that the problem of unaffordable debt levels has been ameliorated by the creation of IDR plans. The commenter asserted that IDR plans are not a solution to the problem of unaffordable for-profit educational programs and that there is no evidence to suggest IDR plans have improved the landscape of GE programs. One commenter contended that PAYE, REPAYE, and other IDR plans set programs up to fail the D/E rates measure since these repayment plans often lower monthly payments to the point where the minimum payment consists only of interest or, in some cases, allows the loan to negatively amortize.

*Discussion:* The Department appreciates support from commenters who agree that it would be arbitrary for the Department to use an amortization term for the purpose of calculating D/E rates that differs from the amortization terms made available to borrowers under the law and the Department's REPAYE regulations. The Department agrees that it is desirable for students who completed shorter-term programs to repay their debts more quickly, but it is equally desirable for all borrowers to repay their debts over a standard 10-year repayment plan. However, Congress has created IDR plans to help borrowers manage debt and ensure that student loan payments will always be a fixed percent of discretionary income. For example, in the REPAYE program, introduced by the Department in 2015, the fixed percent of discretionary income is 10 percent.

The Department does not agree that IDR plans lead to a program's failure to meet the required D/E standard, since the D/E formula is a mathematical calculation and not a measure of the amount of debt borrowers are actually paying. However, the Department believes that student participation in IDR plans will negatively impact repayment rates, since it is possible that a student making the required payment is paying so little that the payment will not keep pace with accumulating interest. We share the commenter's concern about the impact of IDR plans on borrowers and outstanding debt, but IDR plans do not have an impact on calculating a program's D/E rate.

*Changes:* None.

**Earnings Data and Tip-Based Occupations**

*Comments:* Numerous commenters raised concerns that earnings data used to calculate D/E rates were not accurate or reliable for a number of reasons, including that SSA data excludes unreported tip income and some self-employment earnings. Several commenters noted that tip-based careers and commission-based employment may adversely impact a program's D/E rates. Others commented that since data collected by the SSA is used to administer the Social Security Act and not evaluate college or university performance, it should not be used to determine continuing title IV eligibility. Another commenter pointed out that SSA data cannot differentiate between wages earned by those working full time versus part time, including when part-time work is the option preferred by the program completer.

On the other hand, one commenter stated that the Department should not make accommodations for the underreporting of tipped income. The commenter argued that those who underreport tipped income are committing an illegal act and the Department should not protect those individuals.

*Discussion:* The Department agrees with the commenters' critiques of the D/E rates calculation and that institutions may not have the ability to control for the many variables that impact earnings. The Department does not believe that it should sanction institutions for aspects of student debt and earning outcomes that are outside of the institution's control. The Department provided detailed explanations regarding its concerns about the accuracy of the D/E rates formula in the NPRM, including that second- and third-year earnings do not accurately reflect long-term earnings associated with program completion; macro-economic conditions can have a significant impact on D/E rates, even if there are no changes in the program's content or quality; and prevailing wages may differ significantly from one occupation to the next and one part of the country to the next.

The Department also agrees that the exclusion of tip-based income—especially in heavily tip-influenced professions, such as cosmetology—some self-employment income, and household income from the D/E rates measure renders the earnings portion of the D/E calculation subject to significant errors. It also agrees that institutions should encourage graduates to report all income accurately to the IRS; however, institutions do not complete tax returns for students and cannot guarantee accurate reporting.

While the Department agrees that individuals who receive tip income should report that income fully and pay required taxes on that income, it is not the fault of institutions of higher education that many individuals do not. The IRS often assesses the fact that many tipped workers often underreport income, which further demonstrates

[89] Ma, J., et al., ''Education Pays 2016: The Benefits of Higher Education and Society,'' College Board, *trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf.*

that the D/E rates calculation is subject to numerous sources of error. The Department provided a means for institutions to survey program graduates to obtain an alternate earnings appeal for the program in instances where IRS data underreported actual earnings.[90]

However, that mechanism proved more problematic and burdensome to administer than anticipated, and, in *American Association of Cosmetology Schools (AACS)* v. *DeVos,* a Federal court ruled that the Department's standard for such appeals was inappropriately high.[91] The administrative burden and complexity of accounting for underreported income for the purpose of the D/E rates measure is another factor that supports the rescission of the 2014 Rule.[92]

While not expanding the application of its holding beyond AACS cosmetology programs, in *AACS* v. *DeVos,* the D.C. Circuit noted, in dicta, that the problem of underreported income is not reserved solely to cosmetology programs. The court stated: ''The problem of underreporting [income] extends across multiple industries and even across individual entities within those industries. While cosmetology schools' graduates engage in, on average, a certain amount of underreporting, other industries likely also experience different levels of underreporting based on factors like the amount of tips their graduates earn, how frequently their graduates are self-employed, and the amount of tax-compliance training their graduates receive. Within these industries, individual schools experience varying levels of underreporting.'' [93] The consequence of this phenomenon, regardless of the existence of civil and criminal penalties, was an artificial devaluing of programs subject to graduates underreporting their income.[94]

As stated above, to remedy the underreporting issue impacting a program's D/E rates, the 2014 Rule offered an alternate earnings appeal process. Here, the D.C. Circuit found the process reasonable ''on the surface,'' but identified the assumption that every program would be capable of mounting an appeal ''the fly in the DOE's reasoned decision-making ointment.'' [95]

The problem, the court found, was AACS's evidence that showed that cosmetology schools were ''simply unable to mount appeals.'' [96] When considering that, according to the reported 2015 GE data, there were over 950 cosmetology programs that could not accurately report graduate income, plus additional GE programs that rely heavily on tips such as massage therapy, hair styling, and barbering, it is difficult to justify a metric that punishes a program harshly, while not fairly, accurately, or without undue burden measuring the value of the program.[97]

Further, the Department agrees with the commenters that SSA data may be inaccurate, especially for students who are self-employed and for workers in occupations that are highly dependent upon tip income, which may be underreported. SSA data similarly does not provide information about household earnings, which may be adequate to support a family without needing the graduate to work outside of the home. Penalizing programs because the students they serve may decide, for example, to work fewer hours in order to be with children is absurd, especially since daycare challenges and costs may make it economically advantageous to work part-time when family members can provide free or low-cost childcare.

However, SSA has not renewed its MOU with the Department and, therefore, will not currently share earnings data. As a result, the Department is unable to calculate future D/E rates unless it changes the GE regulations to rely on a different data source for earnings information. The 2014 Rule specifically states that earnings data must come from the SSA. Considering the lack of a sufficient alternative data source and that the Department has decided to rescind the GE regulations, it is not necessary to identify a new data source for calculating D/E rates.

*Changes:* None.

**Short-Term vs. Long-Term Earnings**

*Comments:* Multiple commenters noted that the D/E rates measure, as established in the GE regulations, did not account for long-term earnings that accurately reflect the full earnings premium associated with college completion.

*Discussion:* The Department agrees that D/E rates, based on earnings in the third and fourth year following completion of a program, do not accurately predict how much a graduate will earn over a lifetime.

*Changes:* None.

**Impact of Macroeconomic Changes**

*Comments:* One commenter stated that the earnings data used to calculate D/E rates were not sensitive to macroeconomic changes beyond the institution's control.

Another commenter stated that the impact of economic issues, such as how recessions would be accounted for, are sufficiently addressed in the 2014 Rule by using a cohort that includes multiple years of graduates and considers results over several years. The commenter stated that the Department has not explained why it changed its interpretation of the rule regarding these issues. The commenter also stated that the Department fails to disprove the 2014 Rule's research on adult students and D/E rates in its justification to rescind the GE regulations.

One commenter stated that using the impact of economic recessions to justify the rescission of the GE regulations is inappropriate, because data collected during a recession would be an outlier and would not have a long-term impact on rates or program sanctions. Another commenter said that by the Department's own words, the Great Recession was an exceptional event and exceptional events should not be relied upon as a baseline in policy making.

One commenter stated that the Department misinterpreted research by Abel and Dietz [98] in using these data to explain its concerns about the impact of recessions on earnings and employment. The commenter stated that this research is not particularly relevant to the gainful employment conversation and only includes bachelor's degree recipients. The commenter stated that there is a connection between educational qualifications and pay that the Department did not consider. The

[90] 79 FR 64995.

[91] *American Association of Cosmetology Schools* v. *DeVos,* 258 F.Supp.3d 50 (D.D.C. 2017).

[92] As the court stated in *AACS* v. *DeVos:* ''by inexplicably requiring high response rates to submit state-sponsored or survey-based alternate earnings calculations, the DOE narrowly circumscribed the alternate-earnings appeal process, making it unfeasible for certain programs to appeal their designations.'' *Id.* at 57.

[93] *Id.* at 74.

[94] The *AACS* court noted that the existence of penalties is ''irrelevant'' to the issue of undercounting income. *Id.* at 56.

[95] *Id.* at 74.

[96] *Id.*

[97] The Department notes that the 2014 Rule has been challenged numerous times in court proceedings, notably in *Association of Private Sector Colleges and Universities* v. *Duncan,* 640 Fed.Appx. 5 (D.C.C. 2016) and *Association of Proprietary Colleges* v. *Duncan,* 107 F. Supp.3d 332 (S.D.N.Y. 2015). The argument in these cases is nearly identical. The Department observes that in the Southern District of New York case, the court rejected APC's hypothetical ''absurd'' results because it was not an ''as applied'' challenge to the rule. 107 F.Supp.3d at 367. As a result, the court left the door open to a challenge arising out of an as-applied circumstance, such as the one made by AACS two years after the Southern District of New York's ruling, referenced above.

[98] Abel, Jaison & Richard Dietz, ''Underemployment in the Early Career of College Graduates Following the Great Recession'', National Bureau of Economic Research, September 2016, *www.nber.org/papers/w22654.*

commenter noted that Abel and Dietz looked at what graduates actually earned. The commenter also took issue with the CNN Money research that the Department cited in the NPRM since the methodology relied upon in that article was not available for review.

*Discussion:* The Department disagrees that the D/E rates measure under the 2014 Rule sufficiently controls for the impact of recessions. The Great Recession provides a recent example of how prolonged economic challenges coupled with high unemployment and a jobless recovery—with both phenomena lasting longer than the 3-year period afforded to institutions by the 2014 Rule—can have a considerable impact on D/E rates outcomes. It may be true that prolonged recessions of this magnitude are outlier events, but nonetheless, there could be long-lasting consequences of an outlier event eliminating large numbers of higher education programs that will be needed after the recession is over and unemployment declines.[99]

Used as an example, the Great Recession was highly instructive, and we cannot assume that similar recessions will not occur again in the future. Not only did the Great Recession create downward pressure on wages, it also ushered in wide-spread credential inflation such that jobs that once required only a high school diploma now required a bachelor's degree simply because employers were using degrees as a filter to screen large numbers of resumes.[100]

The Department does not believe that any studies used to make and support our decision to rescind the GE regulations were misinterpreted. The Abel and Dietz study was used to support the point that during the high unemployment of the Great Recession, credential inflation may have resulted in graduates taking jobs with earnings much lower than expected simply because other unemployed individuals with higher level credentials were plentiful. The study also points to the fact that job placement rates may have been skewed during the recession because credentials that may have technically qualified a person for a job were not sufficient enough to compete with other applicants. For example, while executive assistant jobs in the past did not require a college credential, a Burning Glass study of job postings showed that while only about a third of current executive assistants had a college credential, two-thirds of current job postings for executive assistants required at least a bachelor's degree.[101] Credential inflation could have a significant impact on job placement rates reported by institutions since it can take years for institutions to gain approval to raise the credential level of their programs.

The Department understands the concerns about the lack of information regarding the methodology that underlies the CNN Money article.[102] The article was included in the NPRM for the purpose of illustrating the point that economic recessions impact graduates of all institutions, not just GE programs. Even without relying on the CNN article, however, we still believe that the D/E rates calculation has numerous flaws and sources of error for reasons explained elsewhere in this document.

The Department notes that bachelor's degree programs are included as GE programs if they are offered by proprietary institutions. In fact, the largest enrollments in the proprietary sector are at online institutions that offer degrees through the doctorate level, all of which are considered to be GE programs. During the Great Recession, there were many factors that made it harder for students to get jobs, or that required them to obtain a higher degree than would otherwise be expected. All of this had a negative impact on earnings and potentially the D/E rates of some programs.

Now that the economy has recovered and unemployment is low, it is reasonable to expect that the lack of access to workers with sufficient education and credentials could hold organizations back from growth they could otherwise support. The Department believes that it is dangerous and inappropriate for it to use two words in the HEA to create an approach to institutional accountability, that could potentially be used to manipulate the higher education marketplace. We think consumers should make those decisions for themselves, aided by information the Department plans to make available through the College Scorecard.

*Changes:* None.

**Geographic Disparities**

*Comments:* One commenter stated that pay disparities based on location and geography would impact a program's D/E rates but would be beyond the institution's control.

On the other hand, another commenter stated that the Department has conducted no analysis to demonstrate that there is a connection between geography and D/E rates.

*Discussion:* A review of published GE earnings data, if sorted by program, show that earnings differ widely among both community colleges and proprietary institutions (for certificate programs offered by both institutions), with some community college graduates earning more than proprietary graduates in some instances, and proprietary graduates earning more than community college graduates in others. A close examination of these data reveal that geography could be responsible for earnings differences.[103] For example, not a single cosmetology program in Oregon passed the D/E rates measure, whereas almost all programs in Maryland passed.[104] While programs in Puerto Rico resulted in the lowest earnings among all GE programs, nearly all passed the D/E rates measure because of the significant subsidies that public institutions receive. It therefore appears that geography can, in fact, have an impact on wages.

In some instances, it may be difficult to fully appreciate the impact of geography on D/E rates because large, national institutions may have, in addition to a main campus in one state,

[99] *Note:* The Court in *APC* v. *Duncan* (2015) stated that the Plaintiff's argument that the 2014 Rule failed to adjust for economic cycles was ''just a red herring.'' 107 F.Supp.3d at 368. The court agreed with the Department at the time that recessions lasted, on average, 11.1 months, while the GE regulations gave ''struggling programs multiple years to improve their results before they lose HEA eligibility.'' *Id.* The Department points out that the Great Recession lasted eighteen months. Importantly, the Center on Budget and Policy Priorities cited that while, technically, the recession lasted from December 2007 to June 2009, the unemployment rate did not fall to where it was at the start of the recession (5%) until late 2015. (CBPP, ''Chart Book: The Legacy of the Great Recession,'' May 7, 2019, *www.cbpp.org/research/economy/chart-book-the-legacy-of-the-great-recession.*) Using that unemployment data—the metric that would have the most profound impact on D/E rates outcomes—the three-year window afforded to institutions in the 2014 Rule would come up desperately short of a jobless recovery that lasted eight years.

[100] Burning Glass Technologies, ''Moving the Goalposts: How Demand for a Bachelor's Degree is Reshaping the Workforce,'' September 2014, *www.burning-glass.com/wp-content/uploads/Moving_the_Goalposts.pdf.* (''65% of postings for Executive Secretaries and Executive Assistants now call for a bachelor's degree. Only 19% of those currently employed in these roles have a B.A.'') (pg. 5)

[101] Burning Glass Technologies, *www.burning-glass.com/wp-content/uploads/Moving_the_Goalposts.pdf.*

[102] Chris Isidore, ''The Great Recession's Lost Generation,'' *CNN Money,* May 17, 2011, *money.cnn.com/2011/05/17/news/economy/recession_lost_generation/index.htm;* cited on 34 FR 40172.

[103] *https://studentaid.ed.gov/sa/about/data-center/school/ge?src=press-release.*

[104] 11 out of 15 cosmetology programs in Maryland passed, while four were in the zone. No cosmetology program in Maryland had a failing score.

additional locations in multiple States. Yet program outcomes are reported in aggregate and attributed to the main campus at its location.

The Department of Labor's ONET database provides evidence that geography has an impact on earnings. For each occupation, ONET lists wages by State, and those data make it clear that many occupations have prevailing wages that differ from one State or region of the country to another. For example, the ONET page for cosmetologists provides wage data by State showing that cosmetologists in Alaska earn more than the U.S. average, whereas cosmetologists in Mississippi earn less than the U.S. average.[105]

Therefore, we believe the evidence is substantial that even within a given occupation, salaries can vary from one geographic region of the country to another, and yet the D/E rates measure fails to take those differences into account. This is another example of why a bright-line standard is inappropriate and invalid since the D/E rates calculation does not control for general differences in wages across States. Note that when calculating the Estimated Family Contribution, FSA considers differences in taxes and the cost of living across States. That the Department didn't similarly build in a correction factor for differences in prevailing wages from one State to the next in calculating D/E rates was an unfortunate omission with potentially devastating impacts on students.

*Changes:* None.

**Cohort Sizes**

*Comments:* Some commenters expressed concerns that the small size of some program cohorts could result in year-to-year fluctuations in D/E rates due to the career decision or performance of a single student, whereas the impact of a single student's career decision or performance would not have a noticeable impact on larger cohorts.

*Discussion:* The Department agrees with the commenters that cohort sizes can have an impact on year-to-year changes in outcomes, since smaller cohorts can be significantly impacted by the decision of just a small number of graduates to work part time or to take time out of the workforce. This means that year-over-year outcomes could differ, even if there are no changes in program content or quality. Given the large number of low-enrollment GE programs, a single student's earnings or career choices could have a significant impact on outcomes for a number of programs and institutions.

We agree that this is yet another weakness of the D/E rates methodology and appreciate the commenters for bringing it to our attention.

*Changes:* None.

**Influence of Student Demographics**

*Comments:* One commenter stated that D/E rates can be affected by the percentage of adult students enrolled in a GE program because of their higher loan limits. The commenter recommended either reporting D/E rates separately for independent and dependent students or capping the amount of independent student borrowing at a lower level, rather than rescinding the GE regulations.

Many commenters supported the proposed rescission of the 2014 Rule due to the impact that various types of employment have on their programs' D/E rates. For example, one commenter stated the 2014 Rule hurts students who are on State assistance due to health issues but want to prepare for a new occupation that could accommodate their individual health needs and allow them to work, even if they cannot work full time. The commenter opined that educating such students would unfairly affect that program's metrics. Another commenter stated that the GE regulations create a disincentive to enroll students with the greatest financial need since they would be most likely to borrow to pay for the education, and the level of a student's borrowing is beyond the institution's or program's control. One commenter noted that much of the total borrowing by students is used for living expenses and not tuition and fees. Another commenter stated that students who are pregnant or have young families may unfairly and negatively impact a program's D/E rates, because their focus may be on their family rather than on finding a job with high earnings.

One commenter noted that the proposed regulations contradict the statement in the 2014 Rule that the GE regulations ''do not disproportionately negatively affect programs serving minorities, economically disadvantaged students, first-generation college students, women, and other underserved groups of students.''

A few commenters objected to the Department's assertion that title IV eligibility based on D/E rates creates unnecessary barriers for institutions or programs that serve larger portions of women and minority students. One commenter asserted that the NPRM misrepresents the experiences of historically disadvantaged groups, including in its suggestions regarding women and students of color. The commenter contended that rescission of the 2014 Rule will exacerbate gender-based and race-based disparities in wealth, income, and employment.

Another commenter stated that the NPRM falsely asserts that the 2014 Rule limits postsecondary access based on geographic, racial, and gender considerations. The commenter contended that many proprietary institutions have a track record of enrolling disproportionate numbers of minorities, lower-income individuals, and single mothers, not because of a lack of accessible options elsewhere, but rather because the programs successfully target underserved communities and low-information consumers.

One commenter stated that the College Board chart used to show inherent earnings differences linked to race, gender, and family socioeconomic status relies on Current Population Survey data that is not limited to those students who graduated from gainful employment programs and received Federal financial aid. The commenter claimed that the Department provided no real analysis as to how the data in this chart should be interpreted or applied to the rescission of the GE regulations, while an earlier version of the report was used in 2014 to reflect the point that higher education provides returns for students overall.

One commenter provided citations from NCES and the Brookings Institution—cited elsewhere in this document—to refute the Department's assertion that student demographics and socioeconomic status play a significant role in determining student outcomes, and suggested that these data similarly refute our claim that student demographics rather than program quality could be responsible for GE outcomes.

*Discussion:* The Department agrees that the percentage of independent students enrolled in a program could impact the calculation of D/E rates because of the higher loan limits Congress has provided to those students. Congress has established student loan limits at $31,000 for dependent students and $57,500 for independent students, recognizing that independent students are less likely to receive financial assistance from parents and are more likely to have higher housing and dependent care costs than dependent students.[106] Because

[105] *www.onetonline.org/link/summary/39-5012.00.*

[106] Federal Student Aid, ''Subsidized and Unsubsidized Loans,'' *studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much.*

borrowing limits are based not just on the cost of tuition, fees, and books, but also include housing, transportation, and dependent care expenses, independent students may rely on student loans to offset lost wages and pay costs of living during periods of postsecondary enrollment.

The Department wishes to point out that the amount of debt utilized for calculating the debt portion of the D/E rates is the lower of mean/median debt or total direct educational costs—tuition, fees, books, supplies, and equipment—so that loans taken for non-direct expenses may be excluded from the calculation. Still, adults with higher borrowing limits who borrow to generate a credit balance must first borrow enough to pay all of the direct costs of education since the credit balance is generated only after those other expenses are paid.

As described earlier, independent students borrow more frequently and at higher levels than dependent students.[107] Therefore, institutions that serve higher proportions of independent students will likely have higher student loan medians and averages. Proprietary institutions serve a disproportionate number of independent students (80% vs. 59% and 36%), as compared to community colleges or four-year public institutions, which will impact their D/E rates.[108]

The 2015 follow-up survey to the 2003–04 Beginning Postsecondary Survey shows that after twelve years of loan repayment, independent students across all institutional sectors still owed between 78.1 percent (average) and 96 percent (median) of their original loan balance.[109] The 1994 follow-up survey of the 1989–90 BPS showed that independent learners are less likely to complete their programs, especially if they also have dependents other than a spouse, enroll part time, or work full time while in school.[110] Clearly student age is one factor that impacts both borrowing levels and completion rates.

While one commenter recommended that a separate D/E rate be calculated for independent students, since the Department is rescinding the GE regulations for the reasons discussed elsewhere, this distinction is no longer necessary.

The Department agrees with commenters about the negative, unintended consequences that the 2014 Rule could have on the lives of students and on the national economy. As noted in the NPRM, and elsewhere in this document, the Department is aware that some students take time out of employment or elect part-time work over full-time work to care for children, care for other family members, manage a personal health condition, start a business, or pursue other personal lifestyle choices.[111] The Department concurs that students who may not want to or be able to work full time should not be denied an educational opportunity.

The Department also agrees with commenters who expressed concern that the GE regulations could deter programs from enrolling students with high financial need, minority students, or women because they are more likely to borrow more and to have greater challenges in earning equal pay to men and non-minority students who complete similar programs. Thus, these students could make it more difficult for the institutions' programs to pass the D/E rates measure, regardless of program quality.[112]

According to the Census Bureau, real median earnings differ by race, with Asians ($81,331) and whites ($68,145) earning more than Hispanics ($50,486) or African Americans ($40,258), and with males ($44,408) earning more than females ($31,610).[113] While these data are not limited to students who participate in GE programs, we believe it is likely that the disparities that exist among the population at large are also reflected in the subpopulation of students who enroll in GE programs, and may even be greater.

Moreover, programs serving women who are pregnant or who have young children are less likely to pass the D/E rates measure because women with children under the age of 6 are more likely to leave the workforce in order to care for children. According to the Census Bureau, in 2017, among married couples with children under the age of 6, 36 percent rely solely on the husband's income to support the family.[114] In such a case, the D/E rates for the program from which the wife graduated would be negatively impacted by zero earnings for that graduate, even though she is part of a household with sufficient income to support her decision to leave the workforce.[115] Therefore, two programs of equal quality could have significantly different outcomes under the D/E rates measure simply because one serves a higher proportion of married female students with children than the other.

Almost four million families with a female head of household and no husband present live below the poverty level, whereas only 793,000 families with a male head of household and no wife present live below the poverty level.[116] In 2018, 30 percent of households with children under the age of 18 are led by a single mother.[117] These data also have implications on student loan repayment rates since a borrower in an income-driven repayment plan will have a monthly payment based on a percentage of discretionary income, which varies by the number of people in a family. Therefore, a borrower who is a parent may have a smaller portion of income available for student loan payments, potentially resulting in negative amortization of their loans.

College Board data confirm that achievement gap disparities exist between men and women and between children from wealthier families and children of low-income families.[118] Additionally, a 2017 report released by NCES confirmed the persistence of achievement gaps between non-minority students and minority students.[119] Therefore, if programs are incentivized to serve more advantaged students to ensure better D/E rates outcomes, they would likely follow the lead of more selective non-profit institutions that enroll small proportions of low-income, minority, and non-traditional students.

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[107] Baum, Sandy and Martha Johnson, ''Student Debt: Who Borrows Most? What Lies Ahead?'' Urban Institute, April 2015, *www.urban.org/sites/default/files/alfresco/publication-pdfs/2000191-Student-Debt-Who-Borrows-Most-What-Lies-Ahead.pdf.*

[108] Stephanie Riegg Cellini and Rajeev Davolia, *Different degrees of debt: Student borrowing in the for-profit, nonprofit and public sectors.* Brown Center on Education Policy at Brookings, June 2016.

[109] *nces.ed.gov/pubs2018/2018410.pdf.*

[110] *nces.ed.gov/pubs/web/97578g.asp.*

[111] Carnevale, Anthony, et al., ''Learning While Earning: The New Normal,'' Center on Education and the Workforce, Georgetown University, 2015, *1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/Working-Learners-Report.pdf.*

[112] Guida, Anthony J. and David Figuli, ''Higher Education's Gainful Employment and 90/10 Rules: Unintended ''Scarlet Letters'' for Minority, Low-Income, and Other At-Risk Students,'' *The University of Chicago Law Review,* 2012, *lawreview.uchicago.edu/publication/higher-education%E2%80%99s-gainful-employment-and-9010-rules-unintended-%E2%80%9Cscarlet-letters%E2%80%9D.*

[113] *www.census.gov/library/publications/2018/demo/p60-263.html,* Table A1.

[114] *www.census.gov/data/tables/time-series/demo/families/families.html,* Table SHP1.

[115] *www.census.gov/data/tables/time-series/demo/families/families.html,* Table SHP1.

