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OFFICE OF SPECIAL COUNSEL

5 CFR Part 1800

[OMB Control No. 3255–0005]

Filing of Complaints of Prohibited Personnel Practices or Other Prohibited Activities and Filing Disclosures of Information

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule; confirmation of effective date.

SUMMARY: On June 9, 2017, the U.S. Office of Special Counsel (OSC) published a final rule revising its regulations regarding the filing of complaints and disclosures with OSC, and updated OSC's prohibited personnel practice provisions. The rule's effective date was delayed indefinitely on July 14, 2017. This document establishes the effective date for the rule.

DATES: The effective date of the final rule published at 82 FR 26739 on June 9, 2017, delayed at 82 FR 32447, July 14, 2017, is August 26, 2019.

FOR FURTHER INFORMATION CONTACT: Susan K. Ullman, General Counsel, U.S. Office of Special Counsel, by telephone at 202–804–7000, or by email at *sullman@osc.gov.*

SUPPLEMENTARY INFORMATION: On July 14, 2017 (82 FR 32447), OSC published an indefinite delay of its June 9, 2017, final rule revising its regulations regarding the filing of complaints and disclosures with OSC and updating OSC's prohibited personnel practice provisions. This document confirms the effective date of August 26, 2019, for that final rule.

Dated: July 18, 2019.

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2019–15656 Filed 7–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0053]

Notification of Decision To Authorize the Importation of Fresh Raspberry Fruit From Morocco Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rulemaking action; notification of decision to import.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh raspberry fruit from Morocco. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of raspberries from Morocco.

DATES: The articles covered by this notification may be authorized for importation after July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Coordinator, Regulatory Policy and Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

On August 26, 2016, we published in the **Federal Register** (81 FR 58867–58869, Docket No. APHIS–2015–0053) a proposal[1] to amend the regulations to allow the importation of fresh raspberry fruit from Morocco into the continental United States.

We solicited comments on the proposed rule for 60 days ending on October 25, 2016. We received six comments by that date, from members of the public and from a State agriculture agency. Two commenters supported the proposed rule. A third commenter generally opposed importing fresh raspberry fruit and all other commodities, but did not offer any comments on the specific provisions of the proposed rule. The remaining comments are discussed below.

One commenter requested that shipments of fresh raspberry fruit from Morocco not be allowed into the State of Florida due to the ''high'' risk rating assigned to the fungus *Monilinia fructigena* in the PRA. The commenter acknowledged that while raspberry fruit is not considered a major host of this fungus, apples, peaches, plums, and apricots are, and if *M. fructigena* were to follow the pathway of importation into the United States, it could have devastating effects on Florida's agricultural industry, especially on commercial peach production and on the native plums that serve as a major food source for wildlife in that State.

As stated in the risk management document (RMD) that accompanied the

[1] To view the proposed rule, supporting documents, and the comments we received, go to *https://www.regulations.gov/docket?D=APHIS-2015-0053.*

proposed rule, *M. fructigena* is a common cause of fruit rot in fruit orchards. Required field inspections, packinghouse inspections, and port of entry inspections provide sufficient mitigation and have been used successfully to mitigate *M. fructigena* associated with fresh pears from China. In addition, culling at the packinghouses, while not required in the systems approach, is a standard industry practice that removes obviously blemished, diseased, and insect-infested fruits from the pathway. Infected or infested fruit found by an inspector will not be allowed to enter into the United States. Furthermore, if a pest or disease is found at the port of entry, a traceback will be conducted by APHIS and the national plant protection organization (NPPO) of Morocco to identify the source of the problem. Corrective action, including removal of the packinghouse or place of production from the export program can then be taken.

One commenter requested that we consider requiring the use of irradiation on fresh raspberry fruit from Morocco to mitigate the risks associated with *M. fructigena.*

Irradiation is an approved treatment to mitigate the risks presented by arthropod plant pests, but is not approved as a treatment against fungi, like *M. fructigena.*

One commenter asked about the costs associated with inspections and whether these inspections would increase the burden on port of entry inspectors and cause delays.

The cost of inspection at the port of entry is covered by the agricultural quarantine and inspection user fee and, for inspections conducted outside regular business hours at the request of the importer/owner of the consignment, a reimbursable overtime charge. As discussed in the economic analysis that accompanied the proposed rule, Morocco expects to export between 200 and 500 metric tons of fresh raspberry fruit to the continental United States annually. This is a relatively small amount (about 0.4 to 0.9 percent of U.S. fresh raspberry fruit production) and we do not therefore anticipate an increase in burden to inspectors, nor do we believe that this action will cause delays at the ports.

One commenter asked how inspectors will be trained to identify *M. fructigena* on fresh raspberry fruit from Morocco.

Inspectors in Morocco and the United States are already well trained in identifying signs and symptoms of pests and diseases, including *M. fructigena.* The fresh raspberry fruit will be inspected for symptoms of fungal infections such as brown lesions and tufts sprouting from the skin of infected fruit.

One commenter asked if fruits or vegetables have been inspected and certified free of pests or diseases in their country of origin only to be found infested or infected upon arrival in the United States.

Commodities are inspected in their country of origin and again upon arrival at the port of entry in the United States. If a consignment is found to contain plant pests at the port of entry, the consignment may be treated, destroyed, or re-exported.

One commenter expressed concern about the monitoring and enforcement of the systems approach. Specifically, the commenter asked how APHIS intends to monitor the NPPO of Morocco to ensure the conditions of the systems approach are being met.

APHIS reserves the right to conduct site visits to Morocco to inspect places of production in Morocco and audit the program if pest problems occur.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule [2] that revised the regulations in § 319.56–4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements database (FAVIR). With those changes to the regulations, we cannot issue the final regulations as contemplated in our August 2016 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation into the continental United States of fresh raspberry fruit from Morocco subject to the following phytosanitary measures, which will be listed in FAVIR, available at *https://epermits.aphis.usda.gov/manual:*

- The NPPO of Morocco must develop an operational workplan, subject to APHIS approval, that details the activities that the NPPO of Morocco would carry out to comply with the phytosanitary requirements.
- The fresh raspberry fruit may be imported in commercial consignments only.
- The fresh raspberry fruit must be grown at a place of production that is registered with the NPPO of Morocco.
- During the growing season, raspberries must be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection no more than 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of fresh raspberry fruit from Morocco into the continental United States from the place of production for the remainder of the growing season. The exportation of fresh raspberry fruit from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.
- The fresh raspberry fruit must be packed in packinghouses that are registered with the NPPO of Morocco.
- Detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.
- Each consignment of fresh raspberry fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that consignment was produced in accordance with the requirements authorized under 7 CFR 319.56–4, and that the consignment has been inspected prior to export from Morocco and found free of *M. fructigena.*

In addition to these specific measures, fresh raspberry fruit from Morocco will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notification are covered under the Office of Management and Budget (OMB) control number 0579–0049. The estimated annual burden on respondents is 119 hours, which will be added to 0579–0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the internet and

[2] To view the final rule, go to *https://www.regulations.gov/docket?D=APHIS-2010-0082.*

other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notification, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

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).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of July 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–15704 Filed 7–23–19; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704 and 713

RIN 3133–AE87

Fidelity Bonds

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is finalizing a rule that amends its regulations regarding fidelity bonds for corporate credit unions and natural person credit unions. The rule strengthens a board of directors' oversight of a federally insured credit union's (FICU) fidelity bond coverage; ensures an adequate period to discover and file fidelity bond claims following a FICU's liquidation; codifies a 2017 NCUA Office of General Counsel legal opinion that permits a natural person credit union's fidelity bond to include coverage for certain credit union service organizations (CUSOs); and addresses Board approval of bond forms.

DATES: The final rule is effective October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Rob Robine, Trial Attorney, or Rachel Ackmann, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428 or telephone (703) 548–2601.

SUPPLEMENTARY INFORMATION

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II. Proposed Rule
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I. Introduction

a. Background and Legal Authority

The Federal Credit Union Act (FCU Act) requires that certain credit union employees and appointed and elected officials be subject to fidelity bond coverage.[1] The FCU Act directs the Board to promulgate regulations concerning both the amount and character of fidelity bond coverage and to approve bond forms.[2] The pertinent portion of the FCU Act provides that the Board is directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of Treasury as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate. Any such bond or bonds shall be in such an amount in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation.[3]

Parts 704 and 713 of the NCUA's regulations implement the requirements of the FCU Act regarding fidelity bonds.[4] Part 713 applies to natural person credit unions and Part 704 applies to corporate credit unions. The parts establish the requirements for a fidelity bond, the acceptable bond forms, and the minimum permissible coverage. Both parts require a FICU's board of directors to review annually its fidelity bond coverage to ensure it is adequate in relation to the potential risks facing the FICU and the minimum requirements set by the Board.

Part 704 was recently revised to amend the provision that determines the maximum amount a corporate credit union may pay for a deductible or a covered loss before the fidelity bond insurer makes a payment. The NCUA restricts the deductible a corporate credit union may pay to limit the potential losses to it if there is a covered claim. The maximum deductible allowed is a percentage of a corporate credit union's capital based on its leverage ratio. For example, if a corporate credit union has a greater than 2.25 percent leverage ratio then it may have a maximum deductible that is 15 percent of its tier 1 capital. The recent final rule updated this provision to reference tier 1 capital instead of core capital.[5] Part 713, however, has not been substantively revised since 2005, when the NCUA issued a final rule modernizing it.[6]

b. Regulatory Reform Task Force

In August 2017, the Board published and sought comment on the NCUA's regulatory reform agenda (Agenda).[7] The Agenda identifies those regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome. This is consistent with the spirit of Executive Order 13777.[8] Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the Board has chosen to comply with it in spirit and has reviewed all of the NCUA's regulations to that end. One of the items in the Agenda is related to the NCUA's regulations on fidelity bonds. The Agenda supports exploring ways to implement the requirements of the FCU Act related to fidelity bonds in the least costly way possible. The Agenda further notes that while the FCU Act mandates fidelity bond coverage, the NCUA's objective should be to allow a credit union to make a business decision based on its own circumstances and needs. This would effectively reduce the NCUA's involvement in a credit union's operational decisions while remaining consistent with the FCU Act.

c. The 2017 Legal Opinion

As discussed above, part 713 establishes the minimum requirements for a fidelity bond for a natural person credit union. One such requirement under part 713 is that fidelity bonds be

[1] 12 U.S.C. 1761a, 1761b, and 1766.

[2] The FCU Act also grants the Board the powers to require such other surety coverage as the Board may determine to be reasonably appropriate; to approve a blanket bond in lieu of individual bonds; and to approve bond coverage in excess of minimum surety coverage.

[3] 12 U.S.C. 1766(h).

[4] 12 CFR pts. 704 and 713.

[5] 80 FR 25932 (May 6, 2015).

[6] 70 FR 61713 (Oct. 26, 2005). In 2012, the NCUA revised Part 713 by removing reference to the agency's former Regulatory Flexibility Program. 77 FR 74112 (Dec. 13, 2012).

[7] 82 FR 39702 (Aug. 22, 2017).

[8] E.O. 13777 (Feb. 24, 2017).

purchased in an ''individual policy.'' [9] The ''individual policy'' provision was intended to prevent multiple FICUs from being insured under one fidelity bond policy. The Board prohibited such joint coverage because the loss suffered by one or two of the joint policyholders could reduce the amount of available coverage for the other policyholders to below the required minimum amount.[10] Before 2017, the NCUA's Office of General Counsel (OGC) had issued legal opinions stating that a FICU may not include one or more CUSOs or other parties as additional insureds under its fidelity bond because of the ''individual policy'' limitation.[11] It came to OGC's attention, however, that some bond issuers may have been interpreting their policies to permit the issuance of bonds that covered FICUs and their CUSOs, despite OGC's opinions. This prompted OGC to review the regulation and approved bond forms. As a result of that review, OGC issued another legal opinion in September 2017 that rescinded and replaced all previous legal opinions that addressed the ''individual policy'' requirement.[12] The 2017 opinion concluded that the ''individual policy'' requirement of § 713.3(a) of the NCUA's regulations generally prohibits joint coverage under fidelity bonds, but does not prohibit a FICU from purchasing a fidelity bond that covers both it and certain of its CUSOs, as discussed more fully below.

II. Proposed Rule

OGC's fidelity bond review extended beyond the issue of joint coverage and revealed several inconsistencies between part 713 and approved bond forms. The review also revealed several outdated provisions. In November 2018, the NCUA published a notice of proposed rulemaking (the proposed rule) to update its fidelity bond regulation to correct these problems, ensure the safe and sound operation of FICUs, and protect the National Credit Union Share Insurance Fund (NCUSIF).[13] The comment period closed on January 22, 2019.

III. Final Rule and Discussion of Comments

The NCUA received 26 comment letters on its November 2018 proposed rule. These comments were received from credit unions, including corporate credit unions, credit union leagues and trade associations, an association of state credit union supervisors, an insurance company, and two insurance associations. In general, many of the commenters supported the stated goal, to implement fidelity bond requirements in a cost-effective manner. All of the commenters, however, expressed concerns about specific aspects of the proposal. Most commenters believed that the proposed rule resulted in unnecessary burden and increased costs without substantially improving the adequacy of FICU fidelity bond coverage. Some commenters also expressed concerns that the rule reduced the number of insurance companies providing fidelity bonds, which would reduce FICUs' ability to negotiate among providers. In response to the comments received, the Board has made several changes to the final rule. The specific details of the final rule, including changes as a result of the comments received, are discussed below.