[116] *www.census.gov/data/tables/time-series/demo/families/families.html,* Pov-table4.

[117] *www.census.gov/data/tables/time-series/demo/families/families.html,* Figure FM–1.

[118] Jennifer Ma, et al., ''Education Pays 2016: The Benefits of Higher Education for Individuals and Society,'' *CollegeBoard, trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf.*

[119] *nces.ed.gov/pubs2017/2017051.pdf.*

The Department has not analyzed participation in GE programs by students with health conditions that preclude them from working full time, but any student who works less than full time will earn wages that reduce the mean and potentially the median earnings used for the D/E calculation. Therefore, the Department agrees with the commenter who suggested that programs may be less interested in serving students with chronic health conditions or disabilities, since doing so could reduce mean or median earnings among a cohort of completers.

The Department wishes to clarify that in the 2014 Rule, it stated that ''student characteristics do not *overly* (emphasis added) influence the performance of programs in the D/E rates measure.'' [120] However, the Department acknowledges that this statement was based on an incomplete analysis of the data available to the Department and considered only students enrolled in GE programs without controlling for other variables that may have impacted GE outcomes. NCES data confirm the impact of student characteristics on outcomes, and the Department erred in ignoring those findings when making this claim in the 2014 Rule.[121] Moreover, a review of the final GE data reported in 2017 confirms that programs that prepare students for occupations that are dominated by males rarely fail the D/E rates measure, whereas occupations dominated by women are represented disproportionately. This would suggest that gender does have a larger impact on D/E rates than the Department originally anticipated.

When full student populations are analyzed, such as through the Beginning Postsecondary Survey, we see over and over again that student characteristics have a considerable impact on student outcomes.[122] It was misleading for the Department to make a statement in the 2014 Rule that does not accurately reflect the consistent findings of the National Center for Education Statistics, which conclude that student demographics and characteristics have a considerable impact on student outcomes.

The Department disagrees with the commenter who said that College Board data showing disparities in earnings based on gender, race, or ethnicity does not apply to the GE regulations because these data are not limited to students who complete GE programs or students who receive financial aid. The point of sharing the College Board data was to illustrate that pay disparities exist among women and minorities across the population, which supports our assertion that programs with larger proportions of women and minorities may achieve poorer outcomes under the D/E rates measure. It is unlikely that students who complete GE programs are not subjected to the same gender and race pay disparities that exist across the general population.

The Department agrees with commenters that historical and continuing discrimination has unfairly depressed the earnings of historically disadvantaged groups. We did not mean to suggest that women and minorities wish to earn less money or select occupations in order to earn less. We simply were making a statement of fact, which is that women and minorities still earn less than non-Hispanic whites and men, even when they graduate from the same institutions. We applaud first generation college students, women, and minorities who wish to leverage their own hard work and opportunities to give back to their communities by working in occupations that have high societal value, even if these jobs pay low wages.

In the NPRM, we were simply pointing out that nationally, women and minorities enroll in majors associated with lower wages than those selected, on average, by white males, and that the GE regulations could reduce the number of options available to women and minorities despite their interest in pursuing certain careers and the benefits that those individuals and occupations provide to society because occupations that pay lower wages are more likely to fail the D/E rates measure. Although some institutions have implemented differential pricing so that students pay tuition based on the program in which they enroll, many institutions do not offer different tuition levels for different majors. Unfortunately, the earnings gap between female-dominated and male-dominated occupations persist, making it more likely that programs serving mostly women will fail the D/E rates measure.

The Department does not agree with the commenter that by continuing the GE regulations, women will benefit since the programs that failed the D/E rates measure were far more likely to serve female students rather than male students. Eliminating programs that predominately serve women, and that prepare large numbers of them for rewarding occupations, is not the solution to the lack of pay equity in this country. While the commenter may be implying that women who are shut out of healthcare and childcare occupations, for example, will be more likely to pursue higher earning occupations, such as computer science or advanced manufacturing, there are no data to support that conclusion. Instead, women who lack access to the academic programs of interest to them may be reluctant to pursue higher education.

The Department disagrees with commenters who suggested that by rescinding the GE regulations, the Department will exacerbate gender-based and race-based disparities in wealth, income, and employment. Since many GE programs serve high proportions of women and minorities, sanctions that would eliminate these programs could reduce postsecondary opportunities, thereby contributing to the earnings and opportunity gap.

The Department agrees that proprietary institutions serve a disproportionate share of underserved communities, and that this could be as much the result of nefarious targeted marketing efforts [123] as it is the result of bona fide efforts to serve a population of students not served by traditional institutions. We have seen no national effort on the part of traditional four-year institutions to serve, *en masse,* the population of students who have been served by community colleges and proprietary institutions.

While the Department shares the commenter's concern about exploitative practices, many proprietary institutions employ pedagogical strategies—such as block scheduling, predetermined course sequences, year-round scheduling, and accelerated completion pathways—that may be more appealing to non-traditional students.[124]

The Department has not analyzed the racial or ethnic demographics of students served by programs that failed the 2015 D/E calculations. However, given that a large number of programs that failed the D/E rates measure, or that were discontinued by institutions that expected they would fail the D/E rates measure in the future, were medical assisting and related programs, or cosmetology programs—both female-dominated professions—it seems clear that women will be impacted more significantly by program closures than

[120] 79 FR 64910.

[121] *https://nces.ed.gov/pubs/web/97578g.asp.*

[122] *nces.ed.gov/pubs/web/97578g.asp.*

[123] Bonadies, Genevieve, et al., ''For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate,'' *Harvard Law Review Blog,* July 30, 2018, *blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/.*

[124] Sugar, Tom, ''Boosting College Completion at Community Colleges: Time, Choice, Structure and the Significant Role of States,'' Complete College of America, *www2.ed.gov/PDFDocs/college-completion/05-boosting-college-completion-at-community-colleges.pdf.*

men. Also, given the high percentage of Pell grant recipients enrolled in programs with failing 2015 D/E rates, there is evidence that program closures would have a disproportionate impact on low-income students. Programs that serve high-income students would not fail the D/E rates measure because those students are far less likely to take student loans and, in addition, are more likely to receive financial support from parents during the early years of repayment.[125]

The Department continues to believe that the GE regulations could significantly disadvantage institutions or programs that serve these already underserved communities, further reducing the educational options available to them.

The data are clear that proprietary institutions serve higher proportions of non-traditional and low-income students, as demonstrated by the fact that nearly 87 percent of students enrolled at proprietary institutions are Pell eligible, as opposed to 45 percent at community colleges and even lower percentages at public or private four-year institutions.[126]

As College Scorecard expands to the program-level for all categories (GE and non-GE) of title IV programs, it will be important to keep in mind student demographics when comparing outcomes, including among open-enrollment institutions that typically serve higher proportions of low-income and minority students. Many of these institutions attract low-income populations to increase enrollment, but the Department believes that most also do it to fulfill their mission to improve educational opportunities for all students.

The Department does not disagree that low-income and minority students have poorer educational and employment outcomes, and it does not disagree that proprietary institutions serve large proportions of these students than any other institutional sector. Compared to public two-years, public four-years, and private non-profits, proprietary institutions serve greater numbers of females, minorities, financially independent, and single parents.[127] The Department encourages more selective institutions to do a better job of serving this population of students, but recognizes the unique opportunities provided by institutions that are designed to serve the needs of non-traditional students and may be more aware of their unique challenges and needs.

*Changes:* None.

**Role of Tuition in Determining D/E Rates**

*Comments:* One commenter noted that the GE regulations do not prohibit institutions from lowering tuition, which would also increase a program's chances of passing the D/E rates measure. The commenter suggested that focusing on cost is one way to avoid the impacts that macroeconomic trends have on earnings.

Several disagreed with conclusions they believe were drawn in the NPRM regarding program cost relative to value. These commenters suggested the Department focused only on one half of the D/E rates calculation to make its point, and that it inaccurately suggested that a program of higher cost is necessarily of higher quality. One commenter stated that ''a program that has low costs but results in higher earnings to students obviously has higher quality than one that has high costs and low earnings.'' This commenter suggested that the Department's assertion reflects a rampant fallacy in higher education that a higher cost program is a higher quality program.

Another commenter stated that the Department seems to be skeptical that program costs and earnings are reliable measures of success. Multiple commenters disagreed with the Department's contention that high-quality GE programs could potentially fail the D/E rates measure, because it costs more to provide high-quality education in certain fields or disciplines.

One commenter specifically mentioned that community colleges provide high-quality GE programs despite their low tuition and fees.

*Discussion:* The Department agrees that the GE regulations do not prohibit an institution from lowering tuition for a program, and that doing so could favorably impact GE outcomes. And the Department agrees that just because a program is higher cost, it is not necessarily higher quality. However, in some instances the higher cost is associated with better equipment and facilities, more highly qualified faculty, better quality or more plentiful supplies, and more abundant or convenient student support services. In some instances, if an institution were forced to lower its prices, it would be unable to provide the unique learning environment or well-equipped facilities that distinguish the institution.

The Department commends community colleges for the tireless and vitally important work they do. However, as pointed out by the CSU Sacramento report,[128] as well as data collected by the Department through IPEDS, many community colleges have small or shrinking CTE programs and may not be able to meet workforce needs or accommodate adult learners who may prefer accelerated scheduling, more personalized support services, smaller campus environments, more frequent program start dates, and predetermined course schedules that are more common among proprietary institutions.[129]

A review of 2015 GE data reveal that in some instances, graduates of proprietary institutions enjoy significantly higher earnings than graduates of community college programs, which may indicate that the higher cost program might be a higher quality program, or that the institution has valuable partnerships with employers or has better job placement services.[130] As Cellini pointed out, despite several limitations of the data she used, students who earn a cosmetology certificate at a proprietary institution are more likely to earn higher wages, perhaps due to the affiliation of some proprietary institutions with high-end salons.[131] At the same time, the graduates of many proprietary institutions achieve lower earnings gains than the graduates of other institutions, including community colleges or four-year institutions. And similarly, even among programs with the same CIP code, the GE data illustrate that there are vast earnings differences among community colleges and among proprietary institutions.

Students may find that public colleges offer smaller numbers of CTE programs

[125] Lochner and Monge-Naranjo, *www.nber.org/papers/w19882.*

[126] U.S. Department of Education, September 2015, NCES 2015–601. Trends in Pell Grants Receipt and the Characteristics of Pell Grant Recipients: Selected Years, 1999–2000 to 2011–12.

[127] Stephanie Riegg Cellini and Rajeev Davolia, *Different degrees of debt: Student borrowing in the for-profit, nonprofit and public sectors.* Brown Center on Education Policy at Brookings, June 2016.

[128] Shulock, N., Lewis, J., & Tan, C. (2013). Workforce Investments: State Strategies to Preserve Higher-Cost Career Education Programs in Community and Technical Colleges. California State University: Sacramento. Institute for Higher Education Leadership & Policy.

[129] Cellini and Turner, *www.nber.org/papers/w22287. See:* ''For profit-schools may have better counseling compared to community colleges . . . for-profit sector has been quicker to adopt online learning technologies . . . for-profits respond to local labor market demand.'' (pg. 5); Richard Kazis, et al., ''Adult Learners in Higher Education: Barriers to Success and Strategies to Improve Results, Employment and Training Administration,'' Occasional Paper 2007–03, March 2007. *files.eric.ed.gov/fulltext/ED497801.pdf.*

[130] *studentaid.ed.gov/sa/about/data-center/school/ge.*

[131] Cellini and Turner, *www.nber.org/papers/w22287.*

than private or proprietary institutions. Nationally, the largest community college majors are liberal arts or general studies, which could signal that the majority of students are interested in transferring to a four-year program or that vocational programs are limited. In other instances, entry-level CTE programs might be offered only through the institution's non-credit or continuing education programs. These programs are not eligible for title IV funding and do not result in academic credit, which can disadvantage students who wish to continue their education and earn a college degree.

The Department is concerned that at many public colleges, students who are enrolled in pre-professional programs have nowhere to turn if they are not admitted to the professional program of interest. For example, many students enroll at a two- or four-year institution with the goal of studying nursing, physical therapy (or physical therapy assistant), or occupational therapy (or occupational therapy assistant); however, these programs are often highly competitive, and the majority of applicants are not admitted. The absence of other allied health options at some institutions may require those who are not admitted to professional programs to either pursue a general studies major or to transfer to another institution that offers a larger number of related programs that enable a student to stay in their field of interest even if it means pursuing a different occupation in that field.

The Department encourages institutions to work hard to reduce costs, encourages states to continue subsidizing higher education to reduce the price of public institutions, and encourages employers to provide more generous education benefits to reduce out-of-pocket costs to students. As stated earlier, public institutions offer lower tuition and fees because of the public subsidies they receive from state and local governments. However, at some public institutions out-of-state students who may be more academically gifted or who pay higher tuition and fees take priority over lower-income or less prepared in-state students because out-of-state students are perceived as being necessary to improve the institution's finances and reputation.[132]

Research shows that the administrative costs for CTE programs are typically higher because of the need for specialized facilities, expensive equipment or supplies, smaller class sizes (due to space and/or safety concerns), and the higher cost of faculty with advanced technical skills.[133] And as pointed out by Shulock, Lewis, and Tan, community colleges often reduce the number of CTE programs or the number of enrollment slots in the CTE programs they administer when budgets are tight.

As already discussed, the largest community college major is general studies or liberal arts, which according to Holzer and Baum has no market value for the majority of students who earn this degree and then do not transfer to complete a four-year degree. It is, therefore, difficult to know whether a general studies program is a worthwhile investment, if a student's goal is to earn a two-year degree that will lead to a higher paying job. A students may be better off paying more to attend an institution that increases the likelihood that the student will be able to enroll in an occupationally-focused program, or will be more likely to complete their program, than attending the lower tuition school if doing so limits the student's opportunity to pursue occupational education.

In conducting the current rulemaking effort, the Department considered tuition and fees charged by all institutions since our goal was to expand the accountability and transparency framework to include all institutions. Nearly all private institutions charge higher tuition and fees than public institutions, and a growing number of students who enroll at public institutions attend an institution outside of their own state. Out-of-state tuition at public institutions mirrors the tuition charged at private institutions. Negotiators representing private, non-profit institutions made it clear that D/E rates will differ between private and public institutions due to differences in the level of public subsidies an institution receives. An institution's geographic location, campus facilities, and engagement in research and graduate education could impact the tuition and fees that students are charged. The Department sought through rulemaking a data-driven solution that could be applied to all institutions of higher education to better inform students and families about likely costs, borrowing, and earnings.

Over the years, policymakers of both major political parties have admonished institutions to lower their costs, but proposals that would impose federally mandated price controls have never gained sufficient support to become law.[134] For example, in order to help families make better decisions about where to enroll and how much to borrow, Congress proposed in the College Access and Affordability Act of 2005 the creation of a College Affordability Index (CAI) which would have identified institutions whose tuition increases outpaced inflation. In the House Report 109–231 at 159, Congress stated that the CAI: ''simply ask[s] that an institution of higher education provide additional information to allow for a clear and informed decision by consumers. If a student decides to attend an institution that increases tuition and fees that exceed the College Affordability Index, they do so fully aware and educated. It is the Committee's position that the Federal government does not currently have the authority to dictate tuition and fee rates for institutions of higher education. . . . The provisions in the bill simply serve as a means by which additional information can be provided to students and their families so that they can make informed and educated decisions about their postsecondary education options.'' [135]

Therefore, the Department believes that creating a system of sanctions that are so closely linked to the tuition and fees a college charges would exceed the Department's current authority and run counter to the authorities laid out by Congress to inform decisions, but not dictate what prices a college can charge. As a result, the Department continues to believe that a program could fail the D/E rates measure not because it is of poor quality or because it is over-priced relative to the cost of delivering the program, but instead because the cost of educational delivery is high or because an institution does not receive public subsidies.

*Changes:* None.

**Challenges in Predicting Future Earnings**

*Comments:* One commenter urged the Department to apply any outcomes metrics equitably to all institutions, rather than singling out or discriminating against one type of institution. The commenter also urged the Department to use simple, easy to understand formulas and to keep in mind that it is impossible for colleges to predict future changes in the economy or career areas.

[132] *www.jkcf.org/research/state-university-no-more-out-of-state-enrollment-and-the-growing-exclusion-of-high-achieving-low-income-students-at-public-flagship-universities/.*

[133] Shulock, Lewis, and Tan, *eric.ed.gov/?id=ED574441.*

[134] Committee on Education and the Workforce, Report 109–231, *www.congress.gov/109/crpt/hrpt231/CRPT-109hrpt231.pdf.*

[135] Ibid.

*Discussion:* The Department agrees, as we discussed earlier in this document, that the widespread problem of student loan debt makes it important to apply the same transparency and accountability metrics to all institutions. We also agree that we should avoid the use of complex formulas or those that allow the Department to manipulate outcomes by defining variables that are inconsistent with the requirements of student loan repayment programs. The Department agrees with the commenter that because the GE regulations do not calculate D/E rates until years after a student is admitted—sometimes as many as nine years after a student enrolls in a bachelor's degree program—an institution must be able to predict macro-economic conditions, future earnings, and various other factors that influence employment and earnings well in to the future in order to establish a price that will guarantee passing D/E rates, a nearly impossible task. Institutions that receive generous taxpayer subsidies can reduce the price students pay such that graduates pass almost any earnings test, but taxpayers also deserve to know if the price they are paying for a student's tuition is justified by the outcomes students achieve. The Department has determined that the best way to establish an equitable and meaningful transparency framework is by reporting debt and earnings income for all types of title IV programs to the public so that a market-based accountability system can flourish.

*Changes:* None.

**Impact of the 90/10 Rule**

*Comments:* One commenter expressed concern that the 2014 Rule may be in tension with the 90/10 requirement. The commenter believed logic from the Department or others indicating the 2014 Rule could encourage schools to reduce tuition is faulty because it puts schools at risk of noncompliance with the 90/10 rule without giving these schools tools necessary to reduce student borrowing.

Many commenters argued that some colleges use aggressive marketing and recruiting to target veterans and service members in an effort to supplement title IV funds with GI Bill funds because the latter do not count against institutions for purposes of 90/10 rule compliance.

Another commenter mentioned law enforcement investigations and actions regarding proprietary institutions. Three of the investigations specifically reference court cases where some institutions were under investigation for misrepresenting their compliance with the 90/10 rule.

Some commenters, who were in favor of rescinding the regulations, argued that they do not treat all educational institutions the same. One commenter argued that public institutions are afforded much more leniency in the same industry, and that these public universities and community colleges are already being given a strategic advantage of not being accountable to metrics such as retention, placement, and 90/10.

*Discussion:* Schools that misrepresent their compliance with 90/10 are in violation of the Department's regulations, regardless of whether we rescind the GE regulations. The Department strongly believes these institutions should be held accountable and takes action against schools out of compliance with 90/10—as is required by law—including loss of title IV participation.

The Department appreciates comments that point out the upward pressure that the 90/10 rule places on tuition costs at proprietary institutions and demonstrate the perverse incentives these regulations create that are not helpful to students. Because of the statutory requirement that proprietary institutions generate at least 10 percent of their revenue from non-title IV sources, coupled with the inability for an institution to establish lower student loan borrowing limits or to deny a student the right to borrow, an institution serving large majorities of low-income students will find it challenging to pass the 90/10 requirement if they lower tuition well beneath federally established borrowing limits.

Also, since independent students have higher borrowing limits than dependent students, and since the title IV loan programs enable students to borrow enough to pay for living expenses, an institution may be unable to prevent students from borrowing a more reasonable amount and working to pay some of the costs in cash because doing so will interfere with the student's ability to receive a credit balance to use for rent, food, and other costs of living. Since borrowing limits are based not just on tuition and fees, but also include housing, food, dependent care, and transportation, lowering tuition may not have a dramatic impact on borrowing. Even among community college borrowers where tuition is low, the average debt is $13,830, which shows the impact of non-tuition costs on student borrowing.[136]

Therefore, the Department believes that providing program-level debt and earnings information for all categories (GE and non-GE) of title IV participating programs is the best way to help all students make better informed decisions.

Although certainly there may be instances in which veterans were targeted to help meet the 90/10 requirement, it is inappropriate to suggest that schools serving thousands of veterans are somehow not delivering on their promises or providing opportunities veterans want and need. Some institutions that ''target'' veterans do so because they provide unique program opportunities, student services, or adult learning environments better suited to the needs of veterans.

Some proprietary institutions are more attractive to veterans than other institutions because they are designed around the needs of adult learners, serve large populations of veterans who share certain values and life experiences, provide additional training to faculty on the unique needs of veteran students, are more likely to accept credits earned from other institutions, and they are more likely to give credit for skills learned during military service. Student veterans made tremendous sacrifices to earn their GI Bill benefits and should be able to use their benefits to attend any school that works well for them. The Department appreciates the comments on 90/10; however, that rule is not the subject of this rulemaking.

*Changes:* None.

**Reporting and Compliance Burdens for GE Programs**

*Comments:* Several commenters expressed concern that if the Department chose to expand GE-like requirements to include all institutions, it would add significant reporting and compliance burden to all institutions. Some commenters expressed a desire to limit the applicability of the GE regulations to the programs covered by the definition of ''institution of higher education'' in section 102 of the HEA.

One commenter discussed other Department requirements that institutions are already subject to, such as enrollment reporting and requested the Department carefully consider the implications of expanding disclosure requirements to all title IV-eligible programs.

Several commenters discussed how the reporting burden from the 2014 Rule took away resources from efforts that

[136] Community College Review, ''Average Community College Debt for Graduating Students,'' *www.communitycollegereview.com/average-college-debt-stats/national-data.*

would actually improve student outcomes.

Other commenters described the problems that would be presented by the requirement to directly distribute disclosures to prospective students by specified procedures at the correct stage of the matriculation process and to maintain all the records to document compliance. Commenters also expressed concerns about protecting student privacy and managing data associated with the records retention requirements.

On the other hand, other commenters stated that burden reduction was not a sufficient reason to justify the proposed regulatory changes.

One commenter stated that the Department misrepresents the stance of the American Association of Community Colleges (AACC) in relation to the burden associated with the reporting and disclosure requirements of the GE regulations and that community colleges have been supportive of the GE regulations.

Several commenters stated that they thought efforts to reduce regulatory burden should be made while also maintaining sanctions for poorly performing programs or while maintaining the GE regulations.

Several commenters affirmed that meeting disclosure requirements using the standardized GE Disclosure Template posted to individual program web pages presented a much greater administrative burden than was reflected in the 2014 Rule's Regulatory Impact Analysis.

Some commenters described how the burden from GE reporting requirements impacted student services at their school, with one commenter stating that it slowed down responsiveness to student and business needs at community colleges. Another commenter described services that were impacted by resources needed to fulfill GE reporting requirements, explaining that resources were taken away from activities that would help students achieve gainful employment such as providing student counseling and making efforts that would assist students with completion.

Some commenters pointed out that the costs of compliance are reflected in higher program costs passed on to students and taxpayers. Another commenter emphasized the need for the Department to carefully consider costs when establishing any future disclosure framework.

One commenter indicated that it would be unlikely for institutions to save much money from the reduced administrative burden from the regulatory change. The commenter also indicated that it would be unlikely that any savings passed to students would be enough to change student decision-making. The commenter expressed concern that removing the extra costs would provide proprietary institutions with a wider profit margin to operate and would encourage expansion.

Multiple commenters stated that the Department should encourage maximum transparency by requiring all programs at all institutions to disclose the same information so that students could have a baseline in which to compare information.

Some commenters suggested that the Department should publish information from data that it already has access to, sparing institutions from having to meet additional reporting requirements.

Some commenters emphasized that program disclosures should be easy to find.

Some of these commenters expressed concern that the direct distribution requirement in the GE regulations would take away ease and flexibility that students need in the application process and that students may be overwhelmed by disclosures.

Some commenters expressed concern regarding inconsistencies in the way that job placement rates are determined and reported under the GE disclosure requirements. Several commenters suggested that the Department standardize the methodology for calculating in-field job placement rates the same way that accreditors have done.

Many commenters expressed the desire to see fair and consistent disclosures allowing students to make apples-to-apples comparisons among programs. Several commenters explained the difficulty of manually gathering GE reporting data, such as job placement rates, as is required by the 2014 Rule. One commenter stated that they were not confident in the reliability of data calculated by thousands of institutions according to their own interpretations of the 2014 Rule, especially with regard to the definitions and calculations of job placement rates. Multiple commenters emphasized the importance of avoiding disclosure of metrics such as job placement rates that are not comparable due to differences in State and accreditor definitions.

Others were opposed to requiring GE-style disclosures of all institutions but did agree that there is a need for greater transparency which could be achieved by the Department through the College Scorecard.

One commenter would prefer that any net price disclosures focus on tuition and fees, independent of living expenses.

One commenter stated that the Department had not adequately explained why direct disclosures should not be provided to prospective and enrolled students or included in promotional and advertising materials.

*Discussion:* The Department thanks the commenters for sharing their insight into how the GE regulations are affecting schools and their ability to serve students. The Department's decision to rescind the GE regulations will enable institutions to redirect resources to other institutional functions and priorities. We strongly encourage institutions to do so. The Department agrees with the commenter who stated that proprietary institutions could use the cost savings generated from rescinding GE to increase their profit margin, but that is true of any institution that has GE programs. The Department sincerely hopes that institutions apply the savings generated to education and student services, but it acknowledges that it cannot control how institutions utilize cost savings.

In addition to reducing the cumbersome reporting burden associated with the reporting provisions of the GE regulations, by rescinding the regulations, institutions will no longer be required to engage in the direct distribution of disclosures or maintain records to prove that students receive those disclosures.

The Department agrees with the commenter who pointed out that it can be difficult to find GE disclosures on many websites. In our own efforts to review GE disclosures, we found that many of them are more than one or two clicks away from the program page, and some are not even referenced on the program pages, but instead are under a separate page for institutional research or consumer information. The College Scorecard, focusing on tuition and fees, will provide ''one stop shopping'' to students and families seeking information about institutions and programs, and it will allow the student to select multiple campuses and programs for the purpose of comparing information on the same screen.

The Department acknowledges that the AACC has been generally supportive of the concept of the GE regulations; however, they have not spoken favorably about the administrative burden the regulations have placed on their own members. Due to taxpayer subsidies, which reduce the price students pay, their programs will likely pass the D/E rates measure even if earnings or program quality are very low. In fact, the Department points to this as one of the reasons why the D/E rates measure is not an accurate indicator of quality since programs with exceptionally low earnings will pass the measure as long as those programs continue to be subsidized by taxpayers.

In addition, given the small number of community college GE programs that met the minimum cohort size, the Department agrees that the burden of reporting was not justified by the information provided. For many programs, D/E rates were not issued because of small cohort sizes and many data items on the GE Disclosure Template output would appear as ''not applicable'' because a group contained fewer than 10 students. Of the 18,184 GE programs offered by non-profit institutions in 2017–18, only 3,708 have cohort sizes of 10 or more. This means that relatively few GE programs offered by non-profit institutions would be subject to the D/E rates measure or disclosure requirements, but it also means that there are relatively few opportunities for students to engage in occupationally focused education at non-profit institutions. This fact may be the single most important clue as to why proprietary institutions have become increasingly attractive to students seeking occupational education and credentials. A program that graduates less than 10 students per year is obviously quite small, either because of enrollment caps that the institution or its accreditor places on the program or because students at the institution are largely unaware that the program exists. Clearly, the majority of GE programs accommodate a very small group of students as table 1–1 previously showed, which may suggest that the programs available at non-profit institutions simply do not provide the supply of enrollment opportunities that meet student or workplace demand.

The Department notes that AACC states in its comments that ''implementing the gainful employment regulation has been hugely burdensome for community colleges'' and that ''any future GE regimen must be extremely sensitive to cost.'' [137] Therefore, we do not believe that we have misrepresented the position of AACC regarding the reporting and disclosure burden. We agree that the GE regulations have been overly burdensome to schools and to the Department, and that all regulations should be sensitive to cost and burden. By rescinding the GE regulations, the cost and burden associated with GE reporting has been permanently removed.

The Department did not receive quantitative estimates of costs associated with changing web architecture or updating GE disclosures on institutional websites each year, so we cannot comment on whether the burden estimates in the 2014 Rule were accurate or not. Because the Department is rescinding the GE regulations, institutions will no longer be required to post disclosures of program outcomes on their websites. The Department will now provide outcomes data to all students using the College Scorecard, or its successor, which has the advantage of reducing the burden on institutions and allowing students to more easily compare outcomes among the institutions and programs available to them.

The Department thanks the commenters for their feedback and points out that the Senate Task Force on Higher Education Regulations similarly pointed to the GE regulations as being particularly burdensome regulations that outstrip legislative requirements and intent.[138] Administering the GE regulations, particularly alternate earnings appeals, has also turned out to be much more burdensome to the Department than was originally anticipated.

Although, the Department has changed disclosure templates in an effort to make them user friendly, we are not convinced that the GE disclosures are useful to students. Consumer testing has revealed that students mostly want to know how students like them have done in the program.[139]

In developing any future transparency framework, the Department will focus on using administrative data sets and Department-developed data tools to minimize burden on institutions and to allow students to compare all of the institutions and programs they are considering by accessing a single website. This website will be accessible to individuals with disabilities, in accordance with section 508 of the Rehabilitation Act. This will ensure that students with disabilities will be able to use the website tools and have equal access to the data that are available to all other students.

The Department agrees that as a result of differences in definitions by States and accreditors, including not only differences in how jobs are defined but also in which students are to be included in or excluded from the measurement cohort, the job placement rates reported in current GE disclosures are not comparable. In addition, the results of a 2013 Technical Review Panel highlighted that job placement determinations are highly subjective and error prone, since there is no reliable data source available to institutions for the purpose of determining or verifying job placements. Until a reliable data source is available for determining job placements, the Department believes that earnings data is the most reliable information that can be made available to students to give them a sense of graduate earnings, even if those data do not specify the precise type of job graduates have secured.

The Department agrees with the commenter that the Department should encourage maximum transparency by ensuring that institutions provide the same information to all students and prospective students. The Department has determined that an expanded College Scorecard, or its successor, not direct disclosures to students, is the appropriate way to share this information, and plans to do so by adding program-level outcomes data for completers of as many title IV programs as possible without compromising student privacy. Although the Department does not require regulatory changes to implement or modify the College Scorecard, we appreciate the many comments we received in response to the NPRM and will consider them as we plan our Scorecard modifications.

*Changes:* None.

### Scorecard

The Department is not required to engage in rulemaking in order to make changes to the College Scorecard. Therefore, the following section of this final rule is not subject to the APA or the requirements of rulemaking. However, because we believe that the Scorecard is a critical tool to improving transparency and informing a market-based accountability system, we sought feedback from the public regarding recommended content for the Scorecard. We are providing a summary of the comments and our responses to better inform the public, but we are not creating regulations related to the College Scorecard.

*Comments:* Many commenters supported the Department's efforts to expand the College Scorecard to include

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[137] Walter G. Bumphus and J. Noah Brown, American Association of Community Colleges and the Association of Community College Trustees Comments on the NPRM on Gainful Employment, (Docket ID ED–2018–OPE–0042), September 13, 2018, *www.aacc.nche.edu/wp-content/uploads/2018/09/GE_nprm_final_comments_AACC_ACCT_091318.pdf.*

[138] *www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.* (pg. 29)

[139] Bozeman, Holly, Meaghan Mingo, and Molly Hershey-Arista, ''Summary Report for the 2017 Gainful Employment Focus Group,'' Westat, *https://www2.ed.gov/about/offices/list/ope/summaryrpt2017gefocus317.pdf.*

program level data. One commenter stated that placing the information in a central location will be more effective than allowing institutions to comply with disclosure requirements by placing them in obscure sections of their websites. Another commenter supported moving all consumer data to the College Scorecard.

Several commenters had questions or concerns regarding College Scorecard data. Some commenters expressed concerns that College Scorecard data are based only on undergraduate students and that this results in inaccurate data for many institutions.

One commenter expressed concern that small cohorts are not excluded from the calculation and that the data may contain discrepancies between cohorts and methodologies used for each of the metrics or rates provided. The commenter gave the examples of such discrepancies, including their belief that: Debt amounts are based only on students with Federal loans, but earnings information is based on all students attending the institution; debt includes debt for indirect costs in addition to direct expenses; some metrics are based on completers only while others include all students; and retention and graduation rates are based on first-time, full-time students only, which is not representative of the current student population. The commenter then expressed concerns that students will not know that the outcomes data are based on different student cohorts.

Many commenters stated that they would like to see the Department's data collection efforts expanded beyond first-time, full-time students. Given the increase in part-time students, transfer students, and students who stop-out for various reasons, some commenters pointed out that by including only first-time, full-time students, the majority of students at some institutions are excluded from the data.

One commenter requested that the Department develop a mechanism that would authorize institutions to forward student data to the Department of the Treasury so that Treasury can disclose to the Department information about the earnings of all program completers and not just those who participated in title IV programs.

One commenter stated that calculators and other financial management tools that can be customized to an individual student's situation provide better information than mandatory standardized disclosures on program pages. Another commenter suggested that the Department publish a calculator allowing students to understand debt, the application of compound interest, and the expected income of a career choice.

Some commenters stated that although they value transparency and are encouraged by the Department's aims to provide more relevant information via an online portal, they believe that there is no replacement for in-person disclosures, which ensure that a student receives information and has an opportunity to ask questions and understand metrics being provided.

Several commenters expressed that they were skeptical that institutions would provide accurate information on institutional disclosures, and these commenters were concerned that institutions would put the disclosures in obscure portions of their website.

Several commenters supported the idea of adding a link to the College Scorecard from institutional program pages. One commenter suggested that the Department create a standardized icon for hyperlinking to the data disclosure portal, mandate that schools use it on their websites and set requirements for its size and prominence. Other commenters suggested that the Department require links to Department data on school websites. One commenter stated that such a link should only be to the main College Scorecard page and that requiring specific links based on program would cause undue burden.

One commenter stated that the centralized Scorecard approach would be less burdensome than updating websites and catalogs. Another advocated for measurements to be added to a national website and require that the link should be included in Admissions paperwork, Free Application for Federal Student Aid (FAFSA) documents and student catalogs.

One commenter recommended that the Outcome Measures Survey for 200 percent of time to completion be used to calculate the graduation rate data and then made recommendations for how to augment the IPEDS data collection.

Many commenters stated that disclosures should be part of the PPAs for all schools, and that all participating schools should be required to link to College Scorecard or a similar national website containing standardized disclosures. Commenters stated that such disclosures would be easy for students to use and would result in meaningful comparisons. Another commenter pointed out that disclosure requirements exist for other large transactions, such as buying a car, and students need this information when making life-impacting decisions. The commenter thought it was especially important that disclosure requirements be applied to programs subject to the 2014 Rule given past history of predatory practices at some schools.

Many commenters discussed items that they thought should be included in any upcoming disclosure framework, including: Whether a program meets State requirements for graduates to obtain licensure in the field; information about programmatic accreditation requirements, program costs, and program size; data on program outcomes such as completion rates and withdrawal rates; earnings data for program graduates after a set period of time in the job market; the percentage of students who complete the program or transfer out within 100/150/200 percent of the normal time to complete; the percentage of Pell recipients who complete the program or transfer out within 100/150/200 percent of the normal time to complete; institution-level success rates parsed out by credential level; the percentage of program graduates earning above a particular income threshold after a set period of time in the job market; and the percentage of students receiving Pell grants.

One commenter expressed concerns that the Department had not discussed any plans to include other data in the College Scorecard, such as: Primary occupation for which a program is designed to prepare students, program length, completion and withdrawal rates, loan repayment rates, program costs, percentage of title IV or private student loan borrowers enrolled in a program, median loan debt, mean or median earnings, program cohort default rates, or State licensure information, which are disclosure items covered under the GE regulations.

One commenter stated that the Department needed to provide a rationale for the decision to not continue each item required for disclosure under the 2014 Rule.

Some commenters listed questions that they would want answered if the Department establishes disclosures via the College Scorecard or other means. These questions included: How the Department will gather the information for the centralized data portal; what requirements there would be to submit data to the centralized data portal; what format the information would need to be disclosed in; how frequently information would need to be submitted to the Department; whether the Department would make it possible to submit data more frequently to ensure that the best possible data are available to students; whether the data would be disclosed on a rolling basis or with deadline requirements; how the College Scorecard or other website would indicate missing information; what enforcement mechanism might be used and how it would work; how institutions would have access to monitor and update disclosure information; what privacy controls would be used; what evidence institutions would be required to provide to support their disclosures and whether those documents would be viewable by the general public; how the Department would explain the data collection period used; what action the Department would take if it found during an audit that an institution misrepresented disclosure information; whether the Department would regularly review which data items would be disclosed for usefulness to students and; what role stakeholders would play in such a review process.

Several commenters stated that an informational solution alone, was not adequate protection for students. Some of these commenters believed that relying solely on the College Scorecard places the burden on students to find and interpret information on programs. One commenter stated that no evidence supports the conclusion that publishing more outcome data will lead to better decision making on the part of students and that most college students would not use the information anyway. One commenter cited research that indicated that upper-income students were more likely to use Federal data in their college decision-making process.[140]

One commenter noted that the College Scorecard is not implemented through regulation and, therefore, is not a good disclosure tool to expand for programmatic disclosure purposes. Another stated that the College Scorecard will not be as effective as a disclosure template and will not lead to loss of eligibility or include a direct warning from an institution to a student considering a poor-performing program. Another commenter questioned the Department's assertion in the NPRM that the College Scorecard will provide more accurate and reliable data than the GE Disclosure Template. Finally, several commenters expressed concerns that the College Scorecard will not be enough to dissuade students from enrolling in a program if high pressure sales tactics, advertisements, commission-based compensation, and ''pain points'' are used in recruiting tactics.

[140] Hurwitz, Michael and Jonathan Smith, ''Student Responsiveness to Earnings Data in the College Scorecard,'' SSRN, September 1, 2017, *papers.ssrn.com/sol3/papers.cfm?abstract_id=2768157.*

Another commenter asked how the Department will balance the need for data with privacy protections in cases of programs with less than ten students. One commenter asked whether the Department will relax privacy protections if it provides program-level data through the College Scorecard. Without doing so, any disclosures through the College Scorecard would still not have program-level data for programs with fewer than ten completers. Several commenters suggested various metrics for inclusion in the College Scorecard, while others noted that privacy laws will prevent students from getting a truly clear picture of programmatic outcomes.

One commenter suggested differentiating earnings between those who complete and those who do not complete. Another commenter pointed out that the College Scorecard does not provide information on a programmatic level and instead provides information at the institution level. One commenter expressed concerns that the College Scorecard cannot be updated with program-level data soon. The commenter then stated that the Department should clarify if it intends to keep the same time horizon of six to ten years after entering schools, whether it will disaggregate earnings for completers and non-completers, and whether it will group very small majors in similar content areas to ensure it is able to produce data covering as many students as possible. Finally, the commenter suggested that the Department conduct consumer testing, consider holding a technical review panel with behavioral economists, designers, and other experts, and construct a data download tool for users who wish to access files with the data in smaller chunks than the current large zip file.

One commenter requested that the Department make sure that the reporting accurately accounts for the enrollment patterns of community college students who may take longer than the traditional time to complete. Another commenter expressed concerns that because most of the key College Scorecard data are based on title IV recipients, information would be made available for a minority of community college students, as fewer than four out of ten community college students receive any Federal financial student aid. The commenter went on to state that this minority of students is unrepresentative of the larger population of community college students—title IV aid recipients are generally less affluent and likelier to have worse outcomes than their better-resourced colleagues.

Many commenters pointed out that cosmetology schools and other certificate programs are not included in the current College Scorecard. One commenter asked that if the College Scorecard approach is adopted, that cosmetology schools should be included in a sensible way or be exempted from the requirement. Additionally, the commenter contended that program-level earnings data will not be representative of the income made by graduates because many completers work part-time, are building businesses, or fail to include tips in their reported earnings. One commenter asked that the Department hold off on requiring certificate programs from having to include a link to the College Scorecard until it contains data regarding certificate programs.

One commenter suggested that the Department adopt language in the College Scorecard that addresses occupational circumstances and geographic differences that have the potential to impact the accuracy and validity of the data. Another commenter suggested that the Department provide earnings information only for program completers, which differs from the current College Scorecard because the earnings information encompasses both completers and non-completers. The commenter argued that the purpose of the College Scorecard's earnings data is to inform students of what they may expect to earn if they complete a given program and that including non-completers' earnings is confusing. One commenter suggested incorporating a risk-adjusted model for presenting data based upon variables such as socioeconomic demographics and geographical location of students and the institution.

Another commenter expressed concerns that including self-reported data on the College Scorecard would invite misrepresentation.

One commenter suggested reporting median earnings of graduates by program. Another commenter suggested integrating analytic insights derived from unique, consumer-level data maintained by other sources. Another commenter suggested using the Credential Transparency Description Language schema in the College Scorecard and providing the data on the institution's website.

Some commenters stated that they did not believe it necessary for the Department to require institutions to publish information such as net price, program size, completion rates, and accreditation and licensing requirements because this information could be added to an FAQ page published to the College Scorecard site so that students could ask the schools the questions if they so choose.

One commenter expressed concern that the College Scorecard website would not include all of the information a student might need to effectively select a school. The commenter explained that disclosures are more effective when they are produced by government regulators to further policy goals rather than from an institution whose goal is to limit liability.

One commenter stated that the Department has not negotiated in good faith, because the Department has not committed to update the College Scorecard with program-level data.

Several commenters expressed concern that increasing the profile of the College Scorecard would increase burden on institutions since there would be more reporting requirements for an expanded College Scorecard. One commenter stated that requiring individual programs to track and disclose information such as programmatic outcomes, program size, completion rates, and net price would result in costs that the institutions would then pass on to students in the form of higher tuition and fees. Several commenters expressed concern over whether students would know where to find program-level information on the College Scorecard after it was added and how to interpret the information. One commenter expressed concern that there is currently no law or regulation requiring that the program-level information be added to the College Scorecard.

*Discussion:* The Department very much appreciates the suggestions, ideas, and potential inclusions and exclusions in the future College Scorecard, or similar tool. The Department continues to believe that the best way to create a transparency and market-based accountability system that serves all students is by expanding the College Scorecard to include program-level outcomes data for all categories (GE and non-GE) of title IV participating programs, so that students can make informed decisions regardless of which programs or institutions they are considering. The Department is also working towards providing more information to students and parents about the level of Parent PLUS borrowing. Only when parent borrowing is included can students fully understand the level of borrowing in which families engage at a particular institution. This also provides families with more complete and meaningful expectations of educational costs and students and parents should be aware of this when making enrollment decisions.

Parents in the later years of their career may be less able to manage student loan repayment than their children who have an entire career ahead of them, yet borrowing limits on Parent PLUS loans are exceedingly high regardless of the parent's income, which could have dire results as parents near their retirement years.[141] We intend to list Parent PLUS debt separate from student debt, but nonetheless believe that it is an important addition to consider in the expanded College Scorecard.

The Department notes that several negotiators recommended that if earnings are to be reported by the Department, those earnings should be considered at 5 or 10 years post-graduation, since earnings in the early years after completion may not reflect the true earnings gains that individuals will realize from their college credential. The Department agrees that earnings at the 5- and 10-year mark, or within a similar timeframe, will provide more meaningful information about a borrower's likelihood to repay his or her loans throughout the standard repayment period. The three- and four-year earnings data currently used to calculate D/E rates were an aspect of the GE regulations that made it an unreliable proxy for program quality since it is not unusual for a graduate to take a few years to hit their career stride, especially if they enter the job market during a time of high unemployment.

Therefore, the Department intends to integrate earnings data closer to the suggested 5- and 10-year earnings data into the expanded College Scorecard. However, since the Department does not have program-level data prior to 2014–15, it will report shorter-term earnings during the first year of Scorecard expansion, and will increase the number of years following graduation that are captured in the data until it reaches the target post-completion metric.

Because students who do not complete the program will not benefit from the full program or curriculum, it is inappropriate to include the earnings of non-completers in the determination of program outcomes. While we encourage institutions to take action to increase program completion rates, the Department recognizes that there are many factors that influence a student's decision or ability to persist and complete the program. Since the HEA is designed to increase access, and since loans are made available to all students regardless of their level of academic preparedness, institutions that adhere to open-enrollment admissions policies and institutions that are minimally selective will likely have lower completion rates than highly selective institutions that serve mostly students who are economically-advantaged, traditionally-aged, and academically well-prepared for college-level work. It is not appropriate to penalize institutions because they take on the difficult work of serving high risk students.

The Department is sympathetic to the concern that by including only title IV participating students, some institutions will not have a representative sample of students included in the earnings calculation and the populations on which earnings are reported are likely to be lower earners. The Department agrees that students from socioeconomically disadvantaged backgrounds tend to have lower earnings in the early years after graduation. However, the Department is permitted to collect data only on title IV participants, unless Congress passes legislation to lift the current data collection prohibitions. Both debt and earnings data presented in the Scorecard will be limited to title IV participating students; however, the Department will work to help students understand why earnings data are being reported for a different cohort for students (*i.e.,* those who graduated 5 or 10 years ago) than the cohort for which median borrowing levels are reported (the most recent cohort of graduates for which data are available). Since college costs can change dramatically over time, we believe that median debt from the most recent cohort of graduates will more closely approximate what a current or prospective student might need to borrow, whereas the amount a student borrowed many years ago may not be meaningful if the tuition and fees are considerably higher now or the demographics of students served have shifted over time (such as because the institution has become more or less selective over time).

The Department does not believe it has the authority to include in its MOU with the Department of Treasury a request for institutions to provide Social Security numbers for non-title IV participants in order to include their earnings data in the Scorecard. We will continue to explore what options, if any, might be available to us so that non-title IV students can be included in Scorecard.

[141] *See:* Andriotis, AnnaMaria, ''Over 60, and Crushed by Student Loan Debt,'' *Wall Street Journal,* February 2, 2019, *www.wsj.com/articles/over-60-and-crushed-by-student-loan-debt-11549083631.*

The Department agrees that calculators and financial management tools can be useful to students. Already, the Department has debt calculators on the FSA website, and as the Department launches the NextGen Financial Services Environment, it will include additional borrower education opportunities. We will explore ways to connect those tools to the College Scorecard so that students can manipulate data from the Scorecard as part of their exploration.

The Department is not suggesting that the College Scorecard replace person-to-person meetings or conversations between campus staff and prospective students and does not intend for the College Scorecard to replace those interactions. We do believe, however, that students who have access to the Scorecard, and who receive Scorecard information as they complete their FAFSA, will be able to identify which institutions they may want to attend and to enable outcomes comparisons between institutions that serve demographically matched populations or that support similar educational missions. Our goal is to go beyond a passive website and to connect Scorecard to the MyStudentAid mobile app so that Scorecard data becomes part of the experience and not an ancillary tool that students may or may not utilize.

While the Department encourages all institutions to post links to the Scorecard on their institutional websites and likes the idea of developing a recognizable icon so that students know where to find the link, we are not including those requirements here. We believe that by linking the College Scorecard to electronic or mobile FAFSA completion, and by providing Scorecard data in an API format so that others, such as Google, can develop new ways to make these data available to consumers, more students will interact with these data and have the opportunity to use them in their personal decision-making process.

The Department agrees that if institutions are left on their own to calculate and disclose their own outcomes, the data may be less accurate and reliable since different data sources could be used to produce those data, since human error could be introduced, and since dishonest institutions could misrepresent the truth. However, it must be noted that IPEDS data are similarly self-reported, and the Department has often pointed out its concern about the likely presence of errors in those data. Still, IPEDS reporting is the best data available to the Department, and we believe that as those data become more readily available to students for use in enrollment decision-making, institutions will be incentivized to further assure the accuracy of those data.

Still, the Department believes that the best way to provide accurate and comparable data to students and parents is to expand the College Scorecard to provide program-level outcomes data for title IV participating programs at all credential levels and regardless of institutional type. We agree with the commenter who stated that a centralized tool like the College Scorecard will be easier to update than websites and catalogs.

We appreciate the commenter who suggested that Outcome Measures Survey data be included in Scorecard, which has more comprehensive graduation rate information including rates for non-first time and part-time students, and the Department will take this recommendation under advisement as it develops the expanded Scorecard.

The Department acknowledges that disclosures are often made available to consumers making large financial transactions. We nonetheless believe that the College Scorecard is the optimal way to share information to student and to ensure that comparable data are made available to students and parents. The Department will explore the possibility of separating debt and earnings data for Pell and non-Pell students at the program-level by examining to what extent these data can be made available while maintaining student privacy.

As for concerns about data privacy, the Department notes that it receives earnings data in aggregate, not at the student level. Therefore, there was no potential for a breach of privacy regarding earnings. The Department has no plans of changing this policy and rescinding the regulation will not change any students' privacy safeguards, regardless of the size of the program in question.

The Department will continue to include information about institutional costs on the College Scorecard and will explore the feasibility of including program-level cost data. The Department has also explored calculating program-level completion rates for title-IV students but believes there will be challenges to creating entry cohorts because students can transfer from program to program within an institution, which makes it difficult to determine which students to include in an entry cohort. The Department is also exploring ways to provide information on program size to help students understand how competitive it might be to be admitted to, how many different class sections will be available, and how likely it is that the program is actually offered each semester. This will also help to reduce the use of tactics that lure a student to an institution and then redirect that student to a different program. The Department is concerned that some institutions may be advertising highly sought programs in order to attract students, but once students enroll at the institution, they then find that the program either is not enrolling more students, has entrance requirements substantially more rigorous than entrance requirements to the institution, or has a long waiting list, at which point the institution may then encourage them to enroll in a different program, such as a general studies program or a lower-level applied program. By publishing program size, students may get important clues about the likelihood of their program of choice being available to them. It may also help explain why proprietary institutions have entered into markets where the uninformed believe a community college is meeting career and technical training needs simply because they list having a program in their catalog.

The Department will consider the usefulness of IPEDS completion rate data to the Scorecard and appreciates the recommendations regarding the 100/150/200 percent completion rates. The Department does not have access to data that provides accurate information about the primary occupations for which a program prepares a student, and in non-CTE programs, it is difficult to determine what does or does not constitute a primary occupation. Therefore, we will likely not include information about primary occupations on the College Scorecard. Similarly, current plans do not include job placement rates because we do not have access to accurate data on this. Our goal is to encourage accreditors and states to stop relying on subjective, and error prone job placement rate determinations to evaluate program outcomes, and to instead encourage the use of College Scorecard earnings data to more accurately inform students about the earnings of prior graduates.

The Department is planning to include program-level information such as median debt, loan repayment rates, monthly payment associated with that debt, and cohort default rates in the Scorecard, although initially some of those data points may be calculated at the institution level rather than the program level. The Department does not have plans to include information about private loans in the College Scorecard, since we do not have access to those data without requiring institutions and students to report additional data to the Department.

The Department believes it has provided sufficient rationale for not including every element of the 2014 Rule disclosures in the expanded College Scorecard. However, we have described more generally throughout this document, and in this and the earlier section about GE disclosures, why we will no longer be requiring GE disclosures. Since our goal is to develop a transparency framework that can be applied to all categories (GE and non-GE) of title IV programs, we are concerned that such disclosures could be too burdensome to large institutions that offer hundreds of programs. Therefore, we will not require any institutions to post GE-type disclosures as a result of this final rule.

The Department plans to begin with annual updates to the College Scorecard and will consider whether more frequent updates are appropriate. College Scorecard will continue to adhere to the Department's privacy standards and suppress values with small cohort sizes and will consider aggregating data from multiple years if necessary, to achieve larger cohort sizes. The Department plans to engage in consumer testing of the College Scorecard.

We hope that more students will use the College Scorecard since we have mechanisms to disseminate data to students through the mobile app and other NextGen FSA tools. We also believe that by providing data in API format, other developers will find novel and innovative ways of making data available to students in a user-friendly format and in ways the Department is unlikely to explore with its own limited resources.

We agree that the College Scorecard will not prevent high pressure sales tactics or pain point recruiting, but it will provide information that makes it difficult for institutions to misrepresent the truth about their outcomes. By rescinding this rule, we are making no changes to the incentive compensation regulations; therefore, we are not proposing any changes to prohibitions on commission-based compensation.

We will work towards expanding the College Scorecard to include programs-level metrics, including for certificate programs, undergraduate programs, graduate programs and professional programs. The Department is not currently planning to separate total debt from debt associated with tuition and fees; however, we will continue to consider the request to do so.

The Department plans to continue providing institution level information to help students understand the impact of variables, such as geographic differences, on outcomes. In addition, other contextual information, such as institutional selectivity or percent of Pell recipients to help students compare similar institutions. We will consider ways in which we might interact with other databases, such as credit bureau data or student outcomes data.