Part 713

In general, part 713 applies to all federally insured natural person credit unions and provides the fidelity bond requirements for them. Changes to the specific subsections of part 713 are discussed below.

§ 713.1 What is the scope of this section?

The proposed rule retained most of the current § 713.1 without change, with the following exceptions. The proposed rule added the words ''federally insured'' before the words ''credit union'' to more precisely describe which credit unions are subject to the section. The current rule uses the term ''credit union'' and ''federal credit union'' interchangeably to mean ''federal credit union.'' As discussed in the background section, the requirements in part 713 are applicable to both federal credit unions and federally insured, state-chartered credit unions (FISCUs).[14] For clarity, the proposed rule cross-referenced the requirement in part 741 that FISCUs must comply with Part 713 and referred to FICUs throughout the rule instead of federal credit unions.

One commenter questioned whether the proposed rule should be applicable to all FISCUs. FISCUs' fidelity bond requirements are applied through part 741, which states that ''[a]ny credit union which makes application for insurance . . . must possess the minimum fidelity bond coverage stated in part 713 . . . .'' The commenter stated that the positioning of the language referring to minimum coverage means that only the amount of bond coverage, and not the other requirements in part 713, apply to FISCUs. The commenter stated that the NCUA should invite specific comment on whether all of Part 713 should apply to FISCUs. The commenter also does not believe it is necessary for the NCUA to impose detailed provisions on FISCUs' fidelity bonds.

The Board has considered the comment and disagrees that part 741 applies to only the amount of bond coverage. Part 741 does not use the term ''amount'' and instead uses the term ''minimum coverage.'' The Board believes that the reasonable and plain understanding of the term ''coverage'' includes factors such as the amount of insurance, the claims covered by the insurance, and other operational considerations that ensure the coverage is adequate. The Board's position is further supported by the fact it has been the Board's public and longstanding position that the entirety of part 713 applies to FISCUs. The commenter even noted that prior NCUA discussions of part 713 were directed to all FISCUs. Therefore, the Board is finalizing this provision as proposed.

The final rule also includes a cross-reference for corporate credit unions and states that corporate credit unions must comply with § 704.18 instead of part 713.

§ 713.2 What are the responsibilities of a federally insured credit union's board of directors under this section?

2(a)

The proposed rule amended current § 713.2 by dividing the section into two subparagraphs. Current § 713.2 became paragraph (a). The proposed rule retained most of the current § 713.2 without change, with the following exception. For consistency with the rest of part 713, the term ''Federal credit union'' was revised to ''federally insured credit union.'' The Board did not receive any comment on this provision and is finalizing it as proposed.

[9] 12 CFR 713.3(a). There is not an analogous provision for corporate credit unions under Part 704, therefore, the legal opinion relates only to fidelity bonds for natural person FICUs under Part 713.

[10] 64 FR 28178 (May 27, 1999).

[11] OGC Legal Op. 14–0311 (Mar. 21, 2014); see also OGC Legal Op. 04–0744 (Sept. 21, 2004).

[12] OGC Legal Op. 17–0959 (Sept. 26, 2017).

[13] 83 FR 59318 (Nov. 23, 2018).

[14] Part 713 is applicable to all FISCUs through § 741.201 of the NCUA's regulations, which states that any credit union which makes application for share insurance must have the minimum fidelity bond coverage stated in part 713 in order for its application to be approved and for such share insurance coverage to continue.

2(b)

The proposed rule added a new paragraph (b) to § 713.2. Proposed paragraph (b) increased a board of directors' oversight responsibility of its FICU's fidelity bond coverage. Specifically, the proposed rule required a FICU's board, and, if applicable, a FICU's supervisory committee, to review all applications for purchase or renewal of bond coverage and to pass a board resolution approving the purchase or renewal. The proposed rule also required a FICU's board to delegate one board member, who is not an employee of the FICU, to sign the attestation for bond purchase or renewal. This proposal prohibited the same board member from signing the attestation for renewal in consecutive years.

The Board notes the current rule already requires a FICU's board to annually review its fidelity bond and other insurance coverage to ensure it is adequate. The proposed rule took that review a step further and required a FICU's board, and, if applicable, its supervisory committee, to review all applications for purchase or renewal of fidelity bond coverage. The Board believed this change helped ensure the board is addressing the adequacy of the coverage at all stages, rather than at an annual point in time that may be retrospective, and require additional steps by the FICU to remedy a deficiency.

Almost every commenter objected to the requirement for additional board review and stated that the current requirement for an annual review of the adequacy of coverage is sufficient. Most commenters stated that bond renewal is a highly involved, time-intensive, and technical process and that it is more appropriate for a board of directors to focus on broad strategic goals. One commenter stated that a bond renewal usually takes about one year to complete. A few commenters stated that the risk of loss from dishonest employees is better addressed through NCUA's examination of a credit union's internal controls. In contrast, one insurance company supported the proposed requirement as adding an important layer of review.

The Board continues to believe that an ongoing review by a FICU's board of directors is necessary to ensure the adequacy of fidelity bond coverage. The Board agrees with commenters that adequate internal controls are a fundamental part of ensuring a FICU's safety and soundness. The Board, however, also believes that adequate fidelity bond coverage complements sound internal controls. Therefore, the Board is finalizing a board's requirement to review all applications for purchase or renewal of fidelity bond coverage as proposed.

The proposed rule required a FICU's supervisory committee to conduct a review of all applications for purchase or renewal of fidelity bond coverage, in addition to the FICU's board. Several commenters objected to the proposed requirement that both the board of directors and the supervisory committee were responsible for reviewing renewal documents. Commenters generally believed that the dual review is unnecessary. A few commenters noted that many supervisory committees do not meet as frequently as boards of directors and it would be very difficult to synchronize their review given the back-and-forth negotiating with the insurance company that usually occurs during the renewal process. After reviewing the comments, the Board has removed the requirement for the supervisory committee to review fidelity bond purchases or renewals. The Board believes that removing the requirement for supervisory committee review balances the Board's concern for adequate fidelity bond oversight with concerns about regulatory burden.

As noted, the proposed rule also required a FICU's board to, after conducting its review, pass a resolution approving the purchase or renewal of fidelity coverage and designating a member of the board, who is not an employee of the FICU, to sign applications for purchase, bond renewals, and any accompanying attestations. Also as mentioned, the proposed rule required that the member of the board acting as signatory rotate each time the FICU purchases or renews fidelity coverage. Commenters were almost universally against this proposed requirement.

A few commenters stated that some insurance companies require an employee of the credit union to sign the renewal documents. The Board is aware that under the current rule it is industry practice for employees to generally sign renewal documents. The final rule, however, requires that a non-employee sign the renewal documents. This policy may necessitate changes to certain fidelity bond forms.

One commenter thought a more effective solution would be to mandate the inclusion of a clause in the fidelity bond contract that states the signatory's fraud is not imputed to the company and, therefore, the signatory's fraud cannot serve as a basis for the insurer to rescind coverage. The Board has not adopted this suggestion. The Board is concerned that this level of specificity in a fidelity bond contract, along with the fact this would be a significant departure from current industry practice, would reduce the number of fidelity bond insurance providers. A robust market for fidelity bond insurance ensures each FICU has options when determining appropriate insurance coverage. The Board believes, however, that if an insurer offers such a bond form it would likely address the Board's concerns regarding rescinded fidelity bond coverage and may alleviate the need for the board of directors to review each renewal and for a director to sign the renewal.

Most other comments focused on the potential burden of this provision. Some commenters expressed concern that this requirement could negatively affect a FICU's ability to recruit volunteer board members by increasing the perceived personal liability of the board member who is designated to sign the renewal. Other commenters thought insurance companies would either increase costs or modify contracts in response to the proposed rule. One commenter stated that the proposal is problematic due to the amount of time, bandwidth, and knowledge that is necessary to be a signatory, and believed it would require the board member to have a background in insurance. In contrast, one insurance company expressed support for this requirement, however, the company stated that the NCUA should impose additional requirements to ensure the signatory has done adequate due diligence before signing the bond renewal.

The Board is finalizing this provision as proposed. The Board has not made any changes to this proposed provision because the Board believes it is necessary to prevent losses to the NCUSIF due to rescinded coverage. The underlying purpose of these requirements is to address the issue of rescission of fidelity bond coverage when the signatory to the application to purchase or renew coverage is knowledgeable of fraudulent activity. If the signatory to the application for purchase or renewal is knowledgeable of fraudulent activity, the bond issuer might void the policy and not make a payout when losses are discovered. The NCUA believes that a non-employee board member, who would not be involved in the day-to-day operations of a FICU, is less likely to be responsible for a fraudulent activity than an employee. The NCUA also believes that rotating signatories reduces the potential for the signatory to be knowledgeable of the fraudulent activity.

In recent years, the NCUSIF has sustained increased losses due to voided fidelity bond coverage. Before 2010, bond rescission was not a material concern for the NCUA. Since 2010, however, the NCUA has had at least three claims denied due to rescinded fidelity bond coverage and the NCUA is concerned that the frequency of rescinded coverage will continue to increase. Between 2010 and May 2019, the NCUSIF has already lost in excess of $10 million from fidelity bonds that were voided due to the signatory being aware of fraudulent activities. Litigation related to denied claims is ongoing and may result in additional losses to the NCUA. The Board also notes that this requirement is also advantageous to individual FICUs, as this will help prevent them from losing coverage in cases not involving involuntary liquidation.

Finally, the Board believes the final rule presents only a minimal increase in regulatory burden as the FICU's board is already required to annually review its fidelity bond coverage, but meaningfully mitigates the risk to the NCUSIF associated with fidelity bond coverage rescission.

713.3 What bond coverage must a federally insured credit union have?

The proposed rule amended current § 713.3 by renumbering and revising the section. Current § 713.3 became paragraph (a), current paragraphs (a) and (b) were renumbered as paragraphs (a)(1) and (2), and two new subparagraphs were added as (a)(3) and (4). Finally, a new paragraph (b) also was added.

3(a)(2)

Current paragraph (b) of § 713.3 states that, at a minimum, a FICU's fidelity bond coverage must include fidelity bonds that cover fraud and dishonesty. The proposed rule removed the redundant phrase ''[i]nclude fidelity bonds that'' in current paragraph (b). The Board did not receive any comment on this section and is finalizing this provision as proposed. The final rule reads ''At a minimum, your bond coverage must: . . . Cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members;''.

3(a)(3)

The proposed rule added a new paragraph (a)(3) to § 713.3. Proposed paragraph (a)(3) required a FICU to have fidelity bond coverage that includes an option for the liquidating agent to purchase coverage that extends the discovery period, the period to discover and file a claim, for at least two years after liquidation.[15] Most commenters objected to the proposed two-year discovery period following an involuntary liquidation. Most commenters cited the potential for increased premiums as the reason for their objection. In the proposed rule, the NCUA stated its belief that any additional cost of this provision would likely be covered by the liquidating agent as the liquidating agent would pay the fee for an extended discovery period.

Commenters, however, did not believe that the liquidating agent would bear all of the additional cost of the two-year discovery window because state insurance regulations cap the amount that an insurer can charge for an extended discovery period. Several commenters expressed concern that the NCUSIF savings would not justify the added cost to all FICUs due to the limited number of FICUs that are involuntarily liquidated. Several commenters requested that the NCUA undergo a cost-benefit analysis. One commenter stated that the NCUA did not present any evidence that the current policy of providing notice does not work, just that it lacks legal certainty. In contrast, two credit union commenters supported the extended discovery period. In addition, two commenters associated with the insurance industry suggested a 12-month discovery window. One stated that a 12-month window is in line with industry standards and encourages timely action by the liquidating agent. In response to the commenters, the Board has amended the proposed two-year discovery window.

In an effort to better balance the costs and benefits of the Board's intent, the Board has amended the final rule to require that fidelity bond contracts provide for a 12-month discovery window following an involuntary liquidation. The Board initially proposed a two-year discovery window as members have 18 months to file a claim on insured accounts after the appointment of a liquidating agent.[16] Upon consideration of the comments, the Board believes a 12-month discovery period provides adequate time to discovery and file a claim. Additionally, after conducting research, the Board believes that this proposed requirement will not result in any material additional cost or burden on FICUs.

3(a)(4)

The Board also proposed to add a new paragraph (a)(4) to § 713.3 to include a requirement that, for voluntary liquidations, a FICU's fidelity bond coverage remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets. There were only two comments on the proposed four-month discovery period following a voluntary liquidation. One commenter did not object to it. The other commenter did not support imposing the requirement on FISCUs and stated that state law governs voluntary liquidations for FISCUs. The Board believes that this requirement is important because it benefits a FISCU's members as any recovery following a voluntary termination flows through to members. Additionally, the provision imposes only a minor burden for FISCUs. Therefore, the Board is finalizing this provision as proposed.

3(b)

Section 713.3 requires that a bond, at a minimum, must be purchased in ''an individual policy.''[17] The NCUA added this section to part 713 in a 1999 final rule in response to a commenter who pointed out that there had been instances of FICUs jointly purchasing fidelity bonds with each other.[18] The commenter was concerned that a loss caused by one or two of the joint policyholders could reduce the amount of available coverage for the other policyholders to below the required minimum amount. In addressing this comment, the Board provided in § 713.3 that a FICU must purchase its own individual policy.[19] The regulation did not, however, define ''individual policy.''