The Department has negotiated in good faith and has committed to updating and expanding the College Scorecard. Since we are still developing the tool and are not required to publish regulations in order to produce the College Scorecard, we will not commit to all of the particulars of its content in this final regulation. However, we will consider the recommendations we received through the public comments as we update and expand the College Scorecard. The Department will continue to enforce disclosure and reporting requirements that remain part of the PPA. In addition, the Department will continue to be mindful of the reporting burdens placed upon institutions for all reporting or disclosure requirements.

**Certification of GE Programs**

*Comments:* One commenter stated that institutions of higher education should be required to certify programs that lead to careers with State licensure requirements actually meet those State licensure standards.

*Discussion:* The Department considered disclosures related to licensure and certification, as well as accreditation, as part of its Accreditation and Innovation negotiated rulemaking package and, therefore, will not include regulations related to disclosures of this information in this rulemaking.

*Changes:* None.

**Continued Implementation of the GE Regulations Prior to Rescission**

*Comments:* One commenter representing a coalition of members of advocacy groups stated that until a rescission of the 2014 Rule is effective, the Department is obligated to follow the law as it exists but has failed to do so.

Alternately, two commenters requested that the Department suspend any further requirements to comply with the GE regulations, including the GE data reporting requirements, publication, or revisions to the disclosure template, and requirements to submit appeals information.

*Discussion:* The GE regulations remain in effect until this regulation is final and the 2014 Rule is rescinded. However, the Department does not have access to the SSA earnings data necessary to calculate future D/E rates. As a result, the Department cannot take action to remove programs from title IV participation since no program will have failed the D/E rates measure for two out of three consecutive years or had a combination of fail and zone rates for four consecutive years. The Department will produce a modified disclosure template that institutions must use to disclose information, as prescribed by the GE regulations.

*Changes:* None.

**Rulemaking Process**

*Comments:* One commenter stated that the Department did not conduct a reasoned rulemaking since it has proposed to eliminate all sanctions. One commenter stated that the proposed regulations are arbitrary and capricious, because the Department failed to justify its regulatory choices. Specifically, the commenter referred to the removal of the sanctions for poor-performing programs and the removal of disclosures to students about program outcomes. The commenter stated that Executive Order 12866 was not followed because the Department did not issue a regulation where the benefits of the new policy outweigh the costs. The commenter also stated that the Department has not presented rigorous analysis and evidence to support its claims.

A commenter stated that the Department did not negotiate in good faith because it refused to hold a fourth session of negotiations after tentative consensus on the proposal was reached.

One commenter accused the Department of ignoring and disregarding years of public input on GE matters.

One commenter provided an appendix in which he quoted from the 2014 NPRM but did not provide a comment to explain its inclusion. The commenter also provided research by Libassi and Miller about how the GE regulations reduce loan forgiveness costs, but again did not provide any explanation as to its inclusion.[142]

*Discussion:* The Department disagrees with the commenter who asserted that the Department is advancing a policy where the risks outweigh the benefits. Throughout the NPRM, and this document, we have provided sufficient evidence that the benefits of the final regulation—including ensuring that all students are free to choose the school

[142] Libassi, C.J. and Miller, B. (8 June 2017). How Gainful Employment Reduces the Government's Loan Forgiveness Costs. Center for American Progress.

and program of their choice—outweigh the risks. In fact, we have been clear that by expanding the College Scorecard to improve program-level outcomes data for all title IV-participating programs, we will expand the benefits of transparency to all students and not just those who seek enrollment in a GE program. The Department also disagrees with the commenter who said that it did not provide rigorous analysis to support its position. The Department has provided a more than rigorous review of data that was not considered in connection with the 2014 Rule and disagrees with earlier claims.

The Department disagrees with the suggestion that it did not conduct a good faith, open, and reasoned rulemaking. The Department proposed the removal of sanctions at the first negotiating session, explaining that the numerous sources of error in the D/E rates measure make it an invalid proxy for program quality. Nonetheless, when a negotiator proposed the use of one-to-one debt-to-earnings ratios that would be more easily understood by students, the Department supported this approach and voted favorably.

Although the Department hoped for consensus among the members of the negotiating committee, it was not reached. A number of negotiators, including representatives of non-profit institutions, discussed the many reasons why sanctions are not appropriate based on the inaccuracies of the D/E rates measure as a proxy for quality since the rates may be influenced by many factors outside of the institution's control. The Department believes it is inappropriate to sanction institutions and eliminate opportunities for students based on metrics that are influenced by factors outside of the control of institutions, such as student loan interest rates.

The Department also disagrees with the assertion that a program that fails the D/E rates measure is automatically and necessarily a poor performing program. As noted in the NPRM, there are a plethora of factors that influence a program's D/E rates. As such, the Department does not believe that failing the D/E rates measure is an accurate indicator that the program is a poor performing program. In addition, given the number of passing programs that have associated earnings below the poverty level, the Department does not believe that passing the D/E rates measure indicates that the program is a good program or that students are benefiting themselves by completing it.

The Department also believes that stewardship of taxpayer dollars includes providing information that allows taxpayers to understand not only the number of dollars at risk through the student loan program, but the number of dollars that are directed through State and local appropriations to programs that yield low earnings. Students also have the right to know, regardless of whether they pay cash, use other forms of credit, or use Federal student loans to pay for their programs, if doing so is likely to generate financial benefits. Employers similarly should be able to review program outcomes before spending their hard-earned dollars to provide employee education and professional development. Therefore, the Department believes that its decision to use the College Scorecard or its successor as the mechanism to increase transparency and inform a market-based accountability system that continues to honor student choice is reasonable. The Department recognizes that students select institutions and programs, including GE and non-GE programs, for many different reasons, of which future earnings may be only one of many deciding factors.

Even without currently having access to all program-level data for non-GE programs, as stated elsewhere, the Department believes that the benefits of rescinding the GE regulations outweigh the potential costs, since GE programs represent just a small portion of title IV programs available to students. In order to ensure that all students make better informed enrollment and borrowing decisions, a comprehensive approach is required. Because the Department does not yet have access to program-level data, we cannot accurately estimate savings associated with reduced enrollments in undergraduate and graduate programs across all institutional sectors as a result of unimpressive outcomes.

The Department's review of the outstanding student loan portfolio has provided ample evidence that the problem of borrowing more than a student can repay in 10 years extends well beyond proprietary institutions and includes institutions from all sectors. According to Jason Delisle and Alex Holt, income-driven repayment programs actually provide disproportional advantage to higher income students, which is not the population for whom IDR programs were designed.[143] Student loan non-repayment poses considerable costs to taxpayers, regardless of which institutions are the source of loans in non-repayment. While the Department did not approve of a fourth negotiating session, we believe we engaged in a good faith effort to negotiate and reach consensus. The Department does not believe that there was tentative consensus on the proposal during the third session or that a fourth session would have brought the group closer to consensus. To the contrary, the Department made considerable compromises in order to arrive at consensus, but it was clear by the end of the third session that consensus would not be achieved. Also, a number of negotiators expressed opposition to the idea of adding another session. There were several negotiators who made it clear that they would never concur with any regulation that did not include program sanctions and one negotiator stated that he would never agree to a regulation without first knowing which programs would pass or fail, so that he could be sure that only the truly ''bad'' programs would fail, since some ''good'' programs could fail if the formula was not properly designed.

The Department believes that it is not appropriate to evaluate the validity of a methodology by reviewing the results to see if they align with a more subjective view of which programs should pass or fail. Either the methodology is valid, or it is not, and while it would be helpful to know which and how many programs would be impacted by a valid methodology, those results are not what determine the accuracy of the methodology. The Department acknowledges that it was able to provide only very limited data to negotiators and could not provide earnings data for non-GE programs since the Department was unable to obtain additional earnings data from SSA. However, neither negotiators nor the Department could identify a new accountability metric that is supported by research and appropriately controls for factors that impact student debt or program earnings. Further, additional data were not needed to develop the methodology. Rather, additional data would have only enabled negotiators to determine which programs would be on the ''right'' side of the formula.

The Department negotiated in good faith, including putting forth a proposal during the third session that deviated significantly from our original proposal and took into account many of the suggestions made by negotiators. However, even with all of those changes, consensus was not reached. From the time that the negotiated rulemaking committee was announced,

[143] Delisle, Jason and Alex Holt, ''Safety Net or Windfall? Examining Changes to Income-Based Repayment for Federal Student Loans,'' New American Foundation, October 2012, *static.newamerica.org/attachments/2332-safety-net-or-windfall/NAF_Income_Based_Repayment.18c8a688f03c4c628b6063755ff5dbaa.pdf.*

negotiators knew that the Department was planning to hold three negotiating sessions. Three sessions provided ample opportunity to fully discuss the issues and determine whether consensus could be reached.

Discussion has continued about the GE regulations since the first rulemaking effort commenced in 2010, and that discussion continued through a second rulemaking effort and this current negotiated rulemaking and public comment. The Department does not believe that uniform consensus about the validity of the GE regulations has ever been achieved, and it notes that there has been vociferous disagreement among those who support and those who oppose the 2014 Rule.

More recently, we have been unable to enter into an updated MOU with SSA, which means that we are unable to obtain earnings data to continue calculating D/E rates. Therefore, the Department has no choice other than to cease D/E calculations and reporting using the methodology defined by the GE regulations. Most importantly, the GE regulations cannot be expanded to include all title IV programs. The Department has determined that the 2014 Rule is fundamentally flawed and does not provide a reliable methodology for identifying poorly performing programs and, therefore, should not serve as the basis for high stakes sanctions that negatively impact institutions and students.

*Changes:* None.

**Information Quality Act (IQA)**

*Comments:* A commenter stated that the NPRM relied upon ''inaccurate, misleading, and unsourced information in violation of the Information Quality Act.'' Additionally, the commenter stated that the Department did not meet the clear standards set forth in both the ED Guidelines related to the IQA and the IQA itself because the data and research cited lacked objectivity since the NPRM was filled with examples of information that was not supported by sources, do not stand for the proposition cited, failed to explain the methodology used, or were not accompanied by information that allows an external user to understand clearly the analysis and be able to reproduce it, or understand the steps involved in producing it.

*Discussion:* The Department separately addresses each of the specific comments and requests related to compliance with the IQA below.

*Changes:* None.

*Comments:* A commenter questions the Department's statement ''The first D/E rates were published in 2017, and the Department's analysis of those rates raises concerns about the validity of the metric, and how it affects opportunities for Americans to prepare for high-demand occupations in the healthcare, hospitality, and personal services industries, among others.'' The commenter stated that this assertion fails to clearly describe the research study approach or data collection technique, fails to clearly identify data sources, fails to confirm and document the reliability of the data and acknowledge any shortcomings or explicit errors, fails to undergo peer review, and fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department is referring to data tables published on the Department's website, based upon the methodology described in the 2014 Rule.[144] Our statement in the NPRM was based upon our analysis of the data in the published D/E rates data table, as discussed above in the Geographic Disparities and the D/E Thresholds and Sanctions sections.

*Changes:* None.

*Comments:* A commenter questioned the Department's statement ''In promulgating the 2011 and 2014 regulations, the Department cited as justification for the eight percent D/E rates threshold a research paper published in 2006 by Baum and Schwartz that described the eight percent threshold as a commonly used mortgage eligibility standard. However, the Baum & Schwartz paper makes clear that the eight percent mortgage eligibility standard 'has no particular merit or justification' when proposed as a benchmark for manageable student loan debt. Upon further review, we believe that the recognition by Baum and Schwartz that the eight percent mortgage eligibility standard 'has no particular merit or justification' when proposed as a benchmark for manageable student loan debt is more significant than the Department previously acknowledged and raises questions about the reasonableness of the eight percent threshold as a critical, high-stakes test of purported program performance.'' The commenter states that the Department fails to present conclusions that are strongly supported by the data, which has been highlighted recently by Sandy Baum, the co-author of the 2006 study cited by the Department, who stated that ''the Department of Education has misrepresented my research, creating a misleading impression of evidence-based policymaking. The Department cites my work as evidence that the GE standard is based on an inappropriate metric, but the paper cited in fact presents evidence that would support making the GE rules stronger.'' The commenter further asserts that ''[the Department is] correct that we were skeptical of [the eight percent] standard for determining affordable payments for individual borrowers, but incorrect in using that skepticism to defend repealing the rule. In fact, our examination of a range of evidence about reasonable debt burdens for students would best be interpreted as supporting a stricter standard.''

*Discussion:* The Department is aware of and respects Ms. Baum's opinion that the 2014 Rule should not be rescinded. However, that does not change the fact that in their earlier paper, Baum's and Schwartz's state that the eight percent mortgage eligibility standard has ''no particular merit or justification'' as a benchmark for manageable student loan debt. Since this paper was cited in the 2014 Rule as the source of the eight percent threshold, it is relevant that even the authors of the paper are skeptical of the merit of the 8 percent threshold as a student debt standard. It is not only appropriate, but essential, that the Department points out that upon a more careful reading of the paper, we realize that the paper does not support the eight percent threshold, but instead clearly refutes it for the purpose of establishing manageable student loan debt. As for the notion that the Baum & Schwartz paper supported a stricter standard, the commenter did state that the 2014 Rule was too permissive, but did not provide a specific threshold for what the number should be and the negotiating committee similarly was unable to identify a reliable threshold for the D/E rates measure.

*Changes:* None.

*Comments:* Several commenters expressed the opinion that research and evidence cited in the NPRM was misinterpreted by the Department or used selectively in an attempt to mislead. One commenter specifically asserted that the NPRM cites evidence in a way that leads to factual errors, does not attempt to justify key choices, and ignores hundreds of pages of evidence in favor of citations that have no bearing on the claims asserted. Another commenter offered that the 2014 Rule is based on extensive research and evidence, which the NPRM fails to adequately refute, showing that some GE programs were accepting

[144] See: *studentaid.ed.gov/sa/sites/default/files/GE-DMYR-2015-Final-Rates.xls* and *studentaid.ed.gov/sa/about/data-center/school/ge.*

Federal financial aid dollars and enrolling students while consistently failing to train and prepare those students for employment.

*Discussion:* The Department disagrees with the commenter's interpretation of the data provided in the NPRM. We continue to believe that the NPRM included adequate justification for its conclusion that the D/E rates measure is an unreliable proxy for program quality for all of the reasons described, including that the Department's selection of an amortization term that could significantly skew pass or fail rates, and the Department's selection of a 10-, 15-, or 20-year amortization term that does not align with the amortization terms provided by Congress and the Department through its various extended and income-based repayment programs.

Similarly, the Department has provided sufficient evidence to support its position that while program quality could have an impact on earnings, so too could a variety of other factors outside of the institution's control, including discriminatory practices that have resulted in persistent earnings gaps between men and women, between individuals from underrepresented minority groups and whites; geographic differences in prevailing wages; difference in prevailing wages from one occupation to the next; micro- and macro-economic conditions; and other factors.

*Changes:* None.

*Comments:* One commenter disagreed with the Department's statement that, ''Research published subsequent to the promulgation of the GE regulations adds to the Department's concern about the validity of using D/E rates to determine whether or not a program should be allowed to continue to participate in title IV programs.'' The commenter believed that the Department failed to identify data sources, including whether a source is peer-reviewed and scientific evidence-based, failed to confirm and document the reliability of the data and acknowledge any shortcomings or explicit errors, and failed to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department has used well-respected, peer-reviewed references to substantiate its reasons throughout these final regulations for believing that D/E rates could be influenced by a number of factors other than program quality. As such, the D/E rates measure is scientifically invalid because it fails to control or account for the confounding variables that could influence the relationship between the independent (program quality) and dependent variable (D/E rates) or render the relationship between the independent and dependent variables as merely correlative, not causal.

*Changes:* None.

*Comments:* One commenter disagreed with the Department's assertion that ''the highest quality programs could fail the D/E rates measures simply because it costs more to deliver the highest quality program and as a result the debt level is higher.'' The commenter stated that the Department ''Fails to identify data sources and fails to be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* As stated above, where a higher quality program requires better facilities, more highly qualified instructors, procurement of expensive supplies, small student-to-teacher ratios, and specialized equipment to provide high-quality education, someone must pay the cost. Although taxpayers may pay some of these costs on behalf of students enrolled at public institutions, private institutions typically pass all or most of these costs on to students, which results in high tuition. However, there is no correlation between the cost to deliver a high-quality education and wages paid to program graduates. The Department cites research from CSU Sacramento that serves as evidence that high quality career and technical education programs can be more than four times as expensive to run as general studies programs.[145]

*Changes:* None.

*Comments:* One commenter disagreed with the Department's statement that, ''Other research findings suggest that D/E rates-based eligibility creates unnecessary barriers for institutions or programs that serve larger proportions of women and minority students. Another commenter claimed that studies demonstrated that rescinding the 2014 Rule could exacerbate gender and race wage gaps. Such research indicates that even with a college education, women and minorities, on average, earn less than white men who also have a college degree, and in many cases, less than white men who do not have a college degree.'' The commenter went on to state that the Department fails to draw upon peer-reviewed sources, fails to acknowledge any shortcomings or explicit errors in the data, fails to present conclusions that are strongly supported by the data. The commenter stated that the source cited by the Department does not draw the same conclusion as the Department reached. For example, the cited table appears to relate to graduates of bachelor's degree programs, and not gainful employment programs. The commenter also states that the statement fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department emphasizes that bachelor's degree programs are included as GE programs if offered by proprietary institutions. Moreover, the NPRM cites data provided by the College Board that points to disparities in earnings between men and women and people of color. The College Board is a reliable and trusted source of data, and its publications undergo rigorous peer review prior to publication. The citation provided links to the College Board's report and data tables, which are robust, and which include information about data sources and methodology used.

The data sourced from the U.S. Census Bureau's Current Population Survey which calculated median earnings based on race/ethnicity, gender and educational level, includes disaggregated earnings based on other characteristics, such as having less than a high school diploma, a high school diploma, some college, no degree, associate degree, bachelor's degree, and advanced degree. While this research did not address GE programs specifically, the point is that there are general earnings disparities based on race and gender. Programs that serve large proportions of women and minorities, therefore, would likely post lower earnings than programs of similar quality primarily serving whites and males, simply because of wage advantages certain groups have had for centuries. The Department agrees that our statement is an extrapolation of the data provided, but this extrapolation is well reasoned and supported by other research. Given that proprietary institutions serve the largest proportions of women and minority students, and that some GE programs (such as those in medical assisting, massage therapy, and cosmetology) serve much larger proportions of female students, it is likely that student demographics will impact earnings among these programs. This is not an unreasonable extrapolation to make, since the impact

[145] Shulock, Lewis and Tan.

of gender and race on earnings is well-documented and the subject of considerable policy discussion and public debate.

*Changes:* None.

*Comments:* A commenter has concerns about the Department's statement ''[D]ue to a number of concerns with the calculation and relevance of the debt level included in the rates[,] we do not believe that the D/E rates measure achieves a level of accuracy that it should [to] alone determine whether or not a program can participate in title IV programs.'' The commenter states that the Department fails to clearly describe the research study approach, fails to identify data sources, fails to confirm and document the reliability of the data, fails to undergo peer review, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* As was discussed during the 2014 negotiations and continuing through the more recent negotiations, public hearings, and public comment, the debt metric can change significantly depending upon the amortization term used, interest rates and congressionally determined student loan lending limits. No research is needed to show that a student in a 20-year repayment plan will pay a lower monthly and annual payment than one in a 10-year repayment plan as this is a well understood mathematical fact. Since REPAYE created an opportunity for all students to qualify for a 20- to 25-year repayment term, depending upon their credential level attainment, it is unreasonable to use a 10- or 15-year amortization period to calculate the annual cost of student loan repayment just because GE programs tend to serve a larger proportion of non-traditional students. Even if using a 10-year repayment term was justified for certificate or associate degree programs, which we do not believe is the case, there is no possible justification that borrowers in bachelor's programs should be evaluated based on a 15-year amortization period whereas students who complete the same credentials at non-profit and private institutions can qualify for 20-, 25-, or even 30-year repayment terms based on the level of their degree and the amount they owe. The Department sees no basis for such a double standard.

The Department does not believe it is appropriate to use REPAYE as the tool to help some students manage a debt load disproportionate to their earnings, imposing no sanctions on the institutions that led the borrower to this position, while penalizing other institutions by eliminating a program because the students who need income driven repayment assistance happened to graduate from a school that pays taxes rather than consuming direct taxpayer subsidies. The 2015 REPAYE regulations, coupled with the gainful employment rule, established a double standard that sanctions proprietary institutions if their graduates need income driven repayment programs to repay their loans, and promises graduates of non-profit institutions income-based repayment and loan forgiveness in return for irresponsibly borrowing.

*Changes:* None.

*Comments:* One commenter has concerns with the Department's statement ''[I]ncreased availability of [income-driven] repayment plans with longer repayment timelines is inconsistent with the repayment assumptions reflected in the shorter amortization periods used for the D/E rates calculation in the GE regulation.'' The commenter states that the Department fails to rely upon peer-reviewed, scientific evidence-based research, fails to identify data sources, fails to confirm and document the reliability of the data, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* This comment is a statement of fact, which is substantiated by information provided on the Federal Student Aid website.[146]

*Changes:* None.

*Comments:* One commenter raised issues about the Department's statement ''[A] program's D/E rates can be negatively affected by the fact that it enrolls a large number of adult students who have higher Federal borrowing limits, thus higher debt levels, and may be more likely than a traditionally aged student to seek part-time work after graduation in order to balance family and work responsibilities.'' The commenter continued that the Department fails to rely upon peer-reviewed, scientific evidence-based research, fails to identify data sources, and fails to confirm and document the reliability of the data.

*Discussion:* It is a statement of fact that independent students have higher Federal loan borrowing limits, because Congress has established those higher limits for independent students (which include students over the age of 25, graduate students, married students, and students with dependents).[147] Independent students can borrow up to $57,500 for undergraduate studies whereas dependent students can borrow only $31,000. Simple mathematics explain that if a larger proportion of students can borrow $57,500 rather than $31,000 to complete a bachelor's degree, the median debt level will be higher at an institution that serves a large portion of independent students than dependent students.[148] As Baum points out in her 2015 publication, 70 percent of students who hold student loan debt of $50,000 or more are independent students. This is not a surprising fact since it is only those students who have borrowing limits over $50,000. These datasets are derived from NCES data reports and were compiled by Sandy Baum.

Therefore, it is not surprising that institutions serving larger proportions of independent students will have higher median borrowing levels, and since proprietary institutions serve the highest portion of independent students, it is not unreasonable that these institutions would have higher median debt levels, which they do.

Data reported by Pew proves that the percentage of college graduates who work part-time rather than full-time increased from 15 percent in 2000 to 23 percent in 2011. We have addressed concerns about data regarding adult students working part-time and the gender gap in earnings earlier in these final regulations. Research provided by the Center for American Progress substantiates that even among college graduates, women tend to earn less than men, in part because they tend to select lower paying majors and in part because of time spent out of the workforce raising children.[149] The Pew Research Center confirms that a higher percentage of women take time out of their career or work part-time because of child-rearing responsibilities.[150]

*Changes:* None.

*Comments:* One commenter raised issues about the Department's statement ''[I]t is the cost of administering the program that determines the cost of tuition and fees.'' The commenter continued that the Department fails to

[146] See: *studentaid.ed.gov/sa/repay-loans/understand/plans.*

[147] See: *studentaid.ed.gov/sa/fafsa/filling-out/dependency.*

[148] *www.urban.org/sites/default/files/alfresco/publication-pdfs/2000191-Student-Debt-Who-Borrows-Most-What-Lies-Ahead.pdf.*

[149] *cdn.americanprogress.org/wp-content/uploads/2016/09/06111119/HigherEdWageGap.pdf.*

[150] *www.pewsocialtrends.org/2013/12/11/10-findings-about-women-in-the-workplace/.*

rely upon peer-reviewed, scientific evidence-based research, fails to identify data sources, fails to confirm and document the reliability of the data, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department did not state that it is the cost of administering academic programs that determines tuition and fees. To the contrary, the Department made clear in the NPRM that at most non-profit institutions, direct taxpayer appropriations and tuition surpluses generated from the low-cost programs the institution administers are used to offset the financial demands of higher cost programs. In this case, the cost of administering the program does not directly drive the cost of tuition and fees. Were that the case, liberal arts programs would charge lower tuition and fees than laboratory science and clinical health sciences programs—which is not the case at most non-profit institutions. Instead, what the NPRM said is that in some cases, the cost of tuition and fees is driven by the higher cost of administering some programs. The Shulock, Lewis and Tan study provides peer reviewed research to support this position.[151]

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's statement ''Programs that serve large proportions of adult learners may have very different outcomes from those that serve large proportions of traditionally aged learners.'' The commenter continued that the Department fails to rely upon peer-reviewed, scientific evidence-based research, fails to identify data sources, fails to confirm and document the reliability of the data, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department offers as evidence to support the statement made in the NPRM data from the NCES Study of Persistence and Attainment of Nontraditional Students.[152] NCES is a reliable and trusted source of higher education data.

*Changes:* None.

*Comments:* One commenter raised issues about the Department's statement ''Data discussed during the third session of the most recent negotiated rulemaking demonstrated that even a small change in student loan interest rates could shift many programs from a 'passing' status to 'failing,' or vice versa, even if nothing changed about the programs' content or student outcomes.'' The commenter continued that the Department fails to clearly describe the research study approach and data collection technique, fails to identify data sources, fails to confirm and document the reliability of the data, fails to undergo peer review, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department points the commenter to our website, where data provided by the negotiator during the third negotiating session show the change in outcomes based on a small shift in interest rates.[153] The negotiator is an economist at Columbia University, Cornell University, and the Urban Institute, and is thus a trusted source of data. However, any loan amortization table will show that when interest rates change, payments on debt increase. Again, this is a basic mathematical fact that requires no statistical study or peer review to be proven true.

*Changes:* None.