Since inclusion of this provision in the NCUA's regulations, OGC has issued two public legal opinions interpreting the meaning of ''individual policy'' and opining on the type of coverage that is prohibited under § 713.3(a).[20] A 2014 OGC legal opinion states that a FICU may not include one or more of its CUSOs or other parties as additional insureds under its fidelity bond.[21] In a 2004 legal opinion, OGC opined that a CUSO that provides management services for multiple credit unions could not purchase a single fidelity

[15] The Board believes that an extended discovery period is important for protecting the NCUSIF as fidelity bonds mitigate the risk presented by fraudulent and other dishonest acts to the NCUSIF and have served as a significant source of recovery in liquidations caused by fraud.

[16] 12 U.S.C. 1787(o).

[17] 12 CFR 713.3.

[18] 64 FR 28718, 28719 (May 27, 1999).

[19] *Id.* at 28719.

[20] OGC Legal Op. 04–0744 (Sep. 21, 2004); and OGC Legal Op. 14–1013 (Mar. 21, 2014).

[21] OGC Legal Op. 14–1013 (Mar. 21, 2014).

bond with each credit union named as an insured.[22] In both letters, OGC explained the purpose of the individual policy requirement is to avoid diluting the individual credit union's coverage.

As noted above, OGC issued a third legal opinion on the ''individual policy'' requirement in 2017 (2017 legal opinion). The 2017 legal opinion rescinded and replaced the previous two opinions and expanded the permissibility for certain joint coverage provisions under the ''individual policy'' requirement. OGC and the NCUA's Office of Examination and Insurance determined this broader interpretation was both within the NCUA's legal authority under the FCU Act and a safe and sound practice for FICUs. For clarity and ease of reference, the Board sought to incorporate the 2017 legal opinion into proposed part 713.

No commenters opposed this policy and several commenters supported it. The Board is finalizing this provision as proposed. Under the final rule, a FICU may have a fidelity bond that also covers its CUSO(s) if the FICU owns greater than 50 percent of a CUSO it wishes to cover, or a covered CUSO is organized by the FICU for the purpose of handling certain of its business transactions and composed exclusively of its employees. The 50 percent threshold reflects the standard for accounting consolidation under generally accepted accounting principles, or GAAP. A FICU directly benefits from any fidelity bond insurance proceeds collected by a consolidated CUSO.[23] This final rule, however, does not eliminate the prohibition against joint coverage of entities not majority owned by the FICU, such as other credit unions or non-majority-owned CUSOs. The Board believes this amendment will provide greater flexibility to FICUs without affecting safety and soundness.[24]

[22] OGC Legal Op. 04–0744 (Sep. 21, 2004).

[23] As discussed in the 2017 legal opinion, the NCUA has previously approved certain nominee provisions that included limited joint coverage. For example, a nominee provision may state that a loss sustained by any ''nominee'' organized by the insured for the purpose of handling certain of its business transactions and composed exclusively of its employees shall be deemed to be loss sustained by the insured.

[24] The final rule is not making a comparable amendment to Part 704. Corporate credit unions are not required to purchase fidelity bonds subject to an individual policy requirement. Therefore, the amendment to clarify the individual policy requirement is only applicable to natural person credit unions.

§ 713.4 What bond forms may a federally insured credit union use?

The current rule provides that the NCUA will maintain a current list of bond forms approved by the Board for use by FICUs. The rule also states that a FICU must obtain the approval of the Board before it can use any other basic bond form or any rider or endorsement that limits coverage of an approved bond form. The Board proposed to amend § 713.4 to make several changes to reflect the practices of the NCUA, clarify the list of documents that must have Board approval, and address the expiration and continuing review of approved bond forms. The Board received several comments that addressed the expiration and continuing review of approved bond forms. Those comments are discussed below. Other than the expiration of bond form approval, the Board did not receive any comments that generally discussed its approval of bond forms. Therefore, this section has generally been finalized as proposed. Any questions regarding the NCUA's approval of fidelity bond forms can be directed to the NCUA's OGC, (703) 518–6540.

4(a)

Current § 713.4(a) states that a current listing of basic bond forms that may be used without prior Board approval is on the NCUA's website. The proposed rule clarified this requirement by dividing paragraph (a) into two new paragraphs. The Board did not receive any comment on this section and is finalizing this provision as proposed. New paragraph (a) explicitly states that ''the NCUA Board must approve all bond forms before federally insured credit unions may use them.''

4(b)

Proposed paragraph (b) stated that approved bond forms are listed on the NCUA's website and may be used by a FICU without further NCUA approval. If a FICU is unable to access the NCUA's website, it can get a current listing of approved bond forms by contacting the NCUA at (703) 518–6330. The proposed rule rewrote this provision for clarity, but did not make any substantive changes. The Board did not receive any comment on this section and is finalizing it as proposed.

4(c)

Proposed paragraph (c) set forth which fidelity bonds and fidelity bond documents require Board approval. The Board is finalizing this paragraph as proposed.

4(c)(1)

The final rule clarifies that any bond form that has been amended or changed since the Board approved it requires new approval from the Board. The Board notes that this policy is the current practice whereby bond issuers submit amended bond forms to the Board for approval under current § 713.4(b)(1).

4(c)(2)

The final rule states explicitly that renewal forms (and any other document) that limit the coverage of approved bond forms must also receive Board approval. The Board is clarifying the list of documents subject to approval because the Board is aware of instances where the renewal or continuation of coverage forms included language affecting the bond coverage, including language that limited the bond coverage. As such, it is the Board's belief that the renewal form is an extension of the bond form and thus this is not an additional burden but further clarification of what constitutes the bond form.

4(d)

The proposed rule also added a new paragraph (d) to sunset its approval on all bond forms ten years after the form is approved. The impetus for this provision is the discovery that Board approved-bond forms were being interpreted in a way that was contrary to the NCUA's understanding of how the bond forms would be used. In addition, a review of previously approved bond forms, as part of issuing the 2017 legal opinion, revealed several instances of outdated provisions, additions that had not been approved by the Board, and some forms that contained provisions that were contrary to the FCU Act and part 713 of the NCUA's regulations. To avoid instances of this in the future, the Board proposed to sunset its approval of a bond form after a period of ten years. Commenters had mixed opinions on this provision. While several commenters supported the ten-year sunset, many other commenters expressed concerns about the ten-year sunset date. Specifically, two commenters associated with the insurance industry expressed concerns because form approval is already a complicated process as it involves state insurance regulators. The Board understands the complexity involved in the approval process, but is maintaining the ten-year sunset. The Board believes the sunset is necessary to ensure bond forms are up-to-date and continue to

provide adequate fidelity bond coverage for FICUs.

With respect to bond forms that the Board has approved before 2019, the Board proposed to allow its approval on these forms to continue until January 1, 2029. Several commenters expressed concerns about the NCUA's ability to reapprove bond forms, and particularly, reapprove all existing bond forms in 2029. Commenters believed that re-approval would be a resource-intensive process and suggested that the NCUA include qualifying language in case there is a delay and the NCUA has not reapproved all bond forms by their expiration date. The Board agrees that qualifying language is beneficial. Therefore, the final rule provides that approval for all existing bond forms sunsets after ten years unless otherwise determined by the NCUA Board.[25] The Board believes the addition of qualifying language provides reasonable flexibility while preserving its intent to sunset bond form approval after ten years.

Under the proposed rule, the ten-year approval period began on the date the Board approved a bond form. The proposed rule stated, however, that the ten-year period would not toll or start over if a bond carrier submits a revision to an approved bond form. One commenter believed that this is unnecessary and approval should always sunset ten years after a bond form is reviewed and approved. The Board has reconsidered and agrees with the commenter. Under the final rule, the Board's approval always sunsets ten years after a bond is reviewed and approved. The Board proposed to maintain the original sunset date because of concerns that a subsequent review may be targeted and not review the bond form in its entirety. To address this concern, under the final rule, a bond form will always be reviewed in its entirety.

The proposed rule also noted that should the Board determine, upon re-review, that a bond form does not comply with the NCUA's regulations, the Board would not require FICUs with coverage under that bond to seek new coverage. One commenter objected to this provision and believed that if the coverage is not adequate, new coverage should be required immediately. The Board is supportive of adequate fidelity bond coverage, but is concerned about the burden to a FICU if the contract is determined to be inadequate during the contract term. Therefore, under the final rule a FICU must only seek new coverage under an approved bond form after its current coverage expires per the terms of the contract between the FICU and the bond issuer.

The proposed rule also clarified that the Board may review a bond form at any time. The Board received no comment on this provision and is finalizing it as proposed.

§ 713.5–§ 713.7

The proposed rule used the term federally insured credit union instead of federal credit union in each of §§ 713.5, 713.6, and 713.7 for consistency and clarity. The Board did not receive any comment on these sections and is finalizing them as proposed.

Part 704

In general, part 704 applies to all federally insured corporate credit unions. Section 704.18 provides the fidelity bond requirements for such credit unions. Changes to the specific subparagraphs of § 704.18 are discussed below.

§ 704.18 Fidelity Bond Coverage

18(b)

The proposed rule amended current § 704.18(b) by dividing paragraph (b) into two subparts. Current paragraph (b) remained unchanged and was designated paragraph (b)(1). The proposed rule added a new paragraph as (b)(2). Proposed paragraph (b)(2) required that a corporate credit union's board of directors and supervisory committee review all applications for purchase or renewal of its fidelity bond coverage. After review, the corporate credit union's board was required to pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the corporate credit union, to sign the purchase or renewal agreement and all attachments. No board member was permitted to be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy. This proposed amendment was identical to proposed changes to Part 713 for natural person credit unions. The Board received significant comment on this proposed requirement. As compared to the proposed rule, the final rule does not require that the corporate credit union's supervisory committee review all applications for purchase or renewal. The Board is finalizing the remaining requirements of this paragraph as proposed. For additional background and a detailed discussion of comments received, see the previous discussion for changes to § 713.2(b).

18(c)

The proposed rule made significant revisions to current § 704.18(c). Section 704.18(c) was split into five new subparagraphs, each of which is described in more detail below.

18(c)(1)

The proposed rule stated that a corporate credit union's fidelity bond coverage must be purchased from a company holding a certificate of authority from the Secretary of the Treasury. This was not a substantive change from the current requirements and the proposed language was intended to reflect the comparable language in part 713. The Board did not receive any comment on this provision and is finalizing it as proposed.

18(c)(2)

Proposed § 704.18(c)(2) stated that fidelity bonds must provide coverage for the fraud and dishonesty of all employees, directors, officers, and supervisory and credit committee members. This was not a substantive change from the current requirements and the Board is finalizing this provision as proposed.

18(c)(3)

The proposed rule substantively amended the requirements for a corporate credit union's approved bond forms. The proposed requirements reflected the changes proposed for natural person credit unions in part 713. The proposed rule required the Board to approve all bond forms before a corporate credit union may use them. In addition, a corporate credit union could not use any bond form that had been amended since receiving Board approval, or any rider, endorsement, renewal, or other document that limited coverage of approved bond forms, without first receiving approval from the Board. As required under proposed part 713, approval of all bond forms expired 10 years after the date the Board approved or reapproved use of the bond form. Any currently approved bond forms would expire on January 1, 2029. The Board is finalizing this provision as proposed with one exception. As compared to the proposed rule, the final rule adds qualifying language to provide the Board flexibility to extend its approval of bond forms. For additional background, and a detailed discussion of comments, see the previous discussion for changes to § 713.4.

[25] The Board has added this flexibility both for the general ten-year sunset provision and for the 2029 sunset date for all currently approved bond forms.

18(c)(4)

The proposed rule added a new § 704.18(c)(4) to ensure that there is an adequate discovery period, the period to discover and file a claim, following a corporate credit union's liquidation. The proposed requirements reflected the changes proposed for natural person credit unions in part 713. The proposed rule required fidelity bonds to include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extended the discovery period for a covered loss for at least two years after liquidation. The Board is finalizing this provision as proposed with one substantive modification. The final rule requires only a one-year discovery period following an involuntary liquidation. In the case of a voluntary liquidation, under the proposed rule, fidelity bonds were required to remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets. The Board is finalizing this provision as proposed. For additional background and a detailed discussion of comments, see the previous discussion for changes to § 713.3(a)(3) and (4).

18(c)(5)

The current rule requires that corporate credit union bond forms include a provision requiring written notification by surety to the NCUA when a credit union's bond is terminated or when the coverage of an employee, director, officer, supervisory or credit committee member has been terminated. The NCUA also must be notified in writing by surety if a deductible is increased above permissible limits. The proposed rule did not include any amendments to these requirements. One commenter, however, objected to the existing requirements and stated that the corporate credit union, and not the insurer, should be responsible for providing the required notice. This comment is outside the scope of the proposed rule, but the Board notes that it continues to believe that the insurance company should notify the NCUA if any of the listed events occur.

IV. Regulatory Procedures

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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.

The burden outline in the preamble of the notice of proposed rulemaking did not include those associated with corporate credit unions. As with part 713, part 704 is being amended to require NCUA approval on all bond forms expired after a period of 10 years from the date of the NCUA approval or reapproved of its use. This information collection requirement is estimated to impact two corporate credit unions, for a total of two additional burden hours. This program change is reflected in the 19 total burden hours requested.

In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133–0170.

b. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The Board does not believe that the final rule has a significant economic impact on a substantial number of small entities. Any increased costs for the bond insurer to resubmit their forms every ten years is spread out among all FICUs and the cost to each FICU is negligible. In addition, after conducting research the Board believes that the requirement for bond forms to include a 12-month discovery period following liquidation will not result in any material additional cost or burden on FICUs. Finally, the requirement that boards must approve purchases and renewals would impose no direct cost on FICUs. Accordingly, the NCUA certifies that the final rule does not have a significant economic impact on a substantial number of small FICUs.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule does not have a 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. The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

d. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule does not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

e. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) generally provides for congressional review of agency rules.[26] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the APA.[27] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' [28] The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. OMB determined the final rule was not a major rule. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects in 12 CFR Parts 704 and 713

Bonds, Credit unions, Insurance.