*Comments:* One commenter challenged the Department's statement ''There is significant variation in methodologies used by institutions to determine and report infield job placement rates, which could mislead students into choosing a lower performing program that simply appears to be higher performing because a less rigorous methodology was employed to calculate in-field job placement rates.'' The commenter continued by stating the Department fails to clearly describe the research study approach and data collection technique, fails to clearly identify data source, fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department cited in the NPRM the findings of the Technical Review Panel (TRP), convened in response to the 2011 GE regulations to address the confusion created by multiple job placement rate definitions. This TRP is a trusted source, as is the external research that was retained to provide background research on job placement rates.[154]

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's statement ''The Department also believes that it underestimated the burden associated with distributing the disclosures directly to prospective students. A negotiator representing financial aid officials confirmed our concerns, stating that large campuses, such as community colleges that serve tens of thousands of students and are in contact with many more prospective students, would not be able to, for example, distribute paper or electronic disclosures to all the prospective students in contact with the institution.'' The commenter continued that the Department fails to draw upon peer-reviewed, scientific-evidence based research and fails to confirm and document the reliability of the data.

*Discussion:* The Department continues to assert that the negotiator who made this statement is a reliable authority on the burden institutions would face if required to distribute disclosures. The point of having negotiators is to consider the opinions of experts in the field. However, the Department did not require the negotiator to provide data to substantiate her claim. Nonetheless, while the Department cited regulatory burden as a contributing factor to its decision to rescind the GE regulations, it was not the primary reasons for making this decision. The primary reason for rescinding the GE regulations, as stated earlier, is evidence that the D/E rates measure is not a reliable proxy for quality since many factors other than quality can impact both the debt and earnings elements of the equation.

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's statement ''The Department believes that the best way to provide disclosures to students is through a data tool that is populated with data that comes directly from the Department, and that allows prospective students to compare all institutions through a single portal, ensuring that important consumer information is available to students

[151] Shulock, N., Lewis, J., & Tan, C. (2013). Workforce Investments: State Strategies to Preserve Higher-Cost Career Education Programs in Community and Technical Colleges. California State University: Sacramento. Institute for Higher Education Leadership & Policy.

[152] *nces.ed.gov/pubs/web/97578g.asp.*

[153] See: ''Minimum Earnings Necessary to Pass D/E, Various Measures,'' Submitted by Jordan Matsudaira, *www2.ed.gov/policy/highered/reg/hearulemaking/2017/gainfulemployment.html.*

[154] *nces.ed.gov/npec/data/Calculating_Placement_Rates_Background_Paper.pdf.*

while minimizing institutional burden.'' The commenter continued that the Department fails to draw upon peer-reviewed, scientific evidence-based research and fails to identify data sources. Specifically, in the 2014 Rule, the Department stated that it ''would conduct consumer testing'' to determine how to make student disclosures as meaningful as possible. The NPRM fails to acknowledge whether such testing occurred, including the results of that testing. The NPRM also fails to state any other basis for the Department's conclusions.''

*Discussion:* The Department did conduct consumer testing on the disclosure template after the 2014 Rule went into effect, the results of which proved that disclosures are typically very confusing to students, that the results presented are frequently misinterpreted, and that in general, students find disclosures most meaningful when they provide information about the students included in the disclosures, including what course loads the students were taking.[155] The Department points to a number of commenters who said that the current GE disclosures can be difficult to find on institutional websites, which the Department has found to be the case in its own attempts to identify GE disclosures when reviewing websites. In addition, the Department points to statutory requirements for the College Navigator which emphasize the importance of using a standardized data tool to provide comparable data to students and that allow students to compare multiple institutions.[156]

*Changes:* None.

*Comments:* One commenter raised issues about the Department's statement ''[T]he Department does not believe it is appropriate to attach punitive actions to program-level outcomes published by some programs but not others. In addition, the Department believes that it is more useful to students and parents to publish actual median earnings and debt data rather than to utilize a complicated equation to calculate D/E rates that students and parents may not understand and that cannot be directly compared with the debt and earnings outcomes published by non-GE programs.'' The commenter continued that the Department fails to draw upon peer-reviewed, scientific evidence-based research and fails to identify data sources.

*Discussion:* Elsewhere in this document, the Department has provided adequate support for its assertion that the D/E rates measure is not sufficiently accurate or reliable to serve as the sole determinant of punitive action against a program or institution. The Department conducted significant consumer testing prior to the launch of the College Scorecard to better understand which data are most relevant to students and parents and will continue to conduct consumer testing. However, the Department is committed to providing data that can reduce the reporting burden to institutions while still providing additional information to students.

*Changes:* None.

*Comments:* One commenter challenged the Department's statement ''The Department has reviewed additional research findings, including those published by the Department in follow-up to the Beginning Postsecondary Survey of 1994, and determined that student demographics and socioeconomic status play a significant role in determining student outcomes.'' The commenter continued that the Department fails to identify data sources. Specifically, the website cited by the Department links to the Beginning Postsecondary Survey of 1994's findings, and not the ''additional research'' mentioned by the Department, including the Department's own ''follow-up.'' Additionally, the Department fails to confirm and document the reliability of the data, and fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department misstated the name of the reference from which it drew data regarding outcomes of non-traditional students. The NPRM should have said that ''The Department has reviewed additional research findings, including the 1994 follow-up on 1989–90 Beginning Postsecondary Survey, which determined that student demographics and socioeconomic status play a significant role in determining student outcomes.'' Other research reviewed included publications by the American Association of Colleges and Universities on the needs of adult learners,[157] a publication about Adult Learners in Higher Education produced by the U.S. Department of Labor[158] and another research study that focused specifically on the needs of adult learners enrolled in online programs.[159]

*Changes:* None.

*Comments:* One commenter raised issues with the Department's statement ''The GE regulation failed to take into account the abundance of research that links student outcomes with a variety of socioeconomic and demographic risk factors.'' The commenter continued that the Department fails to identify data sources and fails to confirm and document the reliability of the data.

*Discussion:* This sentence refers to the same NCES study referenced in the NPRM and above.

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's statement that ''the GE regulation underestimated the cost of delivering a program and practices within occupations that may skew reported earnings. According to Delisle and Cooper, because public institutions receive State and local taxpayer subsidies, even if a for-profit institution and a public institution have similar overall expenditures (costs) and graduate earnings (returns on investment), the for-profit institution will be more likely to fail the GE rule, since more of its costs are reflected in student debt. Non-profit, private institutions also, in general, charge higher tuition and have students who take on additional debt, including enrolling in majors that yield societal benefits, but not wages commensurate with the cost of the institution.'' The commenter stated that the study mentioned did not support the conclusion that the GE regulations underestimated the cost of delivering a program and the NPRM failed to identify the data sources.

*Discussion:* The Department relied on the Delisle and Cooper's research and analysis to substantiate that public institutions are often able to charge less for enrollment than private and proprietary institutions because they receive direct appropriations from a State or local government, are not required to purchase or rent their primary campus buildings or land, and enjoy substantial tax benefits. As such, they can charge the student a lower price for a program that has similar

[155] Bozeman, Holly, and Meaghan Mingo, ''Summary Report for the Gainful Employment Focus Groups,'' Prepared for the U.S. Department of Education, February 10, 2016, *www2.ed.gov/about/offices/list/ope/summaryrptgefocus216.pdf.* Note: Student also ranked the following as ''most important'': job placement rate, annual earnings rate, and completion rates for full-time and part-time students.

[156] The Higher Education Opportunity Act of 2008, Public Law 110–315. 122 Stat. 3102.

[157] *www.aacu.org/publications-research/periodicals/research-adult-learners-supporting-needs-student-population-no.*

[158] *files.eric.ed.gov/fulltext/ED497801.pdf.*

[159] *eric.ed.gov/?id=ED468117.*

overall expenditures as another program sponsored by a private institution that does not receive direct subsidies, have endowment holdings, or benefit from preferential tax treatment. Specifically, Delisle and Cooper state that ''[o]ne shortcoming of the 2014 Rule is that it does not take into account society's full investment in credentials produced by public institutions of higher education.'' [160] As noted in their research, the data sources used by Delisle and Cooper were Department GE Data and data from IPEDS.

*Changes:* None.

*Comments:* A commenter raised concerns about the Department's statement ''In the case of cosmetology programs, State licensure requirements and the high costs of delivering programs that require specialized facilities and expensive consumable supplies may make these programs expensive to operate, which may be why many public institutions do not offer them. In addition, graduates of cosmetology programs generally must build up their businesses over time, even if they rent a chair or are hired to work in a busy salon.'' The commenter continued that the Department fails to identify data sources and fails to confirm and document the reliability of the data.

*Discussion:* Our statement was intended to give further examples of ways that cosmetology programs have been challenged in implementing the GE regulations. The Department received these comments from multiple commenters in connection with the 2014 Rule, as well as this rulemaking, and heard these arguments from negotiators and speakers at negotiations and other public forums.

It is unclear why public institutions do not operate cosmetology programs in greater numbers, but NCES data point to the limited number of enrollments in cosmetology programs among public colleges and universities. It is well known that cosmetologists typically must build their own clientele, even when working in a salon owned by another operator, and that tip income is an important part of the total earnings of cosmetologists. As a blog posted by a cosmetology program explains, if an individual does not make an effort to get clients, the individual may ''have to sit around for hours waiting for a client to walk in and this is likely to affect your income. On the other hand, if you have reliable repeat customers, you can make sure that you have a steady stream of income throughout the year.'' [161]

*Changes:* None.

*Comments:* One commenter raised concerns with the Department's statement ''[S]ince a great deal of cosmetology income comes from tips, which many individuals fail to accurately report to the Internal Revenue Service, mean and median earnings figures produced by the Internal Revenue Service underrepresent the true earnings of many workers in this field in a way that institutions cannot control.'' The commenter continued that the Department fails to present conclusions that are strongly supported by the data. The commenter noted that the Internal Revenue Service (IRS) tax gap study cited by the Department does not support the Department's specific conclusions about cosmetology graduates as it is from 2012 and covers tax year 2006 only. Additionally, the commenter stated that the Department failed to confirm and document the reliability of the data.

*Discussion:* Throughout the 2014 and 2018 negotiations, as well as between those negotiations, the Department has heard from cosmetology programs and their representatives on this matter. These stakeholders have regularly informed the Department that cosmetologists regularly under-report their earnings and hide a portion of their tipped earnings. In the 2014 Rule, the Department admitted that individuals who work in barbering, cosmetology, food service, or web design may under report their income (79 FR 64955) and hoped that the alternate earnings appeal would provide an opportunity to correct earnings in those fields for the purpose of the D/E rates.[162] However, the Department lost a lawsuit filed by the American Association of Cosmetology Schools (AACS) and is no longer able to deny earnings appeals based on the failure of institutions to meet the survey response rates dictated by the 2014 Rule.

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's statement ''While the GE regulations include an alternate earnings appeals process for programs to collect data directly from graduates, the process for developing such an appeal has proven to be more difficult to navigate than the Department originally realized. The Department has reviewed earnings appeal submissions for completeness and considered response rates on a case-by-case basis since the response rate threshold requirements were set aside in the AACS litigation. Through this process, the Department has corroborated claims from institutions that the survey response requirements of the earnings appeals methodology are burdensome given that program graduates are not required to report their earnings to their institution or to the Department, and there is no mechanism in place for institutions to track students after they complete the program. The process of Departmental review of individual appeals has been time-consuming and resource-intensive, with great variations in the format and completeness of appeals packages.'' The commenter continued that the Department fails to present conclusions that are strongly supported by the data. The commenter notes that despite asserting that the alternate appeals process is ''time-consuming and resource-intensive, with great variations in the format and completeness of appeals packages,'' the Department then ''estimates that it would take Department staff [only] 10 hours per appeal to evaluate the information submitted.'' Additionally, the commenter states that the Department fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* The Department has received numerous inquiries about how to file an appeal, and the inquirers have expressed confusion, frustration, and have described excessive burden on their institutions (especially small institutions) in filing an appeal. Additionally, this has come up multiple times at public hearings, in comments received, and at the negotiations themselves. Institutions have had difficulty gathering the earnings information for their appeal because there is no formal mechanism in place for students to report their income to their programs. Even at 10 hours per appeal, the Department has insufficient resources to review appeals in a timely manner. Of the 326 appeals submitted in response to the 2014 earnings data, the Department has completed the review and rendered a decision on only 101 of those claims. Rescinding the regulations will mitigate the flaw in the D/E rates measure that is associated with underreported income or earnings appeals.

*Changes:* None.

*Comments:* One commenter raised concerns about the Department's

[160] Delisle and Cooper, *www.aei.org/wp-content/uploads/2017/03/Measuring-Quality-or-Subsidy.pdf.*

[161] *www.evergreenbeauty.edu/blog/how-to-build-clientele-in-cosmetology/.*

[162] 79 FR 64955.

statement ''We believe that the analysis and assumptions with respect to earnings underlying the GE regulation is flawed.'' The commenter continued that the Department fails to draw upon peer-reviewed, scientific evidence-based research and fails to confirm and document the reliability of the data.

*Discussion:* The Department has provided sufficient evidence to support the conclusion that the D/E rates measure is a flawed metric. As noted earlier, the Department is referring to a claim made in the 2014 Rule that graduates of many GE programs were earning less than those of the average high school dropouts.

Upon further review of the Department of Labor data used to make this claim, the Department has determined that the claim was inaccurate. First, the Department did not differentiate between program completers and program drop-outs in calculating earnings outcomes, which is inappropriate because program drop-outs will not reap the full benefits of the program. In addition, the figure used to represent the earnings of high school dropouts was derived by multiplying a weekly earnings figure by 52, assuming that all high school dropouts will work a full 52 weeks or benefit from paid vacation or sick leave during some of that time. However, the BLS report on Contingent Workers shows that individuals without a high school diploma are more likely to be part of the contingent workforce than the non-contingent workforce, meaning that they are more likely to have employment that is not expected to last or that is described as temporary.[163] Therefore, calculating earnings for high school drops outs based on an assumption that high school drop outs work 52 weeks per year inflates the likely earnings of high school drop outs. Yet, in addition to not differentiating between program completers and program drop-outs, the inflated figure that assumed all workers work 52 weeks per year was compared to SSA earnings data for GE program graduates that included individuals working full-time, part-time, individuals who are self-employed, and those who may not report some or all of their earned income.

It is illogical that students would earn less after completing a postsecondary program than they would have had they not completed high school. Even if the postsecondary education provides zero earnings gains, the program graduate should earn a wage comparable with that of high school dropouts. Therefore, this conclusion defies logic, and was the result of a poorly designed comparison.

*Changes:* None.

*Comments:* One commenter raised issues with the Department's ''Table 1—Number and Percentage of GE 2015 Programs That Would Pass, Fail, or Fall into the Zone Using Different Interest Rates.'' The commenter stated that the Department fails to clearly describe the research study approach and data collection technique, fails to identify data sources, fails to confirm and document the reliability of the data, fails to undergo peer review, and fails to ''be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it.''

*Discussion:* ''Table 1—Number and Percentage of GE 2015 Programs That Would Pass, Fail, or Fall into the Zone Using Different Interest Rates'' from the NPRM illustrates how a change in interest rates would change the results of the 2015 GE rates, altering the number of programs that would pass, fail, or fall into the zone based on debt and earnings data published in 2015. Although the impact of a change in interest rates on the debt portion of the D/E calculation is obvious, these data were provided by a negotiator who is an economist at Columbia and Cornell Universities and the Urban Institute, and who was one of the designers of the College Scorecard during the Obama Administration. Although he built his own model to calculate the impact of changing interest rates, the source of the underlying debt and earnings data was provided by the Department in the data files provided along with the 2015 GE results.

*Changes:* None.

*Comments:* Several researchers submitted a joint comment opposing the rescission of the 2014 Rule. They argued that the rescission is arbitrary and capricious, because it ignores both the benefits of the 2014 Rule and the data analysis supporting the 2014 Rule. The commenters noted that Congress had reason to require that for-profit programs be subject to increased supervision. They cite a post on the Federal Reserve Bank of New York's blog that states that attending a four-year private for-profit college is the strongest predictor of default, even more so than dropping out. They cited evidence that students who attend for-profit institutions are 50 percent more likely to default on a student loan than students who attend community colleges. The commenters also argued that a rise in enrollment in the for-profit sector corresponded with reports of fraud, low earnings, high debt, and a disproportionate amount of student loan defaults. They cited an example that stated that, of the 10 percent of institutions with the lowest repayment rates, 70 percent were for-profit institutions. They argued that because poor outcomes are concentrated in for-profit programs, the 2014 Rule is justified.

*Discussion:* The Department does not disagree with the findings cited by some commenters, including the Federal Reserve Bank of New York's blog, but instead calls attention to the fact that these outcomes may be the result of the demographics of the students served rather than the quality of the educational program. A National Bureau of Economic Research (NBER) study of student loan repayment rates makes clear that race, financial dependency status and parental wealth transfer are the strongest predictors of default and non-repayment.[164] Further, the Department's own research found that being over 25, having a child, being a single parent, and working full-time while in college are each factors that increase the risk of non-completion, and that the more risk factors a student demonstrates, the less likely the student is to complete the program and repay loans.[165] Given that proprietary institutions serve a population of students that include a much higher percentage of Pell eligible, non-traditional and minority students, the results of these research papers are not surprising. The Department agrees with these researchers that non-profit institutions must do more to serve this population of students so that they enjoy the benefits of taxpayer subsidized tuition.

As discussed earlier, the majority of students enrolled in proprietary institutions is enrolled in bachelor's or graduate degree programs, not associate degree programs, making comparisons with community colleges irrelevant. In addition, since most proprietary institutions have open-enrollment policies, they cannot be compared directly with most public four-year institutions, that do not typically have open enrollment policies. These institutions are unique and serve a high-risk population. If other institutions are not willing to serve them, the question must be asked about whether or not these individuals should have the opportunity to go to college. The Department agrees that for many of

[163] *www.bls.gov/spotlight/2018/contingent-workers/home.htm.*

[164] Lochner and Monge-Naranjo, *www.nber.org/papers/w19882.*

[165] *nces.ed.gov/pubs/web/97578g.asp.*

these students, a work-based learning opportunity or a shorter-term training program could provide a more cost-effective option. However, apprenticeship programs are not open-enrollment opportunities, and many have considerable academic entrance requirements, including performance on mathematics tests. In addition, there are not enough of these opportunities to serve all interested participants.

It may be convenient to ignore the many confounding variables that impact student outcomes, and to ignore that the demographics of students enrolled at proprietary institutions are quite different than those of public or private non-profit two- and four-year schools, but the Department cannot ignore those facts, which our own data, published in 2017, substantiates.[166]

The Department believes that more must be done to improve outcomes for high-risk students, and more options must be made available to students for whom college is not the best or preferred option, but in the meantime, the conclusion that institutional quality is the cause for lower outcomes is not substantiated by fact. There is clearly a crisis among minority students, with predictions for defaults among African American students to reach 70 percent in the next 20 years.[167] It is true that defaults are higher among African Americans as compared to other demographics. It is also true that African Americans attend proprietary institutions in higher proportions than other demographics.

But the question is one of cause and effect. Do African American students default at higher rates because they attend proprietary institutions, or are default rates among proprietary institutions higher because these institutions are more likely to serve African-American students? We simply do not currently know.

We are not persuaded by the data commenters cited because the studies did not suppress or control for the many confounding variables that influence student outcomes, nor did they rely on carefully constructed matched comparison groups to better isolate the impact of the institution's tax status on student outcomes. These papers also fail to consider the unique structure of proprietary institutions that enable many of them to offer both associate degrees and bachelor's degrees—making them unlike typical public community colleges or typical four-year institutions. In addition, comparisons are further complicated by the number of proprietary institutions that offer online education, which is well-known to have results that are very different than those achieved by ground-based institutions.[168]

The Department is not suggesting that all proprietary institutions offer high-quality opportunities, or that these institutions should not be held accountable for the outcomes their students achieve. Instead, the Department understands that evaluating college outcomes is an incredibly complicated undertaking, and even with all of the data available to Department researchers, it has been impossible to develop a methodology that allows us to accurately and reliably assess program quality or to make scientifically valid claims of causality between program quality and student outcomes. For that reason, the Department has determined that sanctions limited to a small percentage of institutions and programs—while ignoring other programs whose graduates similarly default on loans or find themselves in a negative amortization repayment situation—are an inappropriate remedy.

*Changes:* None.

*Comments:* Commenters also noted that students enrolled in programs that close generally re-enroll in nearby non-profit or public institutions and that shifting aid to better performing institutions will result in positive impacts for students. They also cited evidence that, after enrollment in for profit programs declined in California, local community colleges increased their capacity. They argued that in light of these examples, the 2014 Rule would not reduce college access for students but would rather direct them into programs that are more beneficial in the long term.

*Discussion:* The California study referenced by the commenter is limited to students who were enrolled at proprietary institutions in that State. Given the large public community college and university system in California, it is not surprising that students closed out of one option in that State found their way to another. However, the Department has recently provided automatic closed school loan discharges for over 15,000 students whose institution closed, and three years later still had not enrolled at another institution. This provides more convincing evidence to us that some students find it harder than others to find a new program. Also, research produced by CSU Sacramento suggests that even among those who find a new home at a lower cost community college, they are likely to be ushered into a general studies program which may result in lower debt, but has no market value unless the student transfers and completes a four-year degree.

In the same way that the Department does not require students seeking a liberal arts education to pursue that degree at the lowest cost institution available, the Department similarly does not require that students interested in occupationally focused education pursue the lowest cost option available.

Moreover, it is entirely unclear whether a student is better off attending a lower cost institution if the only program option available to them is a general studies program, which has little or no market value, rather than a CTE program, which might yield better results.[169] A 2014 study by CSU Sacramento shows that as enrollments increased in the California Community College system during the Great Recession, there was a decrease in enrollment slots in career and technical programs since more students could be served in lower-cost general studies programs.[170] Even so, it is not the Department's role under the HEA to evaluate program quality—as accreditors are charged with that responsibility. Nor does the HEA require students to attend the lowest cost institution available or enroll in the program generating the highest earnings. Students enrolled in CTE-focused

[166] Caren A. Arbeit and Sean A. Simone, ''A Profile of the Enrollment Patterns and Demographic Characteristics of Undergraduates at For-Profit Institutions,'' Stats in Brief, February 2017, *nces.ed.gov/pubs2017/2017416.pdf.*

[167] Judith Scott-Clayton, ''The Looming Student Loan Default Crisis is Worse Than We Thought,'' Brookings Institute, January 11, 2018, *www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.*

[168] See: Matthew J. Werhner, ''A Comparison of the Performance of Online Versus Traditional On-Campus Earth Science Student on Identical Exams,'' *Journal of Geoscience Education,* 2010, *files.eric.ed.gov/fulltext/EJ1164616.pdf;* Anna Ya Ni, ''Comparing the Effectiveness of Classroom and Online Learning: Teaching Research Methods,'' *Journal of Public Affairs Education,* 2013, *w.naspaa.org/JPAEmessenger/Article/VOL19-2/03_Ni.pdf;* Alsaaty, Falih, et al., ''Traditional Versus Online Learning in Institutions of Higher Education: Minority Business Students' Perceptions,'' *Business and Management Research,* 2016, *www.sciedupress.com/journal/index.php/bmr/article/view/9597/5817;* Steven Stack, ''Learning Outcomes in an Online vs Traditional Course,'' *International Journal for the Scholarship of Teaching and Learning,* January 2015, *digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1491&context=ij-sotl;* Caroline M. Hoxby, ''The Returns to Online Postsecondary Education,'' NBER, February 2017, *www.nber.org/papers/w23193.*

[169] Holzer and Baum, *Making College Work: Pathways to Success for Disadvantaged Students,* Brookings Institute, 2017.

[170] Shulock, Lewis and Tan, *eric.ed.gov/?id=ED574441.*

programs are guaranteed by section 102 of the HEA to have equal access to title IV programs and benefits. The GE regulations deny students interested in CTE-focused programs the same rights as students who enroll in traditional, liberal arts programs.

*Changes:* None.

*Comments:* As further justification for the 2014 Rule, commenters stated that there has been a dramatic increase in the number of borrowers who leave school with high debt and low earnings. In one study, a researcher noted that many such programs left students earning less than they did before entering their program. Another study found that the average change in earnings 5 to 6 years post-attendance for over 1.4 million students attending GE programs between 2006 and 2008 was negative for students at for-profit certificate, associates, and bachelor's degree programs. It also found that earnings gains for students in for-profit certificate programs were much lower than for students who attended public institutions even after for controlling for student characteristics. They also stated that at institutions with high D/E rates, students of all income types had poor outcomes, suggesting that the characteristics of the institution are responsible for the poor outcomes. This study also compared students at for-profit certificate programs to demographically similar students who never attended college and found no earnings gains in attendance, suggesting that these students would have been better off choosing not to obtain a postsecondary credential.

Another study cited by the commenters controlled for differences in students' background and characteristics and found that earnings outcomes for students at for-profit programs are typically lower than, or at best equal, to lower-cost programs at public institutions. They cited two studies that found that the poor outcomes of students attending for-profit programs remain even after controlling for family income, race, age, and academic preparation.

*Discussion:* The Department contends that institutions with high D/E rates exist across all sectors of higher education.[171] It makes sense that the change in earnings for 2006–2008 program graduates would be negative since this coincides with the Great Recession, which had a more dramatic impact on low-income and minorities than it did on wealthier, white individuals.[172] In addition, it is impossible for the researcher in the cited studies to have assembled demographically matched comparison groups since the data required to do this is not publicly available.[173]

The Department notes that several of these studies are based on the unauthorized use of a dataset that was made available by a former Department of Treasury employee to himself and a limited number of outside, like-minded researchers. The Department has been unable to review the data files that were removed from Department of Treasury, since the combined Education-Treasury datafiles were not made available to the Department of Education, to confirm their accuracy or completeness, or to ensure that the data were not manipulated by the person who removed those data from government safekeeping. The Department questions the reliability of research results that are based upon the unauthorized use and the unauthorized release of a dataset since other researchers, including Department of Education researchers, are unable to replicate the calculations to confirm the validity of the methodology or the accuracy of the conclusions.

Regardless, the Department believes that the D/E rates measure is a flawed metric that inflates a borrower's monthly or annual repayment obligation above that which is required by the law and does not accurately distinguish between high-quality and low-quality programs.

*Changes:* None.

*Comments:* Commenters criticized the Department's efforts to analyze relevant data related to the NPRM's assertions that, if the D/E rates measure was applied to all degree programs, it would show poor outcomes across all sectors. They argued that if the Department believes this to be the case, it should calculate D/E rates for all programs using available data in NSLDS and with SSA and prove that this is the case. They also criticized the Department's reliance on institutional-level College Scorecard data in lieu of more specific NSLDS data during the negotiated rulemaking process. They further argued that in the absence of such data, the Department has a responsibility to protect students where it has the authority to do so.

*Discussion:* The Department was unable to obtain SSA earnings data during this rulemaking and continues to be unable to obtain those data. The IRS continues to be willing to provide data for our College Scorecard effort, but § 668.405 of the GE regulations does not allow the use of IRS data to calculate D/E rates. The Department does not currently have program-level earnings data for programs other than GE programs. The Department fulfilled as many data requests as possible, but outdated systems, prohibitions on student unit records, and the inability to get additional earnings data from SSA made it impossible to fulfill all of the requests. However, the Department has access to sufficient data to determine that the D/E rates measure is influenced by a variety of variables other than quality, and that the debt calculation methodology is inconsistent with loan repayment programs available to students. That is sufficient evidence to support our decision to rescind the GE regulations.

*Changes:* None.

*Comments:* Commenters disagreed with the statement that for-profit programs would have better D/E rates but for student characteristics outside the institution's control. They argued that it is easy to control for these characteristics and produce adjusted D/E rates, but that the Department had not done so. They believe that such an adjustment would not result in significant numbers of failing programs passing the D/E rates measure. On the point that D/E rates are sensitive to economic conditions, the commenters stated that the Department could use multiple cohorts of rates across institutions to show how changes in the local economy affect D/E rates. They also state that even in large recessions there are not large declines of employed workers and that wages usually do not fall. They argued that because of this, it is likely that only a small number of programs that would have otherwise passed would fail solely due to a recession. They also disagreed with our conclusion in the NPRM that D/E rates are flawed because they are sensitive to tuition and interest rates. These commenters stated this is a desirable outcome because high interest rates and tuition reduce either the government's return on investment or the ability of borrowers to repay.

[171] Kelchen, Robert, ''The Relationship Between Student Debt and Earnings,'' Brookings Institute, Brown Center Chalkboard, September 23, 2016, *https://www.brookings.edu/blog/brown-center-chalkboard/2016/09/23/the-relationship-between-student-debt-and-earnings/.*

[172] Paul Taylor, et al., ''Wealth Gaps Rise to Record Highs Between Whites, Blacks, and Hispanics,'' Pew Social & Demographic Trends, July 26, 2011, *www.pewresearch.org/wp-content/uploads/sites/3/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf.*

[173] *Note:* Study referenced here used a data set that is of questionable quality and not publicly available. In addition, the study relied on the use of birthdates and zip codes, which is not sufficient to establish matched comparison groups, since people of the same age, living in the same zip code, can substantially differ in other ways.

*Discussion:* The Department has not been able to develop a methodology to accurately control for or repress confounding variables, such as student demographic characteristics, to isolate the impact of institutional quality on student outcomes, more accurately attribute student outcomes to a single variable, such as institutional quality. In the past, the Department has performed single variant analysis to identify non-traditional student characteristics that increase the risk of non-completion or student loan defaults. However, the Department has not performed multi-variant analysis to develop an algorithm that would allow it to isolate independent variables and examine causal relationships between those variables and student outcomes.

In addition, the negotiators were unable to recommend or reach a consensus on such a methodology. Therefore, the Department is rescinding the 2014 Rule that relies on the flawed D/E rates measure to impose sanctions on institutions and remove them from title IV participation.

*Changes:* None.

*Comments:* Commenters argued that while disclosures are beneficial, a disclosure-only regime is unlikely to result in the same benefits that the 2014 Rule provides. As evidence, the commenters cited a study that the College Scorecard had small impacts overall on college application behavior and none in less affluent high schools, households with low parental education, and underserved groups. They also noted that similar studies find little impact of informational disclosures on enrollment behavior, but they provided suggestions on how to improve disclosures. They also stated that removing the disclosure requirements prior to enrollment is a mistake.

*Discussion:* The Department disagrees with the commenters who state that removing the disclosure requirements prior to enrollment is a mistake and has provided ample explanation above for our disagreement. The Department agrees that disclosures have not been informative to students, especially when comparable information is not provided for all institutions or programs. However, the Department is pursuing a number of options for making College Scorecard data readily available to students, such as through the MyStudentAid mobile app. In addition, the Department believes that an online tool that allows students to compare multiple institutions or programs on a single screen is more user friendly than trying to find disclosures in each institution's or program's web page. Perhaps ease of use will promote increased utilization of important program-level data.

Perhaps one of the most important features of the College Scorecard is that it provides downloadable data files that can be used by researchers, consumer advocacy groups, and technology companies to develop new data tools that are user-friendly and easily accessible to students and parents. Data tools may prove to be more effective in informing student decisions, especially if third parties help students digest and interpret those data, that traditional paper disclosures could.

*Changes:* None.

*Comments:* Commenters stated that the Department has not provided enough evidence that the administrative burden is higher than expected or so high as to outweigh the benefits of the 2014 Rule to students. They pointed out that simple adjustments to the D/E rates calculation would reduce burden by allowing the Department to calculate D/E rates using administrative data instead of institutional reporting, although it may not be advisable to do so.

*Discussion:* The Department disagrees that it has not provided enough evidence that the administrative burden of the GE regulations was higher than expected. In addition, negotiators representing institutions not subject to the GE regulations were adamant that it would be too burdensome for them if we expanded the scope of the 2014 Rule to cover all programs. While simple adjustments to the D/E rates might reduce the administrative burden to institutions, there is no evidence that such adjustments would improve the accuracy and validity of the D/E rates measure.

*Changes:* None.

APPENDIX A

| | 2017 Gainful employment disclosures | Current scorecard | Expanded scorecard |
|---|---|---|---|
| | Gainful employment programs | All undergraduate institutions | All title IV programs |
| Completion | Percent of students graduating on time for each program. | Institution level data that includes the percentage of first-time, full-time undergraduate students who graduated within 150 percent of the published credential length. Students may also view and can select part-time, full-time, transfer, and first-time institution level graduation rates. | Same as current Scorecard plus: Expanded Scorecard could include total awards conferred at the program level. |
| Cost | Program costs (in-state, out-of-state, books and supplies, off-campus room and board, etc.). | Institution level net price for first-time, full-time undergraduate students who received TIV Federal financial student aid. For public schools, this includes only in-state tuition costs. | Same as current Scorecard. |
| Debt | Percent of students who borrow money to pay for the program. | Institution level data on the percent of undergraduate students who borrow TIV Federal student loan. | Same as current Scorecard, plus: Program level total number of title IV borrowers who complete the program. |

APPENDIX A—Continued

| | 2017 Gainful employment disclosures | Current scorecard | Expanded scorecard |
|---|---|---|---|
| | Gainful employment programs | All undergraduate institutions | All title IV programs |
| | Median debt of TIV Federal financial aid recipients who completed for each program. Median debt includes private, institutional and TIV Federal student loan debt. | Institution level data on median TIV Federal student loan debt of undergraduate borrowers who completed. Does not include Parent PLUS. | Same as current Scorecard, plus: Program level median TIV Federal student loan debt among completers who borrowed to attend college. Future expanded Scorecard could add median debt among Parent PLUS borrowers who borrowed on behalf of a student in the program and median Grad PLUS debt for graduate and professional programs. |
| | Estimated monthly loan payment of the median private, institutional and TIV Federal student loan debt for TIV Federal financial aid recipients who completed for each program. | Institution level data on the estimated monthly payment of the median TIV Federal student loan debt for TIV Federal financial aid undergraduate borrowers who completed. | Same as current Scorecard, plus: Program level estimated monthly payment of the median TIV Federal student loan debt for TIV Federal financial aid borrowers who completed. Future Scorecard could include median monthly payment for Parent PLUS borrowers. |
| Earnings | Median earnings two- and three-years post-completion of TIV Federal financial aid recipients who completed for each program. | Institution level data on median earnings of TIV federal financial aid recipients, 10 years after they began their enrollment. | Same as current Scorecard, plus: Program level data on median earnings of TIV Federal financial aid recipients who completed some number of years after completion (number of years not yet determined, but likely at 1, 5, and 10 years after completion). |
| Job Placement | Job placement rates for students who completed reported to the relevant accreditor and/or state for each program. | None | None. |
| | Fields that employ students who complete for each program. | None | Link to relevant occupational information such as O*NET. |
| Licensure Requirements | Licensure requirements—at least in the state in which the institution is located. | None | The consensus achieved during the recent Accreditation and Innovation Negotiated Rulemaking directs all institutions to disclose to students enrolled in programs that lead to occupational licensing whether the program does or does not prepare a student for licensure requirements in the state in which the student is located, or if the institution does not know, and how a student could find this information if he or she relocates. (This will not be on Scorecard.) |
| Warning | Programs that fail the D/E rates test include a warning that students may not be able to use Federal financial aid for that program in the future. | None | None. |
| Student Demographics (Institution level). | No | Yes | Same. |
| SAT/ACT Test Scores (Institution level). | No | Yes | Same. |
| Most popular academic programs | No | Yes | Same. |
| Institutional type | No | Yes | Same. |
| Institutional size | No | Yes | Same. |
| Geographic location | No | Yes | Same. |
| Institutional control (public, private, proprietary). | No | Yes | Same. |
| Link to FAFSA | No | Yes | Same. |
| Link to data about GI Bill benefits | No | Yes | Same. |

APPENDIX A—Continued

| | 2017 Gainful employment disclosures | Current scorecard | Expanded scorecard |
|---|---|---|---|
| | Gainful employment programs | All undergraduate institutions | All title IV programs |
| Net price calculator | No | Yes | Same. |

**Note:** This proposed list provides potential data that the Department plans to include in its expanded College Scorecard or other educational data tools. As a result, this proposed list is provided for informational purposes and is subject to change without notice.

**Regulatory Impact Analysis (RIA)**

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action will have an annual effect on the economy of more than $100 million because elimination of the ineligibility provision of the GE regulations impacts transfers among borrowers, institutions, and the Federal Government and elimination of paperwork requirements decreases costs. Therefore, this final action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits justify the costs.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. These regulations are a deregulatory action under E.O. 13771 and are estimated to yield $160 million in annualized cost savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with OMB circular A–4, we compare the final regulations to the 2014 Rule. In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

As further detailed in the *Net Budget Impacts* section, this final regulatory action has an annual effect on the economy at the 7 percent discount rate of approximately $518 million in increased transfers among borrowers, institutions, and the Federal government primarily related to the elimination of the ineligibility provision of the GE regulations. This figure does not take into account that a number of large proprietary chains have closed since the 2014 Rule was promulgated, nor the fact that college enrollments have declined dramatically since 2014—especially at proprietary institutions—meaning that with or without the GE regulations, there are significantly fewer GE programs available to students and students likely to enroll in the programs that remain available than when the 2014 Rule was developed. Therefore, transfers to borrowers and institutions may be lower than anticipated by the Net Budget Impact statement.

In addition, our analysis does not include any reductions in transfers to students and institutions that may result from the market-based accountability system that the expanded College Scorecard will enable. Even in the absence of sanctions or loss of eligibility, programs that yield unfavorable outcomes may be significantly less attractive to students who, prior to expansion of the

Scorecard, may have been misled by more generalized claims about the earnings advantage of a college degree.[174] In general, college enrollments have dropped significantly since 2014, and in particular, enrollments at proprietary institutions have decreased markedly since 2014, due in part to the significant public campaign against those institutions and to the well-publicized closure of Corinthian Colleges. According to the National Student Clearinghouse Research Centers, declines in enrollments at proprietary institutions have been sharper than declines in other sectors:[175]

| Semester | Percent enrollment decline relative to previous year at 4-year, for-profit institutions (%) |
|---|---|
| Fall 2014 | −0.4 |
| Spring 2015 | −4.9 |
| Fall 2015 | −13.7 |
| Spring 2016 | −9.3 |
| Fall 2016 | −14.5 |
| Spring 2017 | −10.1 |

As noted in the *Net Budget Impacts* section of this RIA, this enrollment decline may reflect institutional response to the 2014 Rule or other factors such as the sensitivity of non-traditional student enrollment to economic conditions. Therefore, it is possible that the cost of eliminating the 2014 Rule to taxpayers is lower than the estimate provided in our Regulatory Impact Statement.

We estimate $209 million in benefits due to reduced burden from eliminating paperwork requirements. Additionally, we estimate $593 million at a 7 percent discount rate in annualized increased transfers to Pell Grant recipients and borrowers. This economic estimate was produced by comparing the regulation to the PB2020 budget. The required Accounting Statement is included in the Net Budget Impacts section.

Elsewhere, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

*1. Need for Regulatory Action*

A number of factors compel the Department to take this regulatory action including concerns about the validity of the D/E metric and the integration of factors in the D/E equation, such as repayment terms, that are inconsistent with requirements of the student loan program. In addition, the Department has recognized that by providing consumer information on only a small portion of higher education programs, it fails in providing information that consumers can use to compare all programs available to them, and that enables all students to make informed decisions. The Department believes that in the 2014 GE regulation it underestimated the burden associated with this regulation and ignored the conclusions of a technical review panel that made clear how unreliable, subjective and inaccurate job placement reporting is in the absence of standardized definitions, reliable data sources and a single calculation methodology. The Department attempted to resolve the current challenges associated with job placement rate reporting, but the technical review panel assembled failed to do so. Therefore, it is inappropriate for the Department to require institutions to publicly report job placement rates knowing that direct comparisons between institutions could easily mislead consumers since different institutions are required to calculate these rates in different ways. Also, the Department's 2014 burden estimate did not include an assessment of burden on the government.

Perhaps most importantly, now that the Department is aware that the majority of student borrowers are not repaying their loans using a standard 10 year repayment plan, and many are in income driven repayment plans that lead to negative amortization, it is imperative to implement a transparency framework that provides comparable information to all students and parents to inform the enrollment and borrowing decisions of all consumers. The Department has determined that a more effective and comprehensive solution to the problem of student loan under-repayment is the expansion of the College Scorecard to provide program-level debt and earnings data for all title IV eligible academic programs. Such a transparency framework will support a market-based accountability system that respects consumer choice while enabling more informed decision-making. In addition, by using administrative data rather than requiring institutions to report and review additional data, the College Scorecard will ensure that consumers are provided with information that is consistent, accurate and reliable. It will also enable consumers to more easily compare outcomes among the institutions and programs available to them and reduce costly reporting burden to institutions.

As cited earlier in these final regulations, the Department's determination that only 24 percent of loans in the current $1.2 trillion Direct Loan portfolio are paying down at least a dollar of principal points to the need for a more comprehensive transparency and accountability framework. The Department considered through rulemaking how it might apply GE-like requirements to all institutions by amending the regulations for the Program Participation Agreement; however, negotiators could not agree on which, if any, of the metrics, thresholds, or disclosure requirements included in the GE regulations should be applied to all title IV participating institutions.

Upon further review of studies published subsequent to the 2014 Rule as well as our review of the research paper that originally led to the Department's decision to use an 8 percent D/E rate as the ''passing'' score led the Department to the conclusion that the D/E methodology was fundamentally flawed, as were the thresholds for ending a school's title IV participation.[176] In addition, the Department's decision to use its regulatory authority to create a sweeping new student loan repayment program, the REPAYE program, provided the Department with an opportunity to revisit student debt management opportunities and establish new student loan repayment levels and terms. The choices made in establishing the repayment term for REPAYE render the amortization term used for GE calculations of debt-to-earnings inappropriate and obsolete. The GE regulations essentially held GE programs to a student loan repayment standard that no student would be held to by law or regulation. At a minimum, the Department would have needed to adjust the D/E calculation to adopt the amortization terms of REPAYE since any borrower could elect to enter into REPAYE repayment, a program that eliminates an income test for eligibility. However, this adjustment would not solve for the other problems with the validity of the D/E calculation.

The Department's review of the only set of D/E data published to date also reveals the serious weaknesses of the GE

[174] See *blog.ed.gov/2011/12/in-america-education-is-still-the-great-equalizer/* and *www.census.gov/prod/2002pubs/p23-210.pdf.*

[175] National Student Clearinghouse Term Enrollment Estimates, Spring 2017. National Student Clearinghouse Research Center. *nscresearchcenter.org/wp-content/uploads/CurrentTermEnrollment-Spring2017.pdf.*

[176] Note: *Association of Proprietary Colleges* v. *Duncan* (2015), suffers from this same limitation of not having access to studies conducting following the passage of the rule.

methodology since programs with very low earnings passed the D/E rate simply because taxpayers were providing significant financial support to those programs. These data call into question whether taxpayers should continue to subsidize these programs, and also highlight that direct subsidies are every bit a risk to taxpayer investments that do not yield benefits as are student loans that cannot be repaid. While having lower debt is certainly better for students, the Department must weigh the impact of having debt with the impact of achieving higher earnings. From a student perspective, higher earnings may be preferable to lower debt, especially since Congress and the Department have created student loan repayment management programs to help students repay their loans. In some cases, the amount of Federal debt a student could accumulate (due to limits imposed on undergraduate borrowing) would be offset by added earnings (relative to programs in the same field that resulted in lower earnings) just a few years into the student loan amortization period. The GE data made it clear to the Department that there is wide earnings variability among programs within all sectors (non-profit, public, and for-profit), and the Department can no longer assume that this variability accurately reflects differences in program quality. This variability could also be the result of geographic differences in prevailing wages, demographic and socioeconomic differences in student populations, and salary differences from one occupational field to the next. Since the Department is not satisfied that the D/E rates are a reliable or accurate proxy for program quality, the Department is not justified in its use of those data as the determinant for applying sanctions to institutions or eliminating them from title IV participation.

The Department recognizes that some GE programs have inferior outcomes to others, that proprietary institutions like almost all non-public institutions charge higher tuition than public institutions, that earlier comparisons between proprietary institutions and community colleges are misleading since the majority of students enrolled in proprietary institutions are enrolled in four-year programs, and that students who attend proprietary institutions, in general, default at higher rates. However, as pointed out by a recent Brown Center study, proprietary institutions also serve a much higher proportion of high-risk students, low-income and minority students, and students over the age of 25 who by law have significantly higher borrowing limits, than non-profit institutions, which may explain differences in observed outcomes. The Brown Center study also pointed to challenges in comparing data from non-profit institutions and proprietary institutions since non-profit institutions rarely offer both 2-year and 4-year degrees, whereas many proprietary institutions offer both, making comparisons between these institutions and community colleges improper and inaccurate.[177] A more informative and appropriate comparison between proprietary institutions and non-profit institutions, especially with regard to cost and student debt, would need to include non-profit, private 4-year institutions, since the lack of public subsidies makes their cost structure more similar to many proprietary institutions than two-year or four-year public institutions (except for out-of-State students who receive fewer benefits of taxpayer subsidies and therefore pay a higher cost). Institutional comparisons must also take into account institutional selectivity and student demographics because student borrowing behaviors and earnings outcomes are influenced by many factors other than program quality.

Finally, since the SSA has not renewed the MOU with the Department to provide future earnings data, the Department cannot calculate or report future D/E rates. At a minimum the Department would have had to consider different data sources as part of its rulemaking effort, but at the time of rulemaking, it was not yet apparent that SSA would not provide additional earnings data. Therefore, the Department did not seek comment on the risks or benefits of utilizing Census or IRS data to determine earnings, or the impact of the use of those earnings on the validity of the D/E rates calculation or the comparison between D/E rates based on SSA data and the rates that would be calculated using IRS or Census data. Unable to get the data needed to make those determinations, the Department decided to rescind the 2014 Rule and develop a new tool—the expanded College Scorecard—to implement a transparency framework for GE and non-GE programs that will enable a more robust market-based accountability system to thrive.

[177] Stephanie Riegg Cellini and Rajeev Davolia, *Different degrees of debt: Student borrowing in the for-profit, nonprofit and public sectors.* Brown Center on Education Policy at Brookings, June 2016.

*2. Summary of Comments and Changes From the NPRM*

The Department is making no changes from the NPRM. Comments received by the Department relative to the regulatory impact analysis are summarized and discussed below.

*Summary:* Commenters stated that the Department failed to discuss regulatory alternatives that it considered. Commenters offered alternatives for the Department to consider as discussed earlier in the document.

*Discussion:* We thank the commenter for identifying that we inadvertently omitted the *Regulatory Alternatives Considered* section from the NPRM prior to publication. We have included it in this final rule.

*Comments:* Commenters stated that the NPRM ignored research showing that students are likely to find and attend another institution if a GE program closes because of sanctions or other adverse actions against a for-profit institution.[178]

*Discussion:* The Department agrees that in California, where the study was conducted, there are many choices of two-year colleges that may enable students to find a new program at a public institution if their GE program closes. However, the study does not demonstrate that students were able to find a similar CTE or applied program when moving to the community college. If those students moved from an applied program at a proprietary institution to a general studies or liberal arts program at a two year college (the largest majors at most community colleges nationally according to NCES data), they may not be better off since Holzer and Baum have determined that these programs have no market value to students who do not complete a four-year degree at another institution.[179] Nonetheless, the Department has always assumed a high level of transfers related to gainful employment disclosures and institutional closures. As noted in the *Net Budget Impacts* section, the estimates in the PB2020 baseline for the

[178] Cellini, S. R. ''2018 Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data,'' *www.nber.org/papers/w22287;* Cellini, S. R., Darolia, R., and Turner, N. (December 2016). ''Where do students go when for-profit colleges lose federal aid?'' National Bureau of Economic Research working paper series. Available at: *www.nber.org/papers/w22967;* and Blagg, K., & Chingos, M. (2016). Choice Deserts: How Geography Limits the Potential Impact of Earnings Data on Higher Education. Urban Institute. Available at: *www.urban.org/sites/default/files/publication/86581/choice_deserts_1.pdf*).

[179] NCES, *nces.ed.gov/pubs2017/2017051.pdf;* Holzer and Baum, *Making College Work: Pathways to Success for Disadvantaged Students.*

impact on Pell Grants derive from the assumptions about students who would not pursue their education in response to programs' gainful employment results. These assumptions ranged from 5 percent stopping for the first disclosure of a zone result to 20 percent for a second failure.[180] The Department believes this is consistent with the high degree of transfers reflected in the research cited by the commenters. Additionally, even if the percentage of students who lose access to programs is small, the Department maintains that there are significant consequences to students whose educational plans are disrupted by gainful employment related transfers. As recent experience with institutional closures demonstrates, having to find an alternative program that fits with the other restrictions in students' lives is a stressful process. Not all programs, especially those with specific equipment or other resource requirements, are immediately available for students whose programs would be ineligible for Federal aid. Students may be delayed in pursuing their education or may choose another field, both outcomes that could reduce their earnings potential.

*Comments:* Several commenters contended that the Department raised questions about the GE regulations without acknowledging the extensive public record on GE topics, ignored evidence compiled through years of analysis and study, and failed to acknowledge its own factual findings on economic benefits and educational value. The commenters stated the Department did not rely upon its own data or research to formulate its policy.

*Discussion:* The Department considered an abundance of data, including a number of studies that did not exist at the time the Department promulgated the 2014 GE regulation, and NCES data produced by the Department, when trying to develop a methodology for expanding the GE transparency and accountability framework to include all title IV participating programs. While there is an abundance of research comparing proprietary college outcomes with non-profit college outcomes, these studies all have omissions and limitations that make it unclear whether inferior outcomes, where they exist, are the result of program quality or other factors, such as student demographics. These studies also often times compare proprietary colleges with community colleges even though many proprietary institutions offer four-year programs, which makes comparisons with community colleges inappropriate. There is a dearth of research on the low student loan repayment rates across the entire student loan portfolio. The Department recognizes the need to create a transparency and accountability framework that includes all title IV programs and institutions since the problem of student loan over-borrowing and under-repayment impacts all sectors of higher education. However, the Department identified a number of flaws in the D/E rates methodology and thresholds, and excessive burden associated with GE disclosures, making it clear that expanding the components of the GE regulations to all institutions could not be supported by data. The Department believes that in order for consumers to be able to compare their options, all programs they are considering must be subjected to the same analysis and students must have access to comparable data.

The Department did consider data available to it when deciding to rescind the 2014 Rule. In particular, it considered that the data and research presented in conjunction with the 2014 Rule did not support the use of an 8 percent threshold for differentiating between passing and zone or failing programs since the research used to justify the 8 percent threshold specifically pointed out that the 8 percent threshold—a mortgage standard—would not be justified for use in establishing student loan limits.

The 2014 Rule also ignored the role of taxpayer subsidies in allowing programs that generate very low earnings to pass the D/E rates measure. This could give students the inaccurate impression that if a program passes the D/E rates measure, it is high quality and will yield strong outcomes. However, the Department's review of the D/E rates published in 2017 showed that a number of programs that yield earnings below the poverty rate for a family of four passed the test simply because the taxpayer, rather than the student, took on the larger burden of paying for the program. We do not believe that we should mask low earning programs simply by suggesting that if the taxpayer continues to pay for these programs, somehow students benefit.

Given the Department's realization that a sizable percentage of loans in the outstanding student loan portfolio are not shrinking due to student payments, a more comprehensive strategy is required. The GE regulations cannot be expanded to include all programs, and the Department's negotiated rulemaking did not result in consensus on a methodology for applying sanctions or requiring disclosures of all institutions that could be supported by research or justify the potential cost of the added burden or the loss of program options to students. Applying the GE regulations to all institutions could have profound negative impacts on all private institutions, regardless of whether they are non-profit or proprietary, since the absence of direct appropriations naturally pushes the cost burden to students. The Department now believes it is better to use administrative data to provide comparable debt, earnings, default and repayment information across all programs to consumers and taxpayers. Since the Department could not get earnings data for all students in all title IV programs to support this rulemaking effort, the Department is unable to test the impact of applying GE-like metrics to all title IV programs, and would be impetuous to apply GE-like metrics to all title IV programs absent such test data given the sweeping impact that such an action could have.

*Comments:* Commenters stated that the Department's discussion of costs and benefits in the RIA section of the NPRM did not acknowledge the loss of competitive advantage that institutions face if the GE regulations are rescinded because a program with good D/E rates could market that their rates are good and attract more students versus nearby institutions with poor D/E rates. Meanwhile, other commenters submitted data analyses countering these claims.

*Discussion:* After reviewing the published GE rates produced in 2017, the Department does not believe that passing D/E rates should be viewed by consumers as the mark of a "good" program since a number of programs that generated lower earnings than failing programs passed the test simply because the taxpayer heavily subsidized the program. The Department is concerned about the false effect that the D/E rates measure could have on a program's or institution's reputation, and that students could be misled to enroll in a program that generates lower earnings without fully understanding the long-term impact of that decision on earnings across a lifetime.