By the National Credit Union Administration Board on July 18, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA is amending 12 CFR parts 704 and 713 as follows:

[26] 5 U.S.C. 801–804.

[27] 5 U.S.C. 551.

[28] 5 U.S.C. 804(2).

PART 704—CORPORATE CREDIT UNIONS

■ 1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

■ 2. Section 704.18 is amended by revising paragraphs (b) and (c) to read as follows:

§ 704.18 Fidelity bond coverage.

* * * * *

(b) *Review of bond coverage.* (1) The board of directors of each corporate credit union shall, at least annually, carefully review the bond coverage in force to determine its adequacy in relation to risk exposure and to the minimum requirements in this section.

(2) The board of directors of each corporate credit union must review all applications for purchase or renewal of its fidelity bond coverage. After review, the credit union's board must pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the credit union, to sign the purchase or renewal agreement and all attachments; provided, however, that no board members may be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy.

(c) *Minimum coverage; approved forms.* (1) The fidelity bond coverage must be purchased from a company holding a certificate of authority from the Secretary of the Treasury.

(2) Fidelity bonds must provide coverage for the fraud and dishonesty of all employees, directors, officers, and supervisory and credit committee members.

(3) The NCUA Board must approve all bond forms before a corporate credit union may use them. Corporate credit unions may not use any bond form that has been amended since the time the NCUA Board approved the form or any rider, endorsement, renewal, or other document that limits coverage of approved bond forms without receiving approval from the NCUA Board. Approval on all bond forms expires 10 years after the date the NCUA Board approved or reapproved use of the bond form unless otherwise determined by the NCUA Board; provided, however, that any bond forms approved before 2019 will expire on January 1, 2029, unless otherwise determined by the NCUA Board. The NCUA reserves the right to review a bond form at any point after its approval.

(4) Fidelity bonds must include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extends the discovery period for a covered loss for at least one year after liquidation. In the case of a voluntary liquidation, fidelity bonds must remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets.

(5) Notwithstanding the foregoing, all bonds must include a provision, in a form approved by the NCUA Board, requiring written notification by surety to NCUA:

(i) When the fidelity bond of a credit union is terminated in its entirety;

(ii) When fidelity bond coverage is terminated, by issuance of a written notice, on an employee, director, officer, supervisory or credit committee member; or

(iii) When a deductible is increased above permissible limits. Said notification shall be sent to NCUA and shall include a brief statement of cause for termination or increase.

* * * * *

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERALLY INSURED CREDIT UNIONS

■ 3. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

■ 4. The heading for part 713 is revised to read as set forth above.

■ 5. Revise § 713.1 to read as follows:

§ 713.1 What is the scope of this section?

This section provides the requirements for fidelity bonds for federally insured credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, etc., caused by persons outside the credit union. Federally insured, state-chartered credit unions are required by § 741.201 of this chapter to comply with the fidelity bond coverage requirements of this part. Corporate credit unions must comply with § 704.18 of this chapter in lieu of this part.

■ 6. Revise § 713.2 to read as follows:

§ 713.2 What are the responsibilities of a federally insured credit union's board of directors under this section?

(a) The board of directors of each federally insured credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potential risks facing the federally insured credit union and the minimum requirements set by the NCUA Board; and

(b) The board of directors of each federally insured credit union must review all applications for purchase or renewal of its fidelity bond coverage. After review, the federally insured credit union's board must pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the federally insured credit union, to sign the purchase or renewal agreement and all attachments; provided, however, that no board members may be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy.

■ 7. Revise § 713.3 to read as follows:

§ 713.3 What bond coverage must a federally insured credit union have?

(a) At a minimum, your bond coverage must:

(1) Be purchased in an individual policy from a company holding a certificate of authority from the Secretary of the Treasury;

(2) Cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members;

(3) Include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extends the discovery period for a covered loss for at least one year after liquidation; and

(4) In the case of a voluntary liquidation, remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets, as required in § 710.2(c) of this chapter.

(b) The requirement in subsection (a) of this section does not prohibit a federally insured credit union from having a fidelity bond that also covers its credit union service organization (CUSO(s)), provided the federally insured credit union owns more than 50 percent of the CUSO(s) or the CUSO(s) is organized by the federally insured credit union for the purpose of handling certain of its business transactions and composed exclusively of the federally insured credit union's employees.

■ 8. Revise § 713.4 to read as follows:

§ 713.4 What bond forms may a federally insured credit union use?

(a) The NCUA Board must approve all bond forms before federally insured credit unions may use them.

(b) Bond forms the NCUA Board has approved for use by federally insured credit union are listed on the NCUA's website, *http://www.ncua.gov,* and may be used by federally insured credit unions without further NCUA approval.

If you are unable to access the NCUA's website, you can obtain a current listing of approved bond forms by contacting the NCUA at (703) 518–6330.

(c) Federally insured credit unions may not use any of the following without first receiving approval from the NCUA Board:

(1) Any bond form that has been amended or changed since the time the NCUA Board approved the form; and

(2) Any rider, endorsement, renewal, or other document that limits coverage of approved bond forms.

(d) Approval on all bond forms expires after a period of 10 years from the date the NCUA Board approved or reapproved use of the bond form unless otherwise determined by the NCUA Board. Provided, however, that:

(1) Any bond forms approved before 2019 will expire on January 1, 2029, unless otherwise determined by the NCUA Board; and

(2) The NCUA reserves the right to review a bond form at any point after its approval.

§ 713.5 [Amended]

■ 9. In § 713.5:

■ a. In paragraphs (a) and (b), remove the word ''federal'' before the words ''credit union's'' and add in its place the words ''federally insured'' each place they appear;

■ b. In paragraph (c), add the words ''federally insured'' before the words ''credit union'', ''credit unions'', or ''credit union's'' each place they appear; and

■ c. In paragraph (e), remove the word ''your'' and add in their place the words ''a federally insured credit union's''

§ 713.6 [Amended]

■ 10. In § 713.6 remove the word ''federal'' before the words ''credit union's'' or ''credit unions'' and add the words ''federally insured'' before the words ''credit union's'', ''credit unions'', and ''credit union'' each place they appear.

■ 11. Revise § 713.7 to read as follows:

§ 713.7 May the NCUA Board require a federally insured credit union to secure additional insurance coverage?

The NCUA Board may require additional coverage when the NCUA Board determines that a federally insured credit union's current coverage is inadequate. The federally insured credit union must purchase this additional coverage within 30 days.

[FR Doc. 2019–15709 Filed 7–23–19; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

RIN 3133–AE79

Real Estate Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the agency's rule requiring real estate appraisals for certain transactions. The final rule accomplishes four objectives: Increasing the threshold below which appraisals are not required for commercial real estate transactions from $250,000 to $1,000,000; restructuring the rule to enhance clarity; exempting from the rule certain federally related transactions involving real estate in a rural area; and making conforming amendments to the definitions section.

DATES: The final rule is effective October 22, 2019.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Jeffrey Marshall, Program Officer, (703) 548–2415, Lou Pham, Senior Credit Specialist, (703) 548–2745, Office of Examination and Insurance, or *Legal information:* Rachel Ackmann, Staff Attorney, (703) 518–6540, Office of General Counsel, National Credit Union Administration, each at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI) [1] directs each federal financial institutions regulatory agency [2] to publish appraisal regulations for federally related transactions within its jurisdiction. In 1994, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (other banking agencies) established thresholds for all real estate-related financial transactions with a transaction value [3] of $250,000 or less, as well as certain real estate-secured business loans (qualifying business loans or QBLs) with a transaction value of $1 million or less.[4] Transactions below these established threshold levels were not required to have Title XI appraisals. QBLs are business loans [5] that are real estate-related financial transactions and that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.[6]

Thereafter, first in 1995 and again in 2001, the NCUA promulgated rules similar to those of the other banking agencies then in effect, eventually establishing a similar Title XI appraisal threshold level for most real estate-related transactions.[7] In particular, the rulemakings established that all real estate-related financial transactions with a transaction value [8] of $250,000 or less do not require appraisals.[9] The NCUA did not, however, adopt the separate exemption provided in the other banking agencies' appraisal regulations for QBLs with transaction values of $1 million or less. In addition, both residential and commercial real estate related financial transactions, not otherwise exempt from the appraisal rule, are subject to the $1 million threshold, which requires certified appraisals for all transactions with transaction values of $1 million or more.

B. The Other Banking Agencies 2017–2018 Rulemaking

In July 2017, the other banking agencies invited comment on a notice of proposed rulemaking (OBAs

[1] 12 U.S.C. 3331 *et seq.*

[2] ''Federal financial institutions regulatory agencies'' means the Board of Governors of the Federal Reserve System (Fed); the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

[3] For loans and extensions of credit, the transaction value is the amount of the loan or extension of credit. For sales, leases, purchases, investments in or exchanges of real property, the transaction value is the market value of the real property. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of each loan or the market value of each real property, respectively. *See* OCC: 12 CFR 34.42(n); Fed: 12 CFR 225.62(n); and FDIC: 12 CFR 323.2(n).

[4] *See* 59 FR 29482 (June 7, 1994); s*ee also* OCC: 12 CFR 34.43(a)(1) and (5); Fed: 12 CFR 225.63(a)(1) and (5); and FDIC: 12 CFR 323.3(a)(1) and (5).

[5] The other banking agencies' Title XI appraisal regulations define ''business loan'' to mean ''a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.'' OCC: 12 CFR 34.42(d); Fed: 12 CFR 225.62(d); and FDIC: 12 CFR 323.2(d).

[6] *See* OCC: 12 CFR 34.43(a)(5); Fed: 12 CFR 225.63(a)(5); and FDIC: 12 CFR 323.3(a)(5).

[7] *See* 60 FR 51889 (Oct. 4, 1995) *and* 66 FR 58656 (Nov. 23, 2001).

[8] Transaction value means, for loans or other extensions of credit, the amount of the loan or extension of credit, for sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property. 12 CFR 722.2(l).

[9] 12 CFR 722.3(a)(1).

commercial appraisal NPR)[10] that amended the other banking agencies' appraisal regulations promulgated pursuant to Title XI. Specifically, the OBAs commercial appraisal NPR increased the monetary threshold at or below which financial institutions that are regulated by the other banking agencies (regulated institutions) would not be required to obtain appraisals in connection with commercial real estate transactions (commercial real estate appraisal threshold) from $250,000 to $400,000. The other banking agencies consulted with the NCUA throughout the rule development process, and NCUA staff participated in interagency meetings and calls related to the rulemaking.

The OBAs commercial appraisal NPR followed the completion in early 2017 of the regulatory review process required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).[11] During the EGRPRA process, the other banking agencies received numerous comments related to the Title XI appraisal regulations, including recommendations to increase the thresholds at or below which transactions are exempt from the Title XI appraisal requirements. Among other proposals developed through the EGRPRA process, the other banking agencies recommended increasing the commercial real estate appraisal threshold to $400,000.[12]

The comment period for the OBAs commercial appraisal NPR closed on September 29, 2017.[13] The other banking agencies collectively received over 200 comments from appraisers, appraiser trade organizations, financial institutions, financial institutions trade organizations, and individuals. The other banking agencies issued a final rule in early 2018 (OBAs commercial appraisal final rule).[14] As compared to the OBAs commercial appraisal NPR, their final rule increased the commercial real estate appraisal threshold (non-QBLs) to $500,000 rather than the $400,000 proposed.

C. Economic Growth, Regulatory Relief, and Consumer Protection Act

On May 24, 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the EGRRCP Act) into law.[15] Section 103 of the EGRRCP Act amends Title XI to exempt from appraisal requirements certain federally related, rural real-estate transactions valued below $400,000 if no state-certified or state-licensed appraiser is available.[16] The exemption provided in the EGRRCP Act is self-implementing so credit unions may avail themselves of the statute's exemption immediately, provided the transaction meets all of the requirements under section 103.

D. NCUA's Proposed Rule

On October 3, 2018, the NCUA published a notice of proposed rulemaking (the proposed rule) to amend its appraisal regulation to, among other things, increase the threshold below which appraisals are not required for commercial real estate transactions from $250,000 to $1,000,000.[17] The proposed rule also would codify independence requirements for individuals providing written estimates of market value, incorporate the rural exemption under the EGRRCP Act, and make other clarifying amendments. The comment period closed on December 3, 2018.

E. Threshold for Residential Real Estate-Related Financial Transactions

In the other banking agencies' EGRPRA Report and commercial appraisal NPR, they addressed whether it would be appropriate to increase the current $250,000 threshold for transactions secured by residential real estate. The other banking agencies determined that it would not be appropriate to increase the residential threshold at that time based on three considerations. First, the other banking agencies observed that any increase in the threshold for residential transactions would have a limited impact on burden, as appraisals would still be required for the vast majority of these transactions pursuant to rules of other federal government agencies and the standards set by the government-sponsored enterprises (GSEs).[18]

Second, the other banking agencies determined that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the purchase price and the mortgage amount.[19] The consumer protection role of appraisals is reflected in amendments made to Title XI and the Truth in Lending Act (TILA)[20] through the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),[21] governing the scope of transactions requiring the services of a state-certified or state-licensed appraiser. These include the addition of the Consumer Financial Protection Bureau (CFPB) to the group of agencies assigned a role in the appraisal threshold-setting process for Title XI,[22] and a new TILA provision requiring appraisals for loans involving ''higher-risk mortgages.'' [23]

During the EGRPRA process, the staff of the other banking agencies conferred with the CFPB regarding comments the agencies received supporting an increase in the threshold for 1-to-4 family residential transactions. CFPB staff shared the view that appraisals can provide consumer protection benefits and their concern about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement.