The Department agrees that there may be positive reputational effects lost as a result of rescinding the GE regulations; however, the Department believes that some of these positive reputational effects were inappropriate and harmful since taxpayer generosity rather than program quality is responsible for those outcomes. However, those programs that enjoyed earned positive reputational

[180] See Table 3.4: Student Response Assumptions, 79 FR 211 p. 65077. Available at *www.govinfo.gov/content/pkg/FR-2014-10-31/pdf/2014-25594.pdf.*

effects will see them continue as the College Scorecard will provide debt and earnings data for all programs. This may improve the reputational effects for a larger number of deserving programs and institutions.

*Comments:* Commenters stated that the Department did not consider in the NPRM the full costs of the rescission of the 2014 Rule, including costs that accrue to students with high debt in failing programs and to taxpayers when students default. Commenters further stated that controlling for demographics, location, and major field of study, students in proprietary GE certificate programs earned $2,100 less annually than students in non-profit GE certificate programs.

Commenters also expressed concern that, in rescinding the GE regulations, the Department has failed to consider the cost to borrowers that are not gainfully employed and who may default as a result of unsustainable debt. Commenters cited research and stated that these borrowers would be saddled with capitalized interest and high collection fees, which would require them to pay more per month than borrowers in good standing.[181]

*Discussion:* The Department agrees that student loan debt is costly to students and undermines the earnings benefits that many students would otherwise enjoy. However, this problem is not limited to students who enrolled at proprietary institutions. This is a widespread problem that needs a solution that includes all title IV participating programs. The Department agrees that taxpayers need to understand the risks and benefits associated with investing in higher education, but we believe that includes the money that taxpayers invest directly in higher education, including through direct appropriations and State student aid and scholarship programs. Those dollars were ignored in the methodology selected for the 2014 Rule, which was a major shortcoming of the regulation.

The Department has reviewed the research showing that students who complete certificate programs at proprietary institutions earn around $2,100 less per year than those who complete certificate programs at non-profit institutions. However, certificate programs represent only a proportion of higher education programs and it is not clear that those results would persist if the study were expanded to include all degree programs. Also, the research on certificate programs attempted to conduct matched comparison group studies, but it did not accomplish that goal since broad comparisons based on student age and zip codes were used to establish comparison groups, and factors other than that are critical to identifying student matched comparison groups. Even within a single zip code there can be considerable socioeconomic diversity. The study also did not compare outcomes between particular kinds of certificates for particular occupations, meaning that the outcomes could be the result of more students at non-profit institutions pursuing certificates in IT, practical nursing, or the traditional trades, as opposed to more students at proprietary institutions pursuing certificates in allied health professions (other than nursing) or cosmetology. Schools with larger proportions of students in IT and nursing certificate programs will certainly post higher average earnings than those with larger proportions of students in other certificate programs, and yet State nursing boards and accreditors may disallow those institutions to offer programs in higher wage occupations. However, when the study compared earnings outcomes among graduates of certificate programs in cosmetology, it turned out that graduates of proprietary cosmetology programs had higher earnings than graduates of community college cosmetology programs. Therefore, we must interpret the results of the study with caution.

We must also understand that students may have limited options due to location or scheduling convenience, so we need to understand not only whether a student has better earnings potential if she completes a certificate program at a community college versus a proprietary institution, but if she would suffer from lower employability or earnings if in the absence of the proprietary program, the student was unable to complete a career and technical education program at all, or if in the absence of an opportunity to enroll in a certificate program at the community college, she could enroll only in a general studies program. Chances of completing the program could be lower and the market value of doing so could be null. So, we need to also compare the outcomes of general studies programs at community colleges with the outcomes of CTE programs at proprietary institutions since the number of community college GE programs with less than 10 students suggests that only small numbers of students have access to those programs. The largest major at most community colleges is general studies or liberal arts. Therefore, it may not be relevant to compare the outcomes of a proprietary and a non-profit certificate program if the student who enrolls at the non-profit institution is more likely to be ushered into a general studies or liberal arts program than the equivalent certificate program.

The Department does not disagree that the cost of college is a serious concern, but that concern extends well beyond proprietary institutions. The Department is not ignoring that a higher proportion of students at proprietary institutions take on more debt than at community colleges; however, given the size of many community colleges, a lower percent does not translate into fewer students (in whole numbers) taking on debt or defaulting on loans. Total student loan portfolio analysis proves that over-borrowing and under-repayment extends far beyond students who enrolled at proprietary institutions.

The Department is taking a new approach to reducing defaults across the portfolio by implementing better student loan origination and servicing information and support through our Next Generation Financial Services Environment. The Department also believes that by providing comparable information about all programs, enrollment reductions in poor performing programs in all sectors could generate substantial savings.

In the near term, transfers to students and institutions could increase since failing D/E rates will not eliminate the participation of certain programs. However, we have never been able to predict the macro-economic impact of those closures over time. In addition, over the longer-term, the Department believes that the expanded College Scorecard will result in greater savings to students and taxpayers when consumers have earnings and debt data for all title IV programs and can make better choices as a result.

The Department also wishes to point out that macro-economic conditions may have a greater impact on higher education costs and savings to students and taxpayers since college enrollments, in general, have been reduced significantly, especially among students over the age of 24.

*Comments:* Commenters stated that the Department could use data from the National Student Loan Database (NSLDS) and compute consistently measured D/E rates across all programs and not rely on institutional-level data from the College Scorecard which uses different definitions and is not a reliable cross-sector comparison of programs.

[181] Cellini, S. R. '2018 Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data' *www.nber.org/papers/w22287.*

Additionally, this NSLDS data could be used to substantiate the Department's claim that whether programs pass or fail the D/E rates measure is unduly affected by the enrollment of disadvantaged students. This was presented for the 2014 Rule.

*Discussion:* The Department made NSLDS data available during the negotiated rulemaking sessions.[182] It should be noted that the earnings data obtained from SSA was anonymous and in the aggregate, so there was no way to disaggregate earnings data to test the impact of disadvantaged students on rates as the commenter describes. The Department currently does not have program-level data for non-GE programs, as it requires obtaining data from a different department.

If the commenter is referring to estimates provided in the 2011 GE regulations, the Department wishes to point out that those estimates included title IV and non-title IV programs, since, at the time, IPEDS was the only source of program-level data and it included a larger number of programs.

The Department believes that the commenter misunderstands the use of the expanded College Scorecard, which is not to take data from the Scorecard to calculate D/E rates but is instead to use the Scorecard to provide program-level debt and earnings data for GE and non-GE programs. We agree that the current Scorecard would not inform D/E rates calculations since the current Scorecard includes all students, not just completers, and provides institution-level data only. The expanded Scorecard will report program-level median debt and earnings data for GE and non-GE programs at all credential levels. The Department plans to rely on the IRS, rather than SSA as was the case in the GE regulations, to provide aggregate earnings data and NSLDS will continue to serve as the data source for debt data. Since the GE regulations apply only to GE programs, and the full GE regulations cannot be applied to non-GE programs, the only way to provide cross-sector comparisons based on comparable data is by eliminating the GE regulations and developing a new transparency tool that can be applied to all title IV programs. The College Scorecard will serve as that tool.

The Department is currently considering ways to develop risk-adjusted outcomes metrics that leverage the power of regression techniques to control for differences in student-level risk factors such as age, socioeconomic status, or high school preparation when comparing student outcomes. In the meantime, we believe that by providing institution—level selectivity ratings and student demographics, we can begin to put outcomes in the context of differences in student demographics and institutional selectivity.

*Comments:* A commenter stated that during the first year of the D/E calculation GE programs declined from 39,000 to 27,000 programs indicating that failing programs dropped out.

*Discussion:* We were unable to replicate the findings the commenter referenced, and the commenter provided no documentation or data to support this assertion. In the 2014 Rule, the Department did report a total of 37,589 programs for which institutions reported enrollment in FY2010, of which 5,539 met the 30 completer threshold to be included in the 2012 D/E rates calculations.[183] Several factors contribute to the decline in programs for 2008–09 from the first GE reporting reflected in the 2012 informational rates and the data presented for this regulation. As institutions became more familiar with the reporting requirements, they may have changed 6-digit OPEIDS, CIP codes or updated students' enrollment status, all of which could consolidate the number of programs reported. Some of the decline likely was in response to anticipated non-passing gainful employment results, but mergers and changes in program offerings occur on a regular basis for a variety of business reasons, especially when considering the small size of many of the programs captured in the GE reporting. Therefore, we do not agree with the commenter that the reduction in the number of programs is due exclusively to institutions' decisions to discontinue programs that would have failed. However, even in the absence of the GE regulation, when students are able to compare earnings and debt outcomes among all of their options, low-performing programs may suffer from such low enrollments that schools will discontinue them even in the absence of Department sanctions.

During negotiated rulemaking the Department provided[184] Table 3.1 Program and Enrollment Counts during the second negotiated rulemaking session which included GE programs counts from the 2008–2009 thru 2015–2016 year, copied below in Table 3.

TABLE 3—NUMBER OF GE PROGRAMS AND ENROLLEES BY AWARD YEAR

| Award year | Programs | Enrollment |
|---|---|---|
| 2008–2009 | 27,611 | 2,787,260 |
| 2009–2010 | 30,674 | 3,613,730 |
| 2010–2011 | 32,908 | 3,892,590 |
| 2011–2012 | 34,252 | 3,767,430 |
| 2012–2013 | 35,075 | 3,515,210 |
| 2013–2014 | 35,905 | 3,326,340 |
| 2014–2015 | 35,399 | 3,077,970 |
| 2015–2016 | 32,970 | 2,529,190 |

Enrollment values rounded to the nearest 10.

The number of GE programs and enrollment in them changed over time, but do not show a decline from 39,000 to 27,000 programs. During the time period shown above, program count peaked in 2013–2014 and enrollment peaked in 2010–2011.

*Comments:* Commenters stated that during the one year that the 2014 Rule was implemented, results of the rule showed that 98 percent of over 800 programs that failed were offered by for-profit institutions. Commenters stated that risk-based compliance efforts appropriately target proprietary

[182] U. S. Department of Education. (February 2018). Gainful employment: background data analysis. Available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2017/geprogramdata.docx.*

[183] 79 FR 211 p. 65037. Available at *www.govinfo.gov/content/pkg/FR-2014-10-31/pdf/2014-25594.pdf.*

[184] U.S. Department of Education. (February 2018). Gainful employment: background data analysis. Available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2017/geprogramdata.docx.*

institutions. Commenters asserted that the Department relied on the premise that there are justifiable reasons to provide title IV funds to students enrolled in low-quality programs. Commenters claim that data show that the GE regulations affect institutional behavior with respect to zone and fail programs. Commenters also submit data analyses supporting expanding the application of the D/E rates measure to all programs at all institutions or rescinding it entirely.

*Discussion:* The table below is based on data the Department distributed [185] during the second session of negotiated rulemaking, February 2018 'Gainful Employment Data Analysis' section 6, table 3.2.

TABLE 4—NUMBER AND PERCENT OF PROGRAMS THAT FAILED GE

| GE programs—all programs | Number | | Percent and confidence interval | | |
|---|---|---|---|---|---|
| Sector | Fail | Total | Percent fail (%) | LCL (%) | UCL (%) |
| Public | 1 | 2,493 | 0.04 | −0.04 | 0.12 |
| Private | 24 | 476 | 5.04 | 3.08 | 7.01 |
| Proprietary | 878 | 5,681 | 15.46 | 14.52 | 16.40 |
| Overall | 903 | 8,650 | 10.44 | 9.79 | 11.08 |

| GE programs—certificate only | | Number | | Percent and confidence interval | | |
|---|---|---|---|---|---|---|
| Sector | Certificate level | Fail | Total | Percent fail (%) | LCL (%) | UCL (%) |
| Public | Undergraduate | 1 | 2,428 | 0.04 | −0.04 | 0.12 |
| Public | Post baccalaureate | 0 | 17 | 0.00 | 0.00 | 0.00 |
| Public | Graduate | 0 | 48 | 0.00 | 0.00 | 0.00 |
| Private | Undergraduate | 21 | 405 | 5.19 | 3.03 | 7.34 |
| Private | Post baccalaureate | 0 | 27 | 0.00 | 0.00 | 0.00 |
| Private | Graduate | 3 | 44 | 6.82 | −0.63 | 14.27 |
| Proprietary | Undergraduate | 196 | 3,260 | 6.01 | 5.20 | 6.83 |
| Proprietary | Post baccalaureate | 0 | 5 | 0.00 | 0.00 | 0.00 |
| Proprietary | Graduate | 2 | 23 | 8.70 | −2.82 | 20.21 |
| Overall Certificate Programs | | 223 | 6,257 | 3.56 | 3.10 | 4.02 |

We used the published data to produce the tables above, which compare GE programs by sector—public, private, and proprietary—and level-undergraduate, post baccalaureate, and graduate. Overall totals from the table show that there are 8,650 (Proprietary 65.7 percent, Private 28.8 percent & Public 5.5 percent) total GE programs of which 903 or 10.44 percent failed the D/E rates measure. When significance tests are run at the sector level on this data at the 95 percent confidence interval producing lower (LCL) and upper (UCL) confidence limits, the three sectors appear to be significantly different because their confidence intervals do not overlap. However, these data contain non-comparable data in the reported totals because only degree programs are only counted as GE programs in the proprietary sector. When the proprietary data are subset to certificate-only, 198 programs of 3288 failed, resulting in 6.02 percent failing with a confidence interval ranging from 5.21 percent to 6.84 percent; this interval overlaps with that of private, non-profit institutions. Because there are no comparable data at the degree levels, a valid comparison is not possible with Department data.

The second part of the table subsets the data to certificate programs and further breaks down certificates by level. There were 6,257 GE certificate programs of which 223 or 3.56 percent failed the D/E rates measure. When degree programs are removed from proprietary programs (computed using addition), the resulting percentage of proprietary certificate programs failing is 6.02 percent (198/3288) with a confidence interval of 5.21 to 6.84 percent. This overlaps with the private, non-profit certificate confidence interval of 3.08 to 7.01 percent. Therefore, there is no statistical difference between private and proprietary certificate program GE failure rates. Further, we found no significant differences between the percentages of failing certificate programs at non-profit private and proprietary private institutions, regardless of level under examination. Public GE certificate programs had significantly lower failure rates than both private and proprietary GE certificate programs. However, as was pointed out earlier in this document, GE programs offered by taxpayer subsidized public institutions may have passed, despite very low earnings by program graduates, simply because taxpayers take on the largest portion of cost burden. While we agree that taxpayer support benefits students, the masking effect of direct appropriations reduces the accountability of publicly subsidized programs when they are producing sub-optimal earnings outcomes, which is disadvantageous to both students and taxpayers. In other words, a program that passes the D/E rates measure because of taxpayer funding may not impose overwhelming debt burden on students; however, those programs may reduce students' full earning potential and may be directing scarce taxpayer resources to low-performing programs rather than high performing programs.

*Summary:* Commenters stated that this regulatory action will cost taxpayers $5.3 billion over 10 years.

*Discussion:* Comments related to the cost of the regulations are addressed in the *Net Budget Impacts* section of this document.

[185] *Ibid.*

*Comments:* Commenters requested information relative to the budget estimate. Commenters requested the Department clarify the assumptions it used to produce its estimate and incorporate the effect of changed institutional behavior. Commenters also requested that the effects of rescission on default rate and resulting costs to borrowers, society, and the economy be reflected in the budget estimate. Commenters requested modifications to the budget estimate to adjust for IDR, loan forgiveness, and default.

*Discussion:* Comments related to the cost of the regulation are addressed in the *Net Budget Impacts* section of this document.

*Comments:* Commenters stated that the Department did not justify the rescission of the discretionary D/E rate. Other commenters provided evidence to support its rescission.

*Discussion:* The Department clearly stated in the NPRM that neither it nor non-Federal negotiators could identify a D/E metric that was sufficiently valid and accurate to serve as a high-stakes quality test or to become a new, non-congressionally mandated, eligibility criteria for title IV participation. Regardless of whether gross income or discretionary income forms the basis of the D/E rates calculation, the methodology is inaccurate and fails to control for the many other factors other than program quality that influence debt and earnings.

*Comments:* Commenters stated the Department failed to comply with E.O. 12291 because it did not estimate either the number of or dollar impact to students or institutions nor did it match costs to benefits. A commenter asserted that the RIA failed to show why rescission is beneficial.

*Discussion:* Executive Order 12291 was revoked by Executive Order 12866 on September 30, 1993. Further, the monetized estimates in the *Regulatory Impact Analysis* are based on the budget estimates, which can be found in the *Net Budget Impacts* section. Other impacts, including expected burdens and benefits are discussed in the *Costs, Benefits, and Transfers* and *Paperwork Reduction Act of 1995* sections. The Department believes it is in compliance with Executive Order 12866.

*Comments:* Commenters asserted that the regulatory text does not support the transparency argument from E.O. 13777 because the regulatory text does not include disclosures.

*Discussion:* The Department agrees with the commenter and has revised its *Need for Regulatory Action*.

*3. Analysis of Costs and Benefits*

These regulations affect prospective and current students; institutions with GE programs participating in the title IV, HEA programs; and the Federal government. The Department expects institutions and the Federal government to benefit as this action eliminates reporting, administrative costs, and sanctions. As detailed earlier, pursuant to this regulatory action, the Department removes the GE regulations and adopts no new ones.

3.1 Students

Based on 2015–16 Department data from the National Student Loan Data System (NSLDS), about 520,000 students would be affected annually by the rescission of the GE regulation. The Department estimates this rescission will result in both costs and benefits to students, including the costs and benefits associated with continued enrollment in zone and failing GE programs and the benefit of eliminating paperwork burden.

Eliminating sanctions against institutions based on the D/E rates measure will impact students. Under the GE regulations, if a GE program became ineligible to participate in the title IV, HEA programs, its students would not be able to receive title IV aid to enroll in that program. Because D/E rates have been calculated under the GE regulations for only one year, no programs have lost title IV, HEA eligibility. However, 2,050 programs were identified as failing programs or programs in the zone based on their 2015 GE rates and would have been at risk of losing eligibility under the GE regulation. NSLDS data from 2015–16 shows 329,250 students were enrolled in zone GE programs and 189,920 students were enrolled in failing programs (about 520,000 total). These students will not lose access to title IV Federal financial aid at their initially chosen program. As further explained in the *Net Budget Impacts* section, the Department estimates that there will be an annual increase in Direct Loan and Pell grant transfers from the Federal government to students of $593 million at the 7 percent discount rate when compared to the GE regulations under PB2020.

There are further costs and benefits to students who continue enrollment in a program that would have been in the zone or failing under the GE regulations, which the Department was unable to monetize because the actual outcome for these students is unknown. This includes the impact that students will not lose access to title IV aid for those programs, which is a benefit of continued financial aid but could also be a cost if the investment is not as fruitful as it might be at a similar nearby program. What the Department is unable to determine for the purpose of these costs estimates is what number of students displaced from a GE program that loses title IV eligibility will be able to find a similar program at another institution or will enroll in a non-applied program, a different applied program of study, or a general studies program that yields even poorer outcomes. However, given that the large majority of GE programs have less than 10 students suggests that a significant number of students who lose access to a GE program will end up in a community college general studies program, where we do not have D/E outcomes data to inform our analysis. Other impacts relate to whether students would have transferred, found alternate funding, or discontinued postsecondary education as a result of their program losing title IV eligibility under the GE regulation. As a result of the rescission, students would not face this stressful choice, which could be seen as a benefit of continued postsecondary education and not having to transfer institutions, but also a potential cost of completing a program that may be judged less favorably than a similar program at a nearby institution.

The Department will also discontinue GE information collections, which is detailed further in the *Paperwork Reduction Act of 1995* section of this preamble. Two of these information collections impact students—OMB control number 1845–0123 and OMB control number 1845–0107. By removing these collections, the regulations will reduce burden on students by 2,167,129 hours annually. The burden associated with these information collections is attributed to students being required to read warning notices and certify that they received them. Therefore, using an individual hourly rate of $16.30,[186] the benefit due to reduced burden for students is $35,324,203 annually (2,167,129 hours per year * $16.30 per hour).

With the elimination of the disclosures and the ineligibility sanction that would have removed students' program choices, students,

[186] PRA calculations based on recession of information collection requests associated with existing GE requirements and use the same wage rates as the 2014 GE rule. The $16.30 rate for students was the 2012 median weekly wage rate for high school diplomas of $652 divided by 40 hours. Available at *http://www.bls.gov/emp/ep_chart_001.htm* as accessed in January 2014.

their parents, and other interested members of the public will have to seek out the information that interests them about programs they are considering. Affordability and earnings associated with institutions and programs continues to be an area of interest. The College Scorecard is one source of comparative data, but others are available, so students will have the opportunity to incorporate the information into their decisions and rely on their own judgement in choosing a program based on a variety of factors.

To the extent non-passing programs remain accessible with the rescission of the 2014 Rule, some students may choose sub-optimal programs. Whatever the reason, these programs have demonstrated a lower return on the student's investment, either through higher upfront costs, reduced earnings, or both. As some commenters have noted, this could lead to greater difficulty in repaying loans, increasing the use of income-driven repayment plans or risking defaults and the associated stress, increased costs, and reduced spending and investment on other priorities. These regulations emphasize choice and access for all students, and we encourage students to make informed enrollment decisions regardless of which institutions or programs they are considering, and regardless of whether the institution is proprietary, non-profit, or public.

3.2 Institutions

Based on 2015 GE program rates from the National Student Loan Data System (NSLDS), about 2,600 institutions will be affected annually by the removal of the GE regulation. These institutions will have a reduced paperwork burden and no longer be subject to potential GE sanctions that caused loss of title IV eligibility. The table below shows the distribution of institutions administering GE programs by sector.

TABLE [1]—INSTITUTIONS WITH 2015 GE PROGRAMS [187]

| Type | Institutions | | Programs | |
|---|---|---|---|---|
| Public | 865 | 33% | 2,493 | 29% |
| Private | 206 | 8% | 476 | 5% |
| Proprietary | 1,546 | 59% | 5,681 | 66% |
| Total | 2,617 | | 8,650 | |

All 2,617 institutions with GE programs will benefit from the elimination of GE reporting requirements. As discussed further in the *Paperwork Reduction Act of 1995* section of this preamble, reduction in burden associated with removing the GE regulatory information collections for institutions is 4,758,499 hours. Institutions would benefit from these proposed changes, which would reduce their costs by $173,923,138 annually using the hourly rate of $36.55.[188]

There are 778 institutions administering 2,050 zone or failing GE programs that will benefit because they no longer will be subject to sanctions that would result in the loss of title IV eligibility. As further explained in the *Net Budget Impacts* section, the Department estimates this change will increase Pell grant and Direct Loan transfers from students to institutions by $518 million annually under the 7 percent discount rate when compared to PB2019. Although the Department was unable to monetize this impact, institutions further benefit from the elimination of the need to appeal failing or zone D/E rates. The table below shows the distribution of institutions with zone and failing programs by institutional type, which represents 24 percent of the 8,650 2015 GE programs and 30 percent of the 2,617 institutions with GE programs.

TABLE [2]—INSTITUTIONS WITH 2015 GE ZONE OR FAILING PROGRAMS [189]

| Type | Institutions | Zone programs | Failing programs | Zone or failing programs |
|---|---|---|---|---|
| Public | 9 | 9 | | 9 |
| Private | 34 | 68 | 21 | 89 |
| Proprietary | 735 | 1,165 | 787 | 1,952 |
| Total | 778 | 1,242 | 808 | 2,050 |

Table [3] shows the most frequent types of programs with failing or zone D/E rates. Cosmetology undergraduate certificate programs had the most programs in the zone or failing categories, which represented 40 percent of all of these programs. The proportion of programs in zone or fail shown in the table below ranged from 17 to 82 percent. These programs and their institutions would be most significantly affected by the proposed removal of GE sanctions as they would continue to be eligible to participate in title IV, HEA programs.

[187] The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

[188] PRA calculations based on recession of information collection requests associated with existing GE requirements and use the same wage rates as the 2014 GE rule. The $36.55 was calculate for the 2014 GE Rule based on an assumption that 75 percent of the work would be done by staff at a wage rate equivalent to information industries sales and office workers of $33.46 and 25 percent of the work would involve those paid the equivalent of Education Services—managers with a wage rate of $45.81. Wage rates taken from *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf* as accessed for calculation in January 2014.

[189] The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

TABLE [3]—ZONE OR FAILING 2015 GE PROGRAMS BY FREQUENCY OF PROGRAM TYPES [190]

| CIP | Credential level | Zone | Fail | Zone or fail | All programs |
|---|---|---|---|---|---|
| Cosmetology/Cosmetologist, General | Undergraduate Certificate | 270 | 91 | 361 | 895 |
| Medical/Clinical Assistant | Associates Degree | 35 | 56 | 91 | 119 |
| Medical/Clinical Assistant | Undergraduate Certificate | 78 | 12 | 90 | 424 |
| Massage Therapy/Therapeutic Massage. | Undergraduate Certificate | 43 | 4 | 47 | 270 |
| Business Administration and Management, General. | Associates Degree | 24 | 22 | 46 | 74 |
| Legal Assistant/Paralegal | Associates Degree | 20 | 25 | 45 | 58 |
| Barbering/Barber | Undergraduate Certificate | 22 | 16 | 38 | 96 |
| Graphic Design | Associates Degree | 16 | 17 | 33 | 45 |
| Criminal Justice/Safety Studies | Associates Degree | 20 | 11 | 31 | 41 |
| Massage Therapy/Therapeutic Massage. | Associates Degree | 8 | 19 | 27 | 33 |
| All other programs | | 706 | 535 | 1,241 | 6,595 |
| Total | | 1,242 | 808 | 2,050 | 8,650 |

While programs with non-passing results will benefit from avoiding ineligibility and potentially reputational contagion to other programs at the institution that performed better, programs with passing results could lose the benefit of their comparatively strong performance, although the Department believes that comparatively strong performance will be revealed through program-level College Scorecard outcomes as well. Consistently strong earnings or low costs would likely be an attractive draw for students in a given region or field of study, as long as the low-cost program is available to students and offers the same scheduling flexibility, convenience, and student support services as the higher-cost program offered. While there will not be an established standard to be categorized as passing, the Department does believe that programs with strong outcomes could still gain from their strong performance. Presumably, if a large percentage of programs at their institutions do well on gainful employment measures, the earnings, debt levels, and other items reported in the College Scorecard will be strong compared to their peers with similar offerings. As information and analytical tools become more accessible, the Department believes the lost potential reputational benefit from gainful employment can be replaced.