Third, the other banking agencies considered safety and soundness concerns that could result from a threshold increase for residential transactions. As the EGRPRA Report

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[10] 82 FR 35478 (July 31, 2017).

[11] Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009–414, (1996) (codified at 12 U.S.C. 3311).

[12] *See* FFIEC, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act,* (March 2017), (EGRPRA Report), *available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[13] 82 FR 35478 (July 31, 2017).

[14] 83 FR 15019 (April 9, 2018).

[15] Public Law 115–174.

[16] *Id* at sec. 103.

[17] 83 FR 49857 (Oct. 3, 2018). For purposes of this final rule, the term commercial means a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property.

[18] Other federal government agencies involved in the residential mortgage market include the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture. These agencies, along with the GSEs (which are regulated by the Federal Housing Finance Agency (FHFA)), have the authority to set separate appraisal requirements for loans they originate, acquire, or guarantee, and generally require an appraisal by a certified or licensed appraiser for residential mortgages regardless of the loan amount.

[19] The agencies posited in the 1994 amendments to the Title XI appraisal regulations that the timing of the appraisal may provide limited consumer protection. Changes to consumer protection regulations since 1994 now ensure that a consumer receives a copy of appraisals and other valuations used by a creditor to make a credit decision at least three business days before consummation of the transaction (for closed-end credit) or account opening (for open-end credit). See 12 CFR 1002.14 (for business or consumer credit secured by a first lien on a dwelling).

[20] 15 U.S.C. 1601 *et seq.*

[21] Public Law 111–203, 124 Stat.1376.

[22] Dodd-Frank Act, Public Law 111–203, Title XIV, sec. 1473(a), 124 Stat. 2190 (2010), (codified at 12 U.S.C. 3341(b)).

[23] ''Higher-risk mortgages'' are certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage. See Dodd-Frank Act, Public Law 111–203, Title XIV, sec. 1471, 124 Stat. 2185 (2010), which added section 129H to TILA, (codified at 15 U.S.C. 1639h). See also Appraisals for Higher-Priced Mortgage Loans, 78 FR 78520 (Dec. 26, 2013) (interagency rule implementing appraisal requirements for higher-priced mortgage loans).

noted, the 2008 financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions. For these reasons, the other banking agencies concluded in the EGRPRA Report and in their commercial appraisal NPR that a change to the current $250,000 threshold for residential mortgage loans would not have been appropriate at that time.

Likewise, the Board did not propose increasing the appraisal threshold for residential real estate transactions in the proposed rule. The Board, however, specifically sought comment on whether the $250,000 threshold for residential transactions can and should be raised, consistent with consumer protection, safety and soundness, and the reduction of unnecessary regulatory burden. Generally, those commenters that supported the proposed threshold also supported a higher residential threshold and those commenters opposed to the threshold were also opposed to increasing the residential threshold. Most of the commenters who supported increasing the residential threshold made reference to the other banking agencies' recent proposal to increase their residential threshold to $400,000, as discussed more fully below.[24] A few credit unions recommended that the Board consider regional thresholds based on local housing markets. Those commenters against increasing the residential threshold generally reiterated the same three reasons discussed above for not raising the residential threshold.

As alluded to above, on December 7, 2018, the other banking agencies issued a notice of proposed rulemaking inviting comment on a proposed rule to amend their appraisal regulations to increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from $250,000 to $400,000 (OBAs residential appraisal NPR).[25] The OBAs residential appraisal NPR, consistent with the requirement for other transactions that fall below applicable thresholds and do not require an appraisal, would still require regulated institutions to obtain an evaluation of the real property collateral, in lieu of an appraisal, that is consistent with safe and sound banking practices. The OBAs residential appraisal NPR would also, pursuant to the Dodd-Frank Act, amend their appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).[26] Comments for the OBAs residential appraisal NPR were due by February 5, 2019.

At this time, the Board is considering the comments received and is continuing to evaluate whether it is appropriate to increase the threshold level below which appraisals would not be required for credit unions' residential real estate-related transactions from $250,000 to $400,000.

II. Legal Authority

Title XI directs each federal financial institutions regulatory agency to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of Title XI is to protect federal financial and public policy interests [27] in real estate-related transactions by requiring that real estate appraisals used in connection with federally related transactions (Title XI appraisals) be performed in accordance with uniform standards, by individuals whose competency has been demonstrated, and whose professional conduct will be subject to effective supervision.[28]

Title XI directs the NCUA to prescribe appropriate standards for Title XI appraisals under the NCUA's jurisdiction, including, at a minimum that Title XI appraisals be: (1) Performed in accordance with the USPAP; (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.[29] All federally related transactions must have Title XI appraisals.

Title XI defines a ''federally related transaction'' as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser.[30] A real estate-related financial transaction is defined as any transaction that involves: (i) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.[31]

The NCUA has authority to determine those real estate-related financial transactions that do not require the services of a state-certified or state-licensed appraiser and are therefore exempt from the appraisal requirements of Title XI. These real estate-related financial transactions are not federally related transactions under the statutory or regulatory definitions because they are not required to have Title XI appraisals.[32]

The NCUA has exercised this authority by exempting several categories of real estate-related financial transactions from the Title XI appraisal requirements.[33] The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safety and soundness.

In 1992, Congress amended Title XI, expressly authorizing the NCUA to establish a threshold level below which an appraisal by a state-certified or state-licensed appraiser is not required in connection with federally related transactions. The NCUA may establish a threshold level that the NCUA determines, in writing, does not represent a threat to the safety and soundness of credit unions.[34]

In the Dodd-Frank Act, Congress amended the threshold provision to

[24] 83 FR 63110 (Dec. 7, 2018).

[25] 83 FR 63110 (Dec. 7, 2018).

[26] USPAP is written and interpreted by the Appraisal Standards Board of the Appraisal Foundation. Adopted by Congress in 1989, USPAP contains generally recognized ethical and performance standards for the appraisal profession in the United States, including real estate, personal property, and business appraisals. *See http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af.*

[27] These interests include those stemming from the federal government's roles as regulator and deposit insurer of financial institutions that engage in real estate lending and investment, guarantor or lender on mortgage loans, and as a direct party in real estate-related financial transactions. These federal financial and public policy interests have been described in predecessor legislation and accompanying Congressional reports. *See* Real Estate Appraisal Reform Act of 1988, H.R. Rep. No. 100–1001, pt. 1, at 19 (1988); 133 Cong. Rec. 33047–33048 (1987).

[28] 12 U.S.C. 3331.

[29] 12 U.S.C. 3339. The NCUA's Title XI appraisal regulations apply to transactions entered into by the NCUA or by federally insured credit unions. 12 CFR 722.1(b).

[30] 12 U.S.C. 3350(4) (defining ''federally related transaction'').

[31] 12 U.S.C. 3350(5).

[32] See 59 FR 29482 (June 7, 1994).

[33] See 12 CFR 722.3(a). For example, the following transactions do not require an appraisal: (1) A lien on real estate has been taken for purposes other than the real estate's value; (2) a transaction that involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate; and (3) a lease of real estate is entered into, unless the lease is the economic equivalent of a loan.

[34] 12 U.S.C. 3341(b). See also, Housing and Community Development Act of 1992, Public Law 102–550, section 954, 106 Stat. 3894 (amending 12 U.S.C. 3341).

require concurrence ''from the [CFPB] that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [35] As noted above, transactions below the threshold level are exempt from the Title XI appraisal requirements and thus are not federally related transactions.

III. Final Rule and Public Comments on the Proposed Rule

The NCUA received 87 comment letters in response to its October 3, 2018 proposed rule. These comment letters were received from credit unions, credit union trade associations, state credit union leagues, appraisal companies, appraisal trade organizations, individuals, and other industry organizations.

In general, all of the comments received from appraisers, appraisal companies, appraisal trade organizations, and bank trade organizations objected to the proposed $1 million threshold for commercial real estate transactions. These commenters expressed concern that the proposal would reduce the safety and soundness of credit unions and would create an imbalance in the commercial real estate market between credit unions and banks, which are subject to a $500,000 threshold for general commercial (non-QBL) real estate transactions. In contrast, comments received from credit unions, credit union trade associations, and state credit union leagues generally supported the proposal. Almost all such commenters supported the proposed $1 million threshold for commercial real estate transactions and stated the proposed threshold would reduce regulatory burden, reduce member costs, and increase access to credit.

This final rule adopts the October 3, 2018 proposed rule with one material change; the final rule does not adopt the proposed modification to the exemption for existing extensions of credit. Accordingly, the final rule amends part 722–Appraisals of the NCUA's regulations to: (1) More clearly indicate when a written estimate of market value, an appraisal conducted by a state-licensed appraiser, or an appraisal conducted by a state-certified appraiser is required; (2) incorporate the relevant changes enacted by the EGRRCP Act; and (3) provide relief from appraisal requirements for commercial real estate-related financial transactions. In particular, the final rule establishes a new threshold of $1,000,000 or more for commercial real estate-related financial transactions. The new threshold for commercial real estate-related financial transactions represents a significant increase from the current level of $250,000.

Additionally, the NCUA is adding and removing various definitions in support of the changes and for improved clarity. Further, the final rule substantially reorganizes § 722.3 for ease of use.

These changes, along with related comments, are discussed in more detail below in the order in which they appear in the rule. In the Dodd-Frank Act, Congress amended the threshold provision to require ''concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [36] The Board has received concurrence from the CFPB that the commercial real estate appraisal threshold being adopted provides reasonable protection for consumers who purchase 1-to-4 unit single family residential properties.

Section 722.2 Definitions

The Board is amending the terms and definitions applicable to part 722. The final rule also makes technical, non-substantive amendments to section 722.2, including removing the individual numbering of the definitions within the section to make revisions to part 722 easier in the future. The following definitions are added, removed, or amended under this final rule:

Complex

The proposal included an amendment to current § 722.2(d) to remove the definition for *complex 1-to-4 family residential property appraisal* and replace it with the shorter term *complex.* The proposed definition for *complex* was similar to the current definition, but allowed the term to be used more broadly in conjunction with other amendments being made in § 722.3. One commenter recommended additional guidance or commentary on what attributes would constitute complex. The definition of complex remains substantively the same as the long-standing definition of complex 1-to-4 family residential property appraisal. Therefore, the Board does not believe further clarification is necessary.

Accordingly, § 722.2 provides that *complex,* when used in regard to a real estate-related financial transaction, means a transaction in which the property to be appraised, the form of ownership, or market conditions are atypical. The definition also states that a credit union may presume that appraisals of 1-to-4 family residential properties are not complex unless the institution has readily available information that a given appraisal will be complex. This presumption is in the current rule and its addition to the definition of *complex* is not a substantive change in policy. The presumption is moved from § 722.3(b)(3) as part of the overall restructuring of § 722.3.

Federal Financial Institutions Regulatory Agency

The proposed rule included a definition of *federal financial institutions regulatory agency* in response to changes to Title XI under the EGRRCP Act.[37] The Board did not receive any comments on the proposed definition and is finalizing the definition as proposed. Accordingly, consistent with the definition provided under Title XI, the final rule defines *federal financial institutions regulatory agency* as the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision.[38]

Real Estate or Real Property

The proposal included an amendment to current § 722.2(g) to add parentheses around the words ''or real property'' to help clarify for the reader that the terms *real estate* and *real property* can be used interchangeably and have the same meaning for purposes of part 722. No substantive change was intended by this technical amendment. The Board did not receive any comments on the proposed change and is finalizing it as proposed. Additionally, for consistency, the final rule uses the term real estate throughout the rule in place of the term real property.

Real Estate-Related Financial Transaction

The proposed rule included minor, non-substantive technical amendments to current § 722.2(h) and the definition of *real estate-related financial transaction.* In particular, the proposal replaced the words ''real property'' with the words ''real estate'' each place they occur within the definition for consistency. The Board did not receive any comments on the proposed change and is finalizing it as proposed.

[35] *Id.,* sec. 1473 (amending 12 U.S.C. 3341(b)).

[36] Public Law 111–203, 124 Stat.1376, § 1473, 124 Stat. 2190 (amending 12 U.S.C. 3341(b)).

[37] Public Law 115–174.

[38] 12 U.S.C. 3350(6).

Residential Real Estate Transaction

The proposal added a definition of the term *residential real estate transaction* to identify for the reader which federally related transactions are still subject to the $250,000 appraisal threshold. One commenter stated that the definition should be modified such that properties being constructed for resale or non-owner occupancy should not be classified as residential even if it is secured by a 1-to-4 family residential property. Under the other banking agencies' 2018 final rule, a loan that is secured by a single 1-to-4 family residential property, including a loan for construction, remains subject to the $250,000 threshold.[39] The NCUA is taking the same approach in its appraisal regulation by including any loan for construction of one, two, three, or four unit dwellings, including manufactured homes permanently affixed to the underlying land as a single 1-to-4 family residential property. Another commenter asked the Board to clarify that multifamily properties, those with five or more units, are not residential. The Board is therefore clarifying that multifamily properties are not residential. Accordingly, the final rule provides that a *residential real estate transaction* means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.[40]

Staff Appraiser

For clarity, the proposal added a definition of *staff appraiser,* which is a term currently used, but undefined, in § 722.5 of the regulation. The Board did not receive any comments on the proposed definition and is now finalizing it as proposed. Accordingly, section 722.2 of the final rule provides that staff appraiser means a state-certified or state-licensed appraiser that is an employee of the credit union.

Transaction Value

The proposed rule made minor, non-substantive technical amendments to current § 722.2(l) and the definition of *transaction value.* In particular, the proposal replaced the words ''real property'' with the words ''real estate'' each place they occur within the definition for consistency. The Board did not receive any comments on the proposed change and is finalizing it as proposed.

Section 722.3 Appraisals and Written Estimates of Market Value Requirements for Real Estate-Related Financial Transactions

The final rule amends current § 722.3 to increase the threshold level below which appraisals are not required for certain commercial real estate transactions, incorporates relevant changes under the EGRRCP Act, and reorganizes the section to make it easier to determine when an appraisal or written estimate of market value is required. Current § 722.3 provides the general requirement that all real estate-related financial transactions must have a state-certified or state-licensed appraisal unless the transaction qualifies for a listed exception. Under the current structure of this section, the NCUA believes that it is difficult for a reader to quickly determine whether a written estimate of market value or an appraisal performed by a state-licensed or state-certified appraiser is required. Commenters were generally in favor of the proposed formatting revisions. Accordingly, this final rule reorders current § 722.3 to help the reader more readily determine: (a) Whether the real estate-related financial transaction does or does not require an appraisal under part 722; (b) when an appraisal required under part 722 must be prepared by a state-certified appraiser; (c) when an appraisal required under part 722 may be prepared by either a state-certified or state-licensed appraiser; and (d) when only a written estimate of market value is required.

3(a) Real Estate-Related Financial Transactions Not Requiring an Appraisal

3(a)(1)–(6)

The final rule incorporates and updates the list of exempt transactions in current § 722.3(a)(1)–(9). As discussed in more detail below, § 722.3(a)(1)–(6) of the final rule retains many of the transactions currently exempted:

(a)(1). The proposed rule exempted a transaction that is not considered a ''new loan'' under generally accepted accounting principles (GAAP).[41] This exemption replaced current § 722.3(a)(5), which exempts certain existing extensions of credit. The Board believed these provisions were substantively similar, but proposed the modified exemption because the Board believed it would be more consistently implemented. The Board specifically sought comment on whether the current language of the regulation should be maintained. Credit union commenters had mixed opinions on whether the current or proposed language was preferable. Commenters in favor of the revision generally stated that the proposed language has less subjectivity and makes this exemption easier to implement. In contrast, commenters were opposed to the language for a variety of reasons. A few commenters believed that the GAAP definition is too complex and that the current standard is not too subjective. One commenter specifically stated that while the GAAP standard may be precise, it could require a complicated calculation that could lead to more errors than the current standard. A few commenters thought that the proposal reduced flexibility. These commenters stated that the current rule exempts a transaction involving an existing extension of credit under two separate prongs, but the proposal permitted the exemption under only a single scenario.

In response to the comments received, the final rule will not adopt the proposed language, and the Board will maintain the language in current § 722.3(a)(5). The Board proposed the new language to reduce burden and increase consistency among credit unions. As many credit unions did not view the proposed language as less burdensome, and some believed it would result in less consistency than the current language, the Board has declined to adopt it. Therefore, the Board will maintain the current exemption for existing extensions of

[39] Residential construction loans secured by more than one 1-to-4 family residential property are considered commercial real estate transactions subject to the higher threshold. 83 FR 15019 (April 9, 2018).

[40] A 1-to-4 family residential property is a property containing one, two, three, or four individual dwelling units, including manufactured homes permanently affixed to the underlying land (when deemed to be real property under state law).

[41] ASC 320–20–20: Lending, committing to lend, refinancing or restructuring loans, arranging standby letters of credit, syndicating loans, and leasing activities are lending activities. A loan is a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor's statement of financial position. Examples include but are not limited to accounts receivable (with terms exceeding one year) and notes receivable. This definition encompasses loans accounted for as debt securities. ASC 310–20–35–9: If the terms of the new loan resulting from a loan refinancing or restructuring other than a troubled debt restructuring are at least as favorable to the lender as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the lender, the refinanced loan shall be accounted for as a new loan. This condition would be met if the new loan's effective yield is at least equal to the effective yield for such loans and modifications of the original debt instrument are more than minor. Any unamortized net fees or costs and any prepayment penalties from the original loan shall be recognized in interest income when the new loan is granted. The effective yield comparison considers the level of nominal interest rate, commitment and origination fees, and direct loan origination costs and would also consider comparison of other factors where appropriate, such as compensating balance arrangements.

credit. Under the final rule, an appraisal is not required if the transaction involves an existing extension of credit provided that: (1) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or (2) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies.

The Board notes that a written estimate of market value is required for any real-estate related financial transaction that is exempt from appraisal requirements under paragraph (a)(1). This policy is consistent with the current rule. The *Interagency Appraisal and Evaluations Guidelines* (*Guidelines*) provides additional guidance on the requirement to provide a written estimate of market value.[42]

(a)(2). The proposed rule did not include any changes to paragraph (a)(2) other than the term real estate is used instead of real property. The Board is finalizing this provision as proposed.

(a)(3). The proposed rule did not include any changes to paragraph (a)(3).

(a)(4). The proposed rule did not include any changes to paragraph (a)(4).

(a)(5). The proposal moved current § 722.3(a)(6) to proposed § 722.3(a)(5), however, it did not make any substantive changes, and the Board is finalizing this provision as proposed.

(a)(6). The proposal moved current § 722.3(a)(8) to proposed § 722.3(a)(6), however, it did not make any substantive changes to this provision. The Board is finalizing this provision as proposed.

(a)(7) The final rule removes current § 722.3(a)(7). The final rule changes the appraisal and written estimate of market value requirements for real estate-related financial transactions that are fully or partially guaranteed by a U.S. government agency [43] or government-sponsored agency.[44] Under the current rule, any real estate-related financial transaction that is insured or guaranteed by a U.S. government agency or government-sponsored agency (regardless of whether the insurance or guarantee is for the full transaction value or only a part of the transaction value) are exempt from appraisal and written estimate of market value requirements. In contrast, under the proposed rule, there was no categorical exemption for such transactions. Instead, a real estate-related financial transaction that is insured or guaranteed by a U.S. government agency or government-sponsored agency is only exempt from appraisal and written estimate of market value requirements if the transaction value is less than $1 million and the transaction is fully insured or guaranteed. The Board specifically sought comment on this proposed change, and whether the current approach in the regulation should be maintained. A few commenters responded that the proposed change would not generally affect their use of such insurance or guarantee programs. One credit union trade organization stated that the proposal would contribute to regulatory burden without enhancing safety and soundness and stated that the NCUA did not present any evidence of safety and soundness concerns under the current rule.

A few other commenters expressed concerns about the exemption more generally. In particular, several commenters stated that GSE appraisal requirements are in flux and it is premature to make the proposed change at this time. Other commenters noted that not all government agencies require appraisals. Another commenter was concerned that one of the underlying reasons for the exemption, that other agencies require appraisals in such circumstances, are being eroded. This commenter noted that both the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have moved to waive appraisal requirements entirely for both purchase money mortgage transactions and refinance transactions.

The Board is finalizing this provision as proposed. Accordingly, transactions that are partially or fully guaranteed by a U.S. government agency or a sponsored agency are no longer categorical exemptions from the appraisal and written evaluation requirements of part 722. Instead, such transactions are subject to the $1 million threshold. The Board continues to believe that the new approach better aligns the appraisal and written estimate of market value requirements to the potential risk to the credit union, and preserves the borrower protection benefits appraisals provide. While this change varies somewhat from the respective provisions in the other banking agencies' rules, in practice, the Board does not expect this change to result in a material difference in appraisal requirements or burden, given that most U.S. government guaranty and insurance programs currently require appraisals.

Finally, one commenter asked that the Board clarify whether insured or guaranteed transactions are exempt from appraisal requirements if a loan is repurchased by a credit union. The Board is clarifying that generally a repurchase falls within paragraph (a)(5) under the final rule and is exempt from appraisal requirements.

(a)(9) The proposed rule removed current § 722.3(a)(9), which gave the Regional Director an option to grant a waiver from the appraisal requirement for a category of loans meeting the definition of a member business loan. One credit union commented that it has received previous waivers, but does not object to the proposed change and noted that the proposed threshold provided most of the permissions granted under the previous waiver. Two credit union trade organizations questioned the removal of the waiver provision. The provision is removed due to the increase for the commercial appraisal threshold to the requirement of $1 million or more. The Board no longer believes a waiver is necessary given the increase of this threshold. The Board is finalizing this provision as proposed.

3(b) Real Estate-Related Financial Transactions Requiring an Appraisal by a State-Certified Appraiser

Section 722.3(b) of the final rule identifies the real estate-related financial transactions for which an appraisal performed by a state-certified appraiser is required.

3(b)(1)

The proposed rule increased the threshold at which commercial real estate-related financial transactions are exempt from appraisal requirements from $250,000 to $1 million. Of the 87 comments received from the proposed rule, 66 were opposed to the proposed $1 million threshold and 21 supported the threshold. The majority of the comments opposed to the threshold were from appraisers, appraisal

[42] Interagency Appraisal and Evaluations Guidelines at 75 FR 77458 (Dec. 10, 2010). The other banking agencies have also recently issued Frequently Asked Questions that credit unions may find useful if they have additional questions. *See, Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines,* available at *https://www.fdic.gov/news/news/financial/2018/fil18062a.pdf* (Oct. 16, 2018). The *Guidelines* also provide additional information on loan workouts and restructuring.

[43] United States government agency means an instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government. U.S. government agency includes NCUA.

[44] United States government-sponsored agency means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

companies, appraisal trade organizations, and bank trade organizations. The majority of commenters in favor of the threshold were from credit unions, credit union trade associations, state credit union leagues, and other trade associations.

The majority of commenters opposed to the $1 million threshold expressed concern that the proposal increased risk for commercial real estate transactions. These commenters generally discussed that appraisals offer an important safety and soundness tool because appraisals provide an unbiased opinion on the value of collateral, and without this valuation, credit unions are exposed to increased risk. One commenter discussed that appraisals were an important safety and soundness standard during the last financial crisis. In contrast, a few commenters that supported the threshold believed that the proposal does not increase risk as credit unions would continue to use their judgement in deciding when, and if, appraisals are necessary. Another commenter stated that cash flow is the primary factor for the success of a commercial loan.

In addition to safety and soundness concerns, commenters also expressed strong opinions on the relationship of the proposed rule to the other banking agencies' 2018 final rule. Several commenters opposed to the proposed threshold expressed concern about an imbalance in the commercial real estate market that may be created between credit unions and banks. These commenters recommended that the Board adopt the same $500,000 threshold as the other banking agencies. Specifically, a state credit union league stated that a $500,000 threshold is appropriate as it would promote safe and sound lending practices, place credit unions on par with banks, and not expose the National Credit Union Share Insurance Fund to excessive risk. A credit union service organization (CUSO) also encouraged the Board to adopt the $500,000 threshold for general commercial exposures, but to incorporate the $1 million threshold for QBLs included in the other banking agencies' rules. In contrast, five commenters who supported the threshold stated that it increases parity with banks as banks benefit from the $1 million threshold for certain QBLs.

A few other commenters opposed to the proposed threshold stated that most commercial loans under $1 million are to small business owners. Those commenters generally stated that most small business owners are not experienced in commercial lending and benefit from the protection offered by appraisals. In contrast, other commenters stated that consumers benefit from increased access to credit and reduced costs under the proposed rule.

The NCUA has carefully considered the other banking agencies' commercial appraisal NPR [45] and final rule [46] regarding real estate appraisals. The Board also carefully considered whether changes to the threshold for requiring an appraisal by a state-certified appraiser are appropriate to reduce regulatory burden, while consistent with public policy interests and safety and soundness. Based on its supervisory experience and available data, the other risk mitigations incorporated into the final rule, and other regulatory requirements and supervisory expectations, the NCUA Board does not believe that the increased threshold poses a material threat to the safety and soundness of credit unions or creates undue risk to the National Credit Union Share Insurance Fund.

The Board also believes that the final rule benefits both members and credit unions as it reduces regulatory burden and may increase access to credit. The NCUA last modified the threshold for exempt transactions in 2001 and used the same threshold for both residential and commercial real estate.[47] Since 2001, the values of commercial property have increased and the current threshold requires credit unions to obtain Title XI appraisals on a larger proportion of commercial real estate transactions than in 2001. This increase in the number of appraisals required likely has contributed to the increased burden in time and cost described by some of the commenters. The Board believes that the final rule will reduce regulatory burden by providing credit unions greater flexibility in commercial lending. Additionally, the NCUA does not believe that given credit unions' limited origination of commercial mortgages that the final rule creates an imbalance in the commercial mortgage market.[48]

Therefore, the NCUA is finalizing the $1 million threshold as proposed. A more detailed analysis supporting this conclusion is provided below in the *Analysis of Higher Commercial Appraisal Threshold* section.

Under the final rule, an appraisal performed by a state-certified appraiser is required for transactions that are not exempt under paragraph (3)(a) and the transaction value is $1 million or more. This increases the threshold at which commercial real estate-related financial transactions are exempt from appraisal requirements from $250,000 to $1 million.