3.3 Federal Government

Under the proposed regulations, the Federal government will benefit from reduced administrative burden associated with removing provisions in the GE regulations and from discontinuing information collections. As discussed in the *Net Budget Impacts* section, the Federal government will incur annual costs to fund more Pell Grants and title IV loans, including the costs of income-driven repayment plans and defaults.

Reduced administrative burden due to the proposed regulatory changes will result from elimination of sending completer lists to institutions, adjudicating completer list corrections, adjudicating challenges, and adjudicating alternate earnings appeals. Under the GE regulations, the Department estimated about 500 Notices of Intent to Appeal, and each one took Department staff about 10 hours to evaluate. Using the hourly rate of a GS–13 Step 1 in the Washington, DC area of $46.46,[191] the estimated benefit due to reduced costs from eliminating earnings appeals is $232,300 annually (500 earnings appeals * 10 hours per appeal * $46.46 per hour). Similarly, the Department sent out 31,018 program completer lists to institutions annually, which took about 40 hours total to complete. Using the hourly rate of a GS–14 Step 1 in the Washington, DC area of $54.91,[192] the estimated benefit due to reduced costs from eliminating sending completer lists is $2,196 annually (40 * 54.91). Likewise, the Department processed 90,318 completer list corrections and adjudicated 2,894 challenges. The Department estimates it took Department staff 1,420 hours total to make completer list corrections. Similarly, the Department estimates it took $1,500,000 in contractor support and 1,400 hours of Federal staff time total to adjudicate the challenges. Using the hourly rate of a GS–13 step 1 in the Washington, DC area of $46.46, the estimated benefit due to reduced costs from eliminating completer lists, corrections, and challenges is $1,631,017 ($1,500,000 contractor support + (1,420 + 1,400) staff hours * $46.46 per hour).

Additionally, the Department will rescind information collections with OMB control numbers 1845–0121, 1845–0122, and 1845–0123. This will result in a Federal government benefit due to reduced contractor costs of $23,099,946 annually. Therefore, the Department estimates an annual benefit due to reduced administrative costs under the regulations of $24,965,459 ($232,300 + $2,196 + $1,631,017 + $23,099,946).

Finally, the Department will also incur increased budget costs due to increased transfers of Pell Grants and title IV loans, as discussed further in the *Net Budget Impacts* section. The estimated annualized costs of increased Pell Grants and title IV loans from eliminating the GE regulations is approximately $518 to $527 million at 7 percent and 3 percent discount rates, respectively.

*4. Net Budget Impacts*

The Department received a number of comments related to its estimated net budget impact for the regulations proposed in the NPRM that rescinded the current GE regulation. In particular, some commenters presented analysis of the potential effect on defaults and loan forgiveness as a cost of the regulation not accounted for in the Department's analysis. One such commenter's analysis modeled IDR usage at gainful employment programs using the debt and earnings data published for gainful

[190] The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

[191] Salary Table 2018–DCB effective January 2018. Available at *www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf.*

[192] Ibid.

employment programs and found that many borrowers in non-passing programs would qualify for IDR plans and their payments under REPAYE would be $1.5 billion less than under a 10-year standard plan on a net present value basis.[193] The Department appreciates the analysis presented and acknowledges that there are potential interactions between gainful employment, student program choice, repayment outcomes, and other factors that could affect the estimates presented. Other commenters noted the effect of the current gainful employment regulations on institutional behavior, noting that institutions closed or revised programs anticipated not to pass the gainful employment measures and the loss of this deterrent should be factored into the Department's estimates.[194] However, the Department never attributed any savings to default reductions or decreased loan forgiveness in relation to the 2014 GE Regulations. The increased volume in the 2-year proprietary risk group estimated from rescinding the gainful employment regulations, as described in the NPRM and reiterated below, is subject to the relatively high default and income-driven repayment plan assumptions. Therefore, we do not anticipate a significant change in those areas from these final regulations.

As indicated in the NPRM published August 14, 2018, The Department proposes to remove the GE regulations, which include provisions for GE programs' loss of title IV, HEA program eligibility based on performance on the D/E rates measure. In estimating the impact of the GE regulations at the time they were developed and in subsequent budget estimates, the Department attributed some savings in the Pell Grant program based on the assumption that some students, including prospective students, would drop out of postsecondary education as their programs became ineligible or imminently approached ineligibility.

This assumption has remained in the baseline estimates for the Pell Grant program, with an average of approximately 123,000 dropouts annually over the 10-year budget window from FY2019 to FY2028. By applying the estimated average Pell Grant per recipient for proprietary institutions ($4,468) for 2019 to 2028 in the PB2020 Pell Baseline, the estimated net budget impact of the GE regulations in the PB2020 Pell baseline is approximately $−5.2 billion. As was indicated in the Primary Student Response assumption in the 2014 Rule,[195] much of this impact was expected to come from the warning that a program could lose eligibility in the next year. If we attribute all of the dropout effect to loss of eligibility, it would generate a maximum estimated Federal net budget impact of the final regulations of $5.2 billion in costs by removing the GE regulations from the PB2020 Pell Grant baseline.

The Department also estimated an impact of warnings and ineligibility on Federal student loans in the analysis for the 2014 Rule, that, due to negative subsidy rates for PLUS and Unsubsidized loans at the time, offset the savings in Pell Grants by $695 million.[196] The effect of the GE regulations is not specifically identified in the PB2020 baseline, but it is one of several factors reflected in declining loan volume estimates. The development of GE regulations since the first negotiated rulemaking on the subject was announced on May 26, 2009, has coincided with demographic and economic trends that significantly influence postsecondary enrollment, especially in career-oriented programs classified as GE programs under the GE regulation. Enrollment and aid awarded have both declined substantially from peak amounts in 2010 and 2011.

As classified under the GE regulations, GE programs serve non-traditional students who may be more responsive to immediate economic trends in making postsecondary education decisions. Non-consolidated title IV loans volume disbursed at proprietary institutions declined 48 percent between AY2010–11 and AY2016–17, compared to a 6 percent decline at public institutions, and a 1 percent increase at private institutions. The average annual loan volume change from AY2010–11 to AY2016–17 was −10 percent at proprietary institutions, −1 percent at public institutions, and 0.2 percent at private institutions. If we attribute all of the excess decline at proprietary institutions to the potential loss of eligibility under the GE regulations and increase estimated volume in the 2-year proprietary risk group that has the highest subsidy rate in the PB2020 baseline by the difference in the average annual change (12 percent for subsidized and unsubsidized loans and 9 percent for PLUS), then the estimated net budget impact of the removal of the ineligibility sanction in the final regulations on the Direct Loan program is a cost of $1.04 billion.

Therefore, the total estimated net budget impact from the final regulations is $6.2 billion cost in increased transfers from the Federal government to Pell Grant recipients and student loan borrowers and subsequently to institutions, primarily from the elimination of the ineligibility provision of the GE regulation. As in all previous estimates related to Gainful Employment regulations, the estimated effects are associated with borrowers who could no longer enroll in a GE program that loses title IV eligibility and would not enroll in a different program that passes the D/E rates measure, but would instead opt out of a postsecondary education experience. Some commenters submitted research analyzing how CDR-related sanctions in the 1990s resulted in small declines in the aggregate enrollment.[197] Other commenters have suggested that 10 percent of students would not enroll in a different program. The transfer rates estimated for the 2014 Rule which ranged from 5 percent for a first zone result to 20 percent for potential ineligibility were in line with the high transfer rate suggested by the commenters. Given the potential for several programs to become ineligible in the same timeframe and for the loss of eligibility to affect grant and loan programs, the Department believes the transfer and dropout rates it used in developing the GE estimates that are now being rescinded are reasonable. The long-term impact to the student and the government of the decision to pursue no postsecondary education could be significant but cannot be estimated for the purpose of this analysis, which does not include long-term macro-economic impacts, such as long-term tax revenue impacts of a workforce with less education.

[193] Center for American Progress, *How Gainful Employment Reduces the Government's Loan Forgiveness Costs,* June 18, 2017. Available at *www.americanprogress.org/issues/education-postsecondary/reports/2017/06/08/433531/gainful-employment-reduces-governments-loan-forgiveness-costs/.*

[194] New America Foundation comments on GE Regulations, pp. 17–18 available at *www.regulations.gov/document?D=ED-2018-OPE-0042-13659.*

[195] See 79 FR 211, Table 3.4: Student Response Assumptions, p. 65077, published October 31, 2014. Available at *www.regulations.gov/document?D=ED-2014-OPE-0039-2390.* The dropout rate increased from 5 percent for a first zone result and 15 percent for a first failure to 20 percent for the fourth zone, second failure, or ineligibility.

[196] See 79 FR 211, pp. 65081–82, available at *www.regulations.gov/document?D=ED-2014-OPE-0039-2390.*

[197] Stephanie R. Cellini, Rajeev Darolia, and Lesley J. Turner, Where Do Students Go When For-Profit Colleges Lose Federal Aid? NBER Working Paper No. 22967 December 2016 JEL No. H52, I22, I23, I28. Available at *www.nber.org/papers/w22967.pdf.* Finds a 3 percent decrease in overall enrollment within counties of Pell Grant recipients from sanctions on for-profit institutions.

This is a maximum net budget impact and could be offset by student and institutional behavior in response to disclosures in the College Scorecard and other resources. In the 2014 GE rule, the Department stated: ''The costs of program changes in response to the regulations are difficult to quantify generally as they would vary significantly by institution and ultimately depend on institutional behavior.'' [198] In these final regulations, we follow pervious Department practice where we do not attribute a significant budget impact to disclosure requirements absent substantial evidence that such information will change borrower or institutional behavior.

Other factors that could affect these estimates include recent institutional closures, particularly of proprietary institutions whose programs would have been subject to the gainful employment measures. Depending upon where the students who would have attended those programs in the future decide to go instead, the amount of Pell Grants or loans they receive may vary and their earnings and repayment outcomes could also change. The budget impact associated with the rescission of the gainful employment rule would also be affected if significant closures continue and those students pursue programs not subject to the 2014 Rule or leave postsecondary education altogether.

*5. Accounting Statement*

As required by OMB Circular A–4 we have prepared an accounting statement showing the classification of the expenditures associated with this final rule (see Table 4). This table provides our best estimate of the changes in annual monetized transfers as a result of the final rule. The estimated reduced reporting and disclosure burden equals the $−209 million annual paperwork burden calculated in the *Paperwork Reduction Act of 1995* section (and also appearing on page 65004 of the regulatory impact analysis accompanying the 2014 Rule). The annualization of the paperwork burden differs from the 2014 Rule as the annualization of the paperwork burden for that rule assumed the same pattern as the 2011 rule that featured multiple years of data being reported in the first year with a significant decline in burden in subsequent years.

TABLE [4]—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

| Category | Benefits | |
|---|---|---|
| Discount rate | 7% | 3% |
| Reduced reporting and disclosure burden for institutions with GE programs under the GE regulation | $209.3 | $209.3 |
| Category | Costs | |
| Discount rate | 7% | 3% |
| Reduced market information about gainful employment programs; offset by development of College Scorecard for wider range of programs | Unquantified. | |
| Category | Transfers | |
| Discount rate | 7% | 3% |
| Increased transfers to Pell Grant recipients and student loan borrowers from elimination of ineligibility provision of GE regulation | $593 | $608 |

*6. Regulatory Alternatives Considered*

In response to comments received and the Department's further internal consideration of these final regulations, the Department reviewed and considered various changes to the final regulations detailed in this document. The changes made in response to comments are described in the *Analysis of Comments and Changes* section of this preamble. We summarize below the major proposals that we considered but which we ultimately declined to implement in these regulations.

In particular, the Department extensively reviewed outcome metrics, institutional accountability, sanctions, data disclosure, data appeals, and warning provisions in deciding to rescind the GE regulations. In developing these final regulations, the Department considered the budgetary impact, administrative burden, and effectiveness of the options it considered.

TABLE [5]—SUMMARY OF ALTERNATIVES

| Topic | Baseline | Alternatives | NPRM proposal | Final regs. |
|---|---|---|---|---|
| Universe of Coverage | GE Programs | None; GE Programs; all programs at all institutions (IHEs); all programs at all IHEs except graduate programs; and all programs at all IHEs except professional dental, and veterinary. | None | None. |

[198] 79 FR 65080.

TABLE [5]—SUMMARY OF ALTERNATIVES—Continued

| Topic | Baseline | Alternatives | NPRM proposal | Final regs. |
|---|---|---|---|---|
| Disclosures: Calculations and posting location. | IHEs calculate and post on their website using a Department-provided template. | None; IHEs calculate and post on their website using a Department-provided template; IHEs and Department calculate and IHEs post on program homepage in any format; Department calculates and posts all disclosures on program-level College Scorecard and IHEs post link to College Scorecard on program homepage; and Department calculates and posts all disclosures on program-level College Scorecard and IHEs post mean debt, mean earnings, and a link to College Scorecard on program homepage. | None | None. |
| Occupational licensure requirements. | List States where licensure is required and indicate whether program meets requirements. | None; List States where licensure is required and indicate whether program meets requirements; For State in which institution is located, indicate whether the program meets any certification requirements and list other States for which the institution is aware the program meets certification requirements; and List States where program meets requirements. | None | None. |
| Cohort lists and challenges | Lists by Department, challenges available to IHEs. | None; Lists by Department, challenges available to IHEs; Lists by Department, no challenges;. | None | None. |
| Earnings appeals | Available to IHE and adjudicated by Department. | None; and Available to IHE and adjudicated by Department. | None | None. |
| Sanctions | Automatic loss of title IV eligibility in certain circumstances. | None; and Automatic loss of title IV eligibility in certain circumstances. | None | None. |
| Warnings | Required in certain circumstances | None; and Required in certain circumstances. | None | None. |

6.1 Baseline

We use the 2014 Rule as the baseline. Under the GE regulations, institutions must certify that each of their GE programs meets State and Federal licensure, certification, and accreditation requirements. Also, to maintain title IV, HEA program eligibility, GE programs must meet minimum standards under the D/E rates measure. Programs must issue warnings to their students if they could lose their title IV, HEA program eligibility based on their next year's D/E rates.

Institutions are required to disclose a program's student outcomes and information such as costs, earnings, debt, and completion rates, and whether the program leads to licensure on the program's home page. Institutions compute these statistics and enter them into the Department's GE Disclosure Template. Then, the institution posts the template on its website.

6.2 Summary of the Final Regulations

The Department's final regulations rescind the 2014 Rule.

6.3 Discussion of Alternatives

During negotiated rulemaking, the Department considered expanding the universe of institutions and programs to which the regulations would apply. This would have expanded the burden on institutions compared to the baseline. Various alternatives considered would have affected slightly different groups of institutions by excluding special populations. The final regulations rescind the GE regulations and therefore remove the institutional burden associated with it. Under various universe options, cohort lists would have been created; further, the Department did consider permitting and not permitting challenges to those lists. Ultimately, the lists are eliminated and also the need to challenge them because no cohorts are created under the rescission.

The Department considered multiple options regarding which metrics to disclose, which entity bears the burden of computing them, and how to disseminate them to students and the public. One option has the Department computing all metrics administratively and publishing them on its College Scorecard and requiring institutions to post a link to the Scorecard on their program pages. Another option shared burden for metric computation by requiring institutions to compute some and the Department to compute the rest administratively; we considered either having institutions develop their own format for posting the data on their websites or providing them a general format to follow, including links to the College Scorecard. Metrics of specific concern included earnings and the appeals thereof as well as occupational licensure requirements. The Department considered eliminating the appeals process to reduce burden on institutions and the Department and allow for smaller cohort sizes, keeping the appeals process to allow institutions to contest earnings reported to the IRS but thereby causing increased burden to the institution and also to the Department, and replacing the appeals process with secondary metrics like repayment rate thereby increasing burden on the Department to compute extra metrics but to a much smaller amount than adjudicating alternate earnings appeals. Ultimately, the Department chose to rescind these regulations; without regulating it, the Department plans to expand its College Scorecard in order to report data at the program level in the future. In accordance with Executive Order 13864, this would accomplish the presidential mandates both to increase transparency and also to deregulation.

Finally, the Department considered alternative sanctions scenarios. One option was to make no change relative to the baseline, while another made the sanction discretionary. Further, the Department considered options for when and how to deliver warnings to students when a program is zone or failing. Some options discussed included delivering warnings only by email or only posting on the institution's website. Other options included only providing the warning upon matriculation whereas others would have required a reminder annually. Under rescission, the sanctions and associated warnings are eliminated.

*7. Regulatory Flexibility Act (RFA) Certification*

The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Non-profit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The Department lacks data to identify which public and private, non-profit institutions qualify as small based on the SBA definition. Given the data limitations and to establish a common definition across all sectors of postsecondary institutions, the Department uses its proposed data driven definitions for ''small institutions'' (Full-time enrollment of 500 or less for a two-year institution or less than two-year institution and 1,000 or less for four-year institutions) in each sector (Docket ID ED–2018–OPE–0027) to certify the RFA impacts of this final rule. The basis of this size classification was described in the NPRM published in the **Federal Register** July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department has discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 5—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

| Level | Type | Small | Total | Percent |
|---|---|---|---|---|
| 2-year | Public | 342 | 1,240 | 28 |
| 2-year | Private | 219 | 259 | 85 |
| 2-year | Proprietary | 2,147 | 2,463 | 87 |
| 4-year | Public | 64 | 759 | 8 |
| 4-year | Private | 799 | 1,672 | 48 |
| 4-year | Proprietary | 425 | 558 | 76 |
| Total | | 3,996 | 6,951 | 57 |

When an agency promulgates a final rule, the RFA requires the agency to ''prepare a final regulatory flexibility analysis''.'' (5 U.S.C. 604(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities.

These final regulations directly affect all institutions with GE programs participating in title IV aid. There were 2,617 institutions in the 2015 GE cohort, of which 1,357 are small entities.

The Department has determined that the impact on small entities affected by these final regulations would not be a significant burden and will generate savings for small institutions. For these 1,357 institutions, the effect of these final regulations would be to eliminate GE paperwork burden and potential loss of title IV eligibility. Across all institutions, the net result of the institutional disclosure changes is estimated savings of $209,247,341 annually. Using the 57 percent figure for small institutions in Table 5, the estimated savings of the disclosures in the proposed regulations for small institutions is $119.3 million annually. We believe that the economic impacts of the paperwork and title IV eligibility changes would be beneficial to small institutions. Accordingly, the Secretary hereby certifies that these final regulations would not have a significant economic impact on a substantial number of small entities.

*8. Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed or continuing, or the discontinuance of, collections of information in accordance with the PRA (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Respondents also have the opportunity to comment on the Department's burden reduction estimates.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

*Comments:* One commenter asserted that the Department relied upon anecdote to support its claim of burden being higher than expected upon institutions of higher education regarding providing disclosures to students. The commenter stated that this claim was not substantiated in the Paperwork Reduction Act section of the NPRM. Further, the commenter argued that the Department made no effort to quantify or substantiate its anecdotally supported claims.

*Discussion:* As stated above, while administrative burden is not the only reason that the Department is rescinding the GE regulations, the Department believes that the regulations do impart reporting burdens upon institutions and that requiring all institutions to adhere to GE-like regulations would add considerable burden to institutions and, in turn, costs to students. However, the Department has determined that not only will expanding the College Scorecard provide more comprehensive and useful data to current and prospective students, but since the Department can populate the Scorecard using data schools already reported for other purposes, it will be less burdensome to institutions. Since the Department will provide all of the data, we can be sure it was calculated using the same formula, and that it has the same level of reliability.

Further, the final regulations will rescind the GE regulations. That action will eliminate the burden as assessed to the GE regulations in the following previously approved information collections. We will prepare Information Collection Requests, which will be published in the **Federal Register** upon the effective date of this final rule, to discontinue the currently approved information collections noted below.

*Changes:* None.

1845–0107—GAINFUL EMPLOYMENT DISCLOSURE TEMPLATE *

| | Respondents | Burden hours eliminated |
|---|---|---|
| Individuals | −13,953,411 | −1,116,272 |
| For-profit institutions | −2,526 | −1,798,489 |
| Private Non-Profit Institutions | −318 | −27,088 |
| Public Institutions | −1,117 | −176,311 |
| Total | −13,957,372 | −3,118,160 |

1845–0121—GAINFUL EMPLOYMENT PROGRAM—SUBPART R—COHORT DEFAULT RATES

| | Respondents and responses | Burden hours eliminated |
|---|---|---|
| For-profit institutions | −1,434 | −5,201 |
| Private Non-Profit Institutions | −47 | −172 |
| Public Institutions | −78 | −283 |
| Total | −1,559 | −5,656 |

1845–0122—GAINFUL EMPLOYMENT PROGRAM—SUBPART Q—APPEALS FOR DEBT TO EARNINGS RATES

| | Respondents | Responses | Burden hours eliminated |
|---|---|---|---|
| For-profit institutions | −388 | −776 | −23,377 |
| Private Non-Profit Institutions | −6 | −12 | −362 |
| Public Institutions | −2 | −4 | −121 |
| Total | −396 | −792 | −23,860 |

1845–0123—GAINFUL EMPLOYMENT PROGRAM—SUBPART Q—REGULATIONS

| | Respondents | Burden hours eliminated |
|---|---|---|
| Individuals | −11,793,035 | −1,050,857 |
| For-profit institutions | −28,018,705 | −2,017,100 |
| Private Non-Profit Institutions | −442,348 | −76,032 |
| Public Institutions | −2,049,488 | −633,963 |
| Total | −42,303,576 | −3,777,952 |

The total burden hours and change in burden hours associated with each OMB Control number affected by the final rule follows:

| Regulatory section | OMB control No. | Burden hours | Estimated cost $36.55/hour for institutions; $16.30/hour for individuals |
|---|---|---|---|
| § 668.412 | 1845–0107 | −3,118,160 | −$91,364,240 |
| §§ 668.504, 668.509, 668.510, 668.511, 668.512 | 1845–0121 | −5,656 | −206,727 |
| § 668.406 | 1845–0122 | −23,860 | −872,083 |
| §§ 668.405, 668.410, 668.411, 668.413, 668.414 | 1845–0123 | −3,777,952 | −116,804,291 |
| Total | | −6,925,628 | −209,247,341 |

**Intergovernmental Review**

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

In accordance with section 411 of GEPA, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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(Catalog of Federal Domestic Assistance Number does not apply.)

**List of Subjects**

*34 CFR Part 600*

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

*34 CFR Part 668*

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: June 24, 2019.

**Betsy DeVos,**

*Secretary of Education.*

For the reasons discussed in the preamble, and under the authority at 20 U.S.C. 3474 and 20 U.S.C. 1221e-3, the Secretary of Education amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

## PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10 is amended by revising paragraph (c)(1) and (2) to read as follows:

### § 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) *Educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval;

(ii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; and

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3), obtain the Secretary's approval.

(2) Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1) of this section.

* * * * *

■ 3. Section 600.21 is amended by revising the introductory text of paragraph (a)(11) to read as follows:

### § 600.21 Updating application information.

(a) * * *

(11) For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—

* * * * *

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

### § 668.6 [Removed and Reserved]

■ 5. Remove and reserve § 668.6.

■ 6. Section 668.8 is amended by revising paragraphs (d)(2)(iii) and (d)(3)(iii) to read as follows:

### § 668.8 Eligible program.

* * * * *

(d) * * *

(2) * * *

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(3) * * *

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

* * * * *

## Subpart Q—[Removed and Reserved]

■ 7. Remove and reserve subpart Q, consisting of §§ 668.401 through 668.415.

## Subpart R—[Removed and Reserved]

■ 8. Remove and reserve subpart R, consisting of §§ 668.500 through 668.516.

[FR Doc. 2019–13703 Filed 6–28–19; 4:15 pm]

**BILLING CODE 4000–01–P**

# FEDERAL REGISTER

Vol. 84 Monday,

No. 126 July 1, 2019

Part III

## The President

Memorandum of June 26, 2019—Policy for Military Service Academy and Reserve Officers' Training Corps Graduates Seeking to Participate in Professional Sports

Federal Register
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Monday, July 1, 2019

# Presidential Documents

Title 3—

The President

Memorandum of June 26, 2019

## Policy for Military Service Academy and Reserve Officers' Training Corps Graduates Seeking to Participate in Professional Sports

**Memorandum for the Secretary of Defense**

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

**Section 1**. *Background.* Under current Department of Defense (DOD) policy, new graduates of the Military Service Academies (Academies) and Reserve Officers' Training Corps (ROTC) programs cannot pursue careers in professional sports until after they have served 2 years of commissioned service in the Armed Forces. As I recently stated, these student-athletes should be able to defer their military service obligations until they have completed their professional sports careers. Such cadets and midshipmen have a short window of time to take advantage of their athletic talents during which playing professional sports is realistically possible. At the same time, these student-athletes should honor the commitment they made to serve in the Armed Forces in exchange for the extraordinary benefits afforded to them at taxpayer expense at the Academies or ROTC programs. A revised policy will benefit the student-athletes, the Academies and ROTC programs, and the Armed Forces.

**Sec. 2**. *Revised Sports Policy.* (a) The Secretary of Defense (Secretary) shall develop a policy that authorizes new graduates of the Academies and ROTC programs to pursue professional sports opportunities immediately following graduation, consistent with their military service obligation (Revised Sports Policy).

(b) The Secretary shall submit the Revised Sports Policy to the President, through the Assistant to the President for National Security Affairs, no later than 120 days from the date of this memorandum.

**Sec. 3**. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

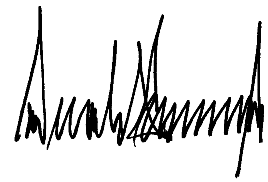
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum 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.

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



THE WHITE HOUSE,
*Washington, June 26, 2019*

[FR Doc. 2019–14194
Filed 6–28–19; 11:15 am]
Billing code 5001–06–P

# Reader Aids

**Federal Register**

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## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List June 28, 2019**

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 21 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 35 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
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| July 17 | Aug 1 | Aug 7 | Aug 16 | Aug 21 | Sep 3 | Sep 16 | Oct 15 |
| July 18 | Aug 2 | Aug 8 | Aug 19 | Aug 22 | Sep 3 | Sep 16 | Oct 16 |
| July 19 | Aug 5 | Aug 9 | Aug 19 | Aug 23 | Sep 3 | Sep 17 | Oct 17 |
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