The Board notes this is the only provision in the final rule that requires an appraisal for commercial real estate transactions not otherwise exempt,[49] as current § 722.3(b)(2) is removed as part of the overall reorganization of § 722.3. For commercial real estate transactions with transaction values below $1 million, credit unions are able to use their judgment, consistent with safe and sound lending practices, to determine whether to use an appraisal or a written estimate of market value. This approach aligns with the other banking agencies' appraisal requirements for QBLs with a transaction value of $1 million or less.[50] This approach provides more flexibility, however, than the commercial real estate appraisal threshold for non-QBLs, which the other banking agencies established at $500,000 in their 2018 final rule.

(b)(2)

The final rule also requires an appraisal performed by a state-certified appraiser if the transaction is complex, involves residential real estate, and $250,000 or more of the transaction value is not insured or guaranteed by a U.S. government agency or government-sponsored agency.[51] An appraisal is not required if the transaction is otherwise exempt under paragraph (3)(a) or qualifies for the rural area exemption in paragraph (3)(f). This requirement is similar to the requirement in current § 722.3(b)(3) that complex residential transactions of $250,000 or more have appraisals performed by a state-certified appraiser. The substantive difference between current § 722.3(b)(3) and the final rule relates to transactions that are partially insured or guaranteed by a U.S. government agency or government-sponsored agency. Specifically, a complex residential real estate

[45] 82 FR 35478 (July 31, 2017).

[46] 83 FR 15019 (Apr. 9, 2018).

[47] 66 FR 58656 (Nov. 23, 2001).

[48] As of December 31, 2018 NCUA Call Report data, real-estate secured commercial loans and lines of credit total $64 billion and compose only 6.1 percent of total loans and leases at all federally insured credit unions. In contrast, Call Report data as of December 31, 2018 for FDIC institutions indicate real-estate secured commercial loans total $2.3 trillion and compose 23.0 percent of total loans and leases.

[49] Unless so required to address safety and soundness concerns under § 722.3(e).

[50] *See* 59 FR 29482 (June 7, 1994); *see also* OCC: 12 CFR 34.43(a)(1) and (5); Board of Governors of the Federal Reserve System: 12 CFR 225.63(a)(1) and (5); and FDIC: 12 CFR 323.3(a)(1) and (5).

[51] The final rule aligns all the dollar thresholds used as either the dollar amount ''or more'' (greater than or equal to), or ''less than'' the dollar amount. This ensures consistency within the regulation and with the relevant statutory requirements.

transaction that is partially insured or guaranteed by a U.S. government agency or government-sponsored agency, but has $250,000 or more of the transaction value not insured or guaranteed, is required to have a state-certified appraisal in the final rule. Such a transaction is exempt from appraisal requirements under the current rule. The Board is finalizing this section as proposed.

Finally, the Board is removing the clarifying statement in the proposed rule text that a credit union is not required to obtain an appraisal if the United States government agency or United States government-sponsored agency obtains an appraisal by a state-certified appraiser. The Board does not intend any substantive change and is only removing the statement upon further consideration that it is unnecessary. If a credit union gets a certified appraisal as part of a loan that is insured or guaranteed by a U.S. government agency or sponsored agency, then it has also met its obligations under the final rule.

§ 722.3(c) Real Estate-Related Financial Transactions Requiring an Appraisal by Either a State-Certified or State-Licensed Appraiser

3(c)(1)

The final rule requires an appraisal performed by a state-certified or state-licensed appraiser if the transaction is not complex, involves residential real estate, and $250,000 or more of the transaction value is not insured or guaranteed by a U.S. government agency or government-sponsored agency.[52] An appraisal is not required if the transaction is otherwise exempt under paragraph (3)(a) or qualifies for the rural area exemption in paragraph (3)(f). This requirement is consistent with the current rule that non-complex residential transactions of $250,000 or more require an appraisal from either a state-certified or state-licensed appraisal. The one substantive difference, which is discussed above, is the addition of certain transactions that are partially insured or guaranteed by a U.S. government agency or government-sponsored agency. For clarity, this requirement is explicit under the final rule, as opposed to implicitly through § 722.3(c), as in the current rule. The Board believes the final rule more clearly indicates when an appraisal conducted by a state-licensed appraiser or a state-certified appraiser is acceptable. The Board also notes that if a transaction requires a certified appraisal under paragraph (b)(1), but also could qualify for a licensed appraisal under paragraph (c), the credit union must obtain a certified appraisal. The Board is finalizing this section as proposed.

3(c)(2)

The final rule states that if, during the course of an appraisal of a residential real estate transaction performed by a state-licensed appraiser, factors are identified that result in the transaction meeting the definition of complex, then the credit union may either ask the state-licensed appraiser to complete the appraisal and have a state-certified appraiser approve and cosign the appraisal, or engage a state-certified appraiser to complete the appraisal. The Board notes that while a credit union is responsible for properly applying the complex transaction definition, the NCUA maintains interpretive authority with respect to the regulatory definition and may determine that a transaction is complex and requires an appraisal. The Board is finalizing this provision as proposed.

As in paragraph 3(b), the clarifying paragraph stating that a credit union is not required to obtain an appraisal if the United States government agency or United States government-sponsored agency obtains an appraisal has been removed.

§ 722.3(d) Real Estate-Related Financial Transactions Requiring a Written Estimate of Market Value

The final rule requires a written estimate of market value for any real estate-related financial transaction unless: (1) An appraisal performed by a state-certified or state-licensed appraiser was obtained; (2) the transaction is exempt from appraisal requirements under paragraphs (a)(2) through (6) of this section; or (3) the transaction is fully insured or guaranteed by a United States government agency or United States government-sponsored agency.

Proposed paragraph (d) has been finalized as proposed with one material exception; under the final rule, a written estimate of market value is required for existing extensions of credit that are exempt from appraisal requirements. As discussed above, this is consistent with the current rule. The change from the proposed rule reflects that the final rule did not adopt the proposed amendment to modify the exemption for existing extensions of credit to reference the GAAP definition of a new loan. Comments and the Board's consideration of the comments are more fully discussed below.

Most credit union-affiliated commenters did not comment on the written estimate of market value requirements, but a few did ask for clarifying information. A few credit unions asked for additional guidance on what is a safe and sound written estimate of market value. The Board notes that a safe and sound written estimate of market value contains sufficient information detailing the credit union's analysis, assumptions, and conclusions to support the credit decision. A written estimate of market value requires documentation of a property's market value. The term ''market value'' is defined under the appraisal rule and generally means the most probable price which a property should bring in a competitive and open market. To document a property's market value, a credit union must obtain and analyze appropriate available information, from multiple sources if practicable, to arrive at a valuation that is supported by property-specific and relevant market information. Additionally, a safe and sound written estimate of market value must be supported by a physical inspection of the property or any alternative method to confirm the property's condition, depending on transaction risks. Credit unions should refer to the *Guidelines* to develop policies and procedures for conducting written estimates of market value that are consistent with safety and soundness expectations.

The Board does not intend for valuation programs to be one size fits all, but rather risk-focused and commensurate with the complexity and nature of each credit union's real estate lending activities, risk profile, and business model. For example, a credit union that engages primarily in owner-occupied real estate lending in its local market area should tailor its valuation program to reflect the size and nature of the loans and collateral. In contrast, a credit union that engages in significant commercial real estate lending or large acquisition, development, and construction projects should tailor its valuation program for these types of higher risk transactions.

Additionally, credit unions should establish policies and procedures for determining when to obtain an appraisal for transactions that may otherwise permit a written estimate of market value, such as for a higher risk transaction. One commenter stated that this suggestion to get an appraisal for certain transactions, even when a written estimate of market value is permitted, should be written in more

[52] The final rule aligns all the dollar thresholds used as either the dollar amount ''or more'' (greater than or equal to), or ''less than'' the dollar amount. This ensures consistency within the regulation and with the relevant statutory requirements.

definitive language. The Board has not made any changes to the rule and believes that the current rule provides flexibility to credit unions to obtain appraisals even if they are not required, based on the specific risk factors for a transaction.

Several appraisers, appraisal companies, and appraisal trade associations commented on written estimates of market value. These commenters generally discussed that evaluators are not subject to state oversight requirements or enforcement actions, credit union employee evaluators may be biased, and written estimates are not subject to the Uniform Standards of Professional Appraisal Practice. Under the final rule, a person must be qualified and experienced to perform written estimates of market value for the type and amount of credit being considered. A credit union must ensure that the individual possesses the requisite education, expertise, and experience to competently complete the written estimate of market value. For example, to meet this standard a person could have experience selling real estate, lending, or have attended professional training in which they acquired knowledge and expertise necessary to value real estate. Credit unions should establish criteria to select, evaluate, and monitor evaluation providers to ensure their valuations sufficiently meet NCUA standards.

Under the final rule, the person conducting the written estimate of market value must be capable of rendering an unbiased opinion and be independent. Specifically, the person performing the written estimate cannot have a direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction. The final rule has also strengthened the independence requirements for persons performing written estimates of market value as compared to the current rule. The Board believes that an enhanced independence requirement for written estimates of market value is an important prudential safeguard, as the final rule permits commercial real estate transactions that are less than $1 million to have a written estimate of market value instead of a state-certified appraisal. Accordingly, under the final rule, the individual performing a written estimate of market value must be independent of the loan production and collection process. If independence cannot be achieved, the credit union must be able to demonstrate clearly that it has prudent safeguards to isolate its collateral valuation program from influence or interference from the loan production process and collection process.

One CUSO asked whether a loan officer, other than the one handling the loan, could perform written estimates of market value under the independence standards. The Board is clarifying that a loan officer other than the one handling the loan could provide the written estimate of market value, provided that this person is qualified and experienced, independent of and has no interests in that loan transaction, and there is a review of the valuation by a person independent of the loan production process. For example, if the only expertise in the credit union to conduct a valuation is with individuals in the loan production process, a loan officer that is not originating the loan could perform the valuation. However, in such a case, the loan officer's valuation would be reviewed by an individual that is independent of the loan production process. For example, someone in the credit union's supervisory committee could review the valuation. If adequate independence cannot be achieved internally, a credit union must engage a third party, such as an appraiser or real-estate broker, to provide for the written estimate of market value.

One commenter asked for additional information on what constitutes prudent safeguards for independence and asked if it is sufficient to eliminate the performance of written estimates from the reviewing officer's compensation. Under the final rule, persons who perform written estimates of market value cannot have direct or indirect or prospective interest, financial or otherwise, in the property or transaction. Additionally, the Board does not believe that one factor ensures independence across all credit unions. In contrast, the Board believes each credit union should take a comprehensive approach and consider its unique situation to ensure its collateral valuation is independent of influence from the loan production process.

In evaluating this final rule, the NCUA considered the impact to credit unions and borrowers. A couple of credit union commenters provided time and cost estimates of appraisals as evidence of borrowers' potential savings. Those commenters stated that commercial real estate appraisals generally cost between $2,000 and $5,000 and take between three to five weeks to receive. In contrast, a few commenters opposed to the proposal stated appraisals generally cost a few hundred dollars. Based on information from banking agency data, the cost of third-party evaluations of commercial real estate generally ranges from $500 to over $1,500, whereas the cost of appraisals of such properties generally ranges from $1,000 to over $3,000. Commercial real estate transactions with values above $250,000, but below $1 million (applicable transaction value range), are likely to involve smaller and less complex properties, and appraisals and written estimates of market value on such properties would likely be at the lower end of the cost range. This third-party pricing information suggests a savings of several hundred dollars per transaction. The NCUA also notes there is a greater pool of individuals qualified to conduct written estimates of market value than state-certified appraisers, particularly in rural areas, thereby reducing the associated time and costs.

In the proposed rule, the Board sought comment on whether the NCUA should establish a *de minimis* threshold for which written estimates of market value are not required. Seven credit unions and credit union trade organizations supported a *de minimis* threshold. Suggestions ranged between $25,000 and $100,000. One credit union thought the threshold should apply on a transaction-by-transaction basis, rather than be applicable to all transactions under the threshold. One appraisal trade organization did not support a *de minimis* threshold. The Board has determined not to adopt a *de minimis* threshold at this time as the Board believes further consideration is warranted. The Board is considering a requirement for credit unions to document a valuation for secured property even if a written estimate of market value is not required. The Board is also considering whether residential transactions should be treated the same as commercial transactions. Under the member business loan rule, transactions below $50,000 are generally exempt from the definition of commercial loan, and therefore exempt from the member business loan limit.[53] Accordingly, the Board believes there may be reason to exempt similarly sized loans under the appraisal rule. The Board also appreciates, however, that members who purchase residential properties with values below $50,000 may benefit from valuations of their real-estate related transaction. The Board is also in the process of determining whether credit unions originate a substantial volume of commercial transactions under $50,000 and whether a targeted *de minimus* exception would provide meaningful burden relief.

[53] 12 CFR 723.2.

§ 722.3(e) Appraisals To Address Safety and Soundness Concerns

The proposed rule did not include any amendments to the current requirement that the NCUA can require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns. Two commenters, however, objected to this provision as potentially expensive and burdensome. The EGRRCP Act refers to each agency's authority to require an appraisal whenever the agency believes it is necessary to address safety and soundness.[54] The Board interprets this reference as an important recognition of the safety and soundness benefits provided by this provision. The Board is not amending the current rule and believes this provision is an important prudential tool.

§ 722.3(f) Exemption From Appraisals of Real Property Located in Rural Areas

The final rule incorporates a new exemption that was included in the EGRRCP Act. Under this provision, transactions involving real estate or an interest in real estate located in a rural area are exempt from appraisal requirements if certain conditions are met. The exemption provided in the EGRRCP Act is self-implementing so credit unions may currently avail themselves of the statute's exemption. The Board only incorporated the exemption into part 722 for easier reference. This provision is being finalized as proposed.

The Board notes that if a transaction does not require an appraisal under § 722.3(f), a written estimate of market value may still be required under § 722.3(d).

Analysis of Higher Commercial Appraisal Threshold

Title XI expressly authorizes the agencies to establish a threshold level at or below which an appraisal by a state-certified or state-licensed appraiser is not required in connection with federally related transactions if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions.[55] The Board does not believe that increasing the threshold that commercial real estate transactions are exempt from Title XI appraisals represents a threat to the safety and soundness of credit unions as there are several factors that inherently mitigate the risk from commercial loans in the credit union system.

Under the Federal Credit Union Act, most credit unions are restricted to holding no more than 1.75 times the credit union's total net worth for member business loans.[56] The statutory ceiling of 1.75 times net worth limits risk for credit unions granting all forms of commercial loans, of which commercial real estate transactions are a subset. Therefore, increasing the threshold to $1 million does not pose the same safety and soundness risk to credit unions as it does to similarly situated banking organizations, which do not have the same commercial lending restrictions.

As of December 31, 2018 Call Report data, commercial loans represent only 4.9 percent of total assets and 43.3 percent of total net worth of federally insured credit unions. Comparatively, commercial loans represent 25.5 percent of total assets and 271.7 percent of tier one capital at institutions insured by the FDIC.[57]

Under the final rule, the increased threshold does not substantially reduce the total dollar amount of commercial real estate transactions that are subject to appraisal requirements. The NCUA used the CoStar Comps database [58] to estimate the dollar volume and number of commercial real estate transactions that are potentially exempt from obtaining an appraisal performed by a state-certified appraiser due to the increase in the threshold. The CoStar Comps database provides sales value data on specific commercial real estate transactions. While there are some limitations regarding use of the CoStar Comps database, as detailed below, the database contains information on sales values for individual transactions. Thus, it can be used to estimate the number and percentage of transactions that would become exempt under the threshold change.[59]

The CoStar Comps database contains data for transactions involving nonresidential commercial mortgages, multifamily, and land, and is derived from sales data and reflects the total transaction amount, as opposed to the loan amount. For purposes of this analysis, the NCUA included only financed transactions and assumed a loan-to-value ratio of 85 percent for nonresidential and multifamily commercial mortgages and a loan-to-value ratio of 65 percent for raw land transactions [60] to arrive at an estimated loan amount, which would be equivalent to the ''transaction value'' under the appraisal regulation. While the CoStar Comps database has some limitations for the purposes of evaluating the threshold increase,[61] it provides information that can be used to estimate the dollar volume and number of commercial real estate transactions that are potentially exempted by the threshold increase.

An analysis of the CoStar Comps database suggests that increasing the threshold to $1 million significantly increases the number of exempted commercial real estate transactions. The estimated percentage of commercial properties that are exempted from the appraisal requirement increases from 27 percent to 66 percent if the threshold were raised from $250,000 to $1 million. However, the estimated total dollar amount of commercial real estate transactions that are exempted is relatively small and does not expose credit unions to undue risk. The total dollar volume of loans for commercial properties would only increase from 1.8 percent to 13 percent. Exempting an additional 39 percent of commercial real estate transactions provides significant burden relief to credit unions, but still covers 75 to 90 percent of the total dollar volume of such transactions. This incremental risk can be controlled through sound risk management practices. In particular, the Board notes

[54] Public Law 115–174, sec. 103(d)(1).

[55] 12 U.S.C. 3341.

[56] Some credit unions are subject to one of several exemptions under the Federal Credit Union Act. *See* 12 U.S.C. 1757a(b).

[57] For commercial real estate transactions, the NCUA does not differentiate between QBL and non-QBL commercial transactions like the other banking agencies. Based on credit union Call Report data, the NCUA estimates that $17 billion of the $57 billion of commercial real estate loans in the credit union system would meet the definition of a QBL and be subject to a $1 million appraisal threshold under the rules for banks. Setting the threshold at $1 million provides relief for credit unions and a simplified standard.

[58] The CoStar Comps database is comprised of sales data involving commercial real estate properties. The agencies have limited their analysis to arms-length completed sales, where the price is provided. The agencies have also limited the sample to properties that were financed. Owner-occupied properties and sales of coops and condominiums were excluded. The sample was also limited to existing buildings. Land includes only raw land defined as land held for development or held for investment.

[59] This same analysis could not be performed using Call Report data because transactions reported for purposes of the Call Report are either reported in groupings of large value ranges or not reported by size at all.

[60] The Interagency Guidelines for Real Estate Lending provides that institutions' loan-to-value limits should not exceed 85 percent for loans secured by improved property and 65 percent for loans secured by raw land. *See* OCC: 12 CFR part 34, subpart D, appendix A; Fed: 12 CFR part 208, appendix C; FDIC: 12 CFR part 365, subpart A, appendix A.

[61] For example, the database tends to underrepresent sales of smaller properties and transactions in rural markets, and includes transactions that are not financed by depository institutions.

that written estimates of market value are generally required for such transactions not requiring an appraisal.[62]

The NCUA's analysis of data reported on the Call Report suggests that the threshold for requiring an appraisal conducted by a state-certified appraiser for commercial real estate transactions could be raised and be comparable to the risk that these transactions posed when the current threshold was imposed on commercial real estate transactions in 2002. According to Bank Call Report data, when the threshold for real estate-related financial transactions was raised for banks from $100,000 to $250,000 in 1994, approximately 18 percent of the dollar volume of all non-farm, non-residential (NFNR) loans reported by banks had original loan amounts of $250,000 or less. As of the fourth quarter of 2016, approximately 4 percent of the dollar volume of such loans had original loan amounts of $250,000 or less. The NCUA does not possess similar data for credit unions; however, this analysis generally suggests that a larger proportion of commercial real estate transactions now require appraisals than when the threshold was last established and, therefore, the threshold could be raised without unduly affecting the safety and soundness of credit unions.

Also, the Board notes that many variables beyond appraisal requirements, including market conditions and various loan underwriting and credit administration practices, affect an institution's loss experience. For credit unions, the $250,000 threshold has been applicable to commercial real estate transactions since March 2002. Analysis of supervisory information concerning losses on commercial real estate transactions suggests that faulty valuations of the underlying real estate collateral have not been a material cause of losses. In the last three decades, the banking industry suffered two crises in which poorly underwritten and administered commercial real estate loans were a key feature in elevated levels of loan losses, and bank and credit union failures.[63] Supervisory experience and a review of material loss reviews[64] covering those decades suggest that factors other than faulty appraisals were the cause(s) for an institution's loss experience. For example, larger acquisition, construction, and development[65] transactions were more likely to be troublesome. This is due to the lack of appropriate underwriting and administration of issues unique to larger properties, such as longer construction periods, extended ''lease up'' periods (the time required to lease a building after construction), and the more complex nature of the construction of such properties.

Additionally, effective January 1, 2017, NCUA implemented a modernized commercial lending regulation and supervisory program.[66] The regulation streamlined standards and established principles-based requirements that instill appropriate discipline. Also, the *Guidelines* provide regulated institutions, including credit unions, with guidance on establishing parameters for ordering Title XI appraisals for transactions that present significant risk, even if those transactions are eligible for written estimates of market value under the regulation. Regulated institutions, including credit unions, are encouraged to continue using a risk-focused approach when considering whether to order an appraisal for real estate-related financial transactions.

The NCUA believes statutory limits, combined with appropriate prudential and supervisory oversight, offset any potential risk that could occur by raising the appraisal threshold for commercial real estate-related transactions. Therefore, the Board concludes that increasing the commercial real estate appraisal threshold to $1 million does not pose a threat to safety and soundness.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of a rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The NCUA believes that the threshold increase will meaningfully reduce burden for small credit unions as the threshold for commercial appraisals is increased from $250,000 to $1 million. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133–0125.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.

[62] The Board notes that some transactions are exempt from written estimate of market value requirements. *See,* 12 CFR 722.3(d).

[63] *See, e.g.,* FDIC, *History of the Eighties—Lessons for the Future, Chapter 3: Commercial Real Estate and the Banking Crises of the 1980s and Early 1990s,* available at *https://www.fdic.gov/bank/historical/history/137_165.pdf;* FDIC, Office of the Inspector General, EVAL–13–002, *Comprehensive Study on the Impact of the Failure of Insured Depository Institutions* 50, Table 6 (January 2013), available at *https://www.fdicig.gov/reports13/13-002EV.pdf.*

[64] Section 38(k) of the FDI Act, as amended, provides that if the Deposit Insurance Fund incurs a ''material loss'' with respect to an IDI, the Inspector General of the appropriate regulator (which for the OCC is the Inspector General of the Department of the Treasury) shall prepare a report to that agency, identifying the cause of failure and reviewing the agency's supervision of the institution. 12 U.S.C. 1831o(k).

[65] Acquisition, development and construction refers to transactions that finance construction projects including land, site development, and vertical construction. This type of financing is typically recorded in the land or construction categories of the Call Report.

[66] 12 CFR part 721.

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) generally provides for congressional review of agency rules.[67] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the APA.[68] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' [69] The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The OMB determined that the rule is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 722

Appraisal, Appraiser, Credit unions, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

By the National Credit Union Administration Board on July 18, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 722 as follows:

PART 722—APPRAISALS

■ 1. The authority citation for part 722 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1789, and 3331 *et seq.* Section 722.3(a) is also issued under 15 U.S.C. 1639h.

■ 2. Revise § 722.2 to read as follows:

§ 722.2 Definitions.

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately-described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Complex means a transaction in which the property to be appraised, the form of ownership, or market conditions are atypical. A credit union may presume that appraisals of 1-to-4 family residential properties are not complex unless the institution has readily available information that a given appraisal will be complex.

Federal financial institutions regulatory agency means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision.

Federally related transaction means any real estate-related financial transaction entered into on or after August 9, 1990 that:

(1) The National Credit Union Administration, or any federally insured credit union, engages in or contracts for; and

(2) Requires the services of an appraiser.

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Real estate (or *real property*) means an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a parcel or tract of land, but does not include mineral rights, timber rights, and growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

Real estate-related financial transaction means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real estate, including interests in property, or the financing thereof; or

(2) The refinancing of real estate or interests in real estate; or

(3) The use of real estate or interests in property as security for a loan or investment, including mortgage-backed securities.

Residential real estate transaction means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

Staff appraiser means a State-certified or a State-licensed appraiser that is an employee of the credit union.

State-certified appraiser means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of a state or territory are inconsistent with title XI of FIRREA. The National Credit Union Administration may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

State-licensed appraiser means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The NCUA may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

Tract development means a project of five units or more that is constructed or is to be constructed as a single development.

Transaction value means:

[67] 5 U.S.C. 801–804.

[68] 5 U.S.C. 551.

[69] 5 U.S.C. 804(2).

(1) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(2) For sales, leases, purchases, and investments in or exchanges of real estate, the market value of the real estate interest involved; and

(3) For the pooling of loans or interests in real estate for resale or purchase, the amount of the loan or market value of the real estate calculated with respect to each such loan or interest in real estate.

■ 3. Revise § 722.3 to read as follows:

§ 722.3 Appraisals and written estimates of market value requirements for real estate-related financial transactions.

(a) *Real estate-related financial transactions not requiring an appraisal under this part.* Provided the transaction is not a ''higher-priced mortgage loan'' under 12 CFR 1026.35, which must meet separate appraisal requirements under section 129H of the Truth in Lending Act, 15 U.S.C. 1639h, an appraisal is not required for a real estate-related financial transaction in which:

(1) The transaction involves an existing extension of credit at the lending credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies;

(2) A lien on real estate has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real estate, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real estate interest met the requirements of this regulation, if applicable, at the time of origination; or

(6) The transaction either qualifies for sale to a United States government agency or United States government-sponsored agency, or involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

(b) *Real estate-related financial transactions requiring an appraisal by a state-certified appraiser.* An appraisal performed by a state-certified appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which:

(1) The transaction value is $1,000,000 or more; or

(2) The transaction is complex, involves a residential real estate transaction, $250,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government-sponsored agency, and the transaction does not meet the criteria in paragraph (f) of this section.

(c) *Real estate-related financial transactions requiring an appraisal by either a state-certified or state-licensed appraiser.* (1) An appraisal performed by a state-certified appraiser or a state-licensed appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which the transaction is not complex, involves a residential real estate transaction, $250,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government-sponsored agency, and the transaction does not meet the criteria in paragraph (f) of this section.

(2) If, during the course of an appraisal of a residential real estate transaction performed by a state-licensed appraiser, factors are identified that result in the transaction meeting the definition of complex, then the credit union may either:

(i) Ask the state-licensed appraiser to complete the appraisal and have a state-certified appraiser approve and cosign the appraisal; or

(ii) Engage a state-certified appraiser to complete the appraisal.

(d) *Real estate-related financial transactions requiring a written estimate of market value*—(1) *Applicability.* Any real estate-related financial transaction must be supported by a written estimate of market value, unless:

(i) An appraisal performed by a state-certified or state-licensed appraiser was obtained;

(ii) An appraisal is not required under paragraphs (a)(2) through (6) of this section; or

(iii) The transaction is fully insured or guaranteed by a United States government agency or United States government-sponsored agency.

(2) *Requirements.* All written estimates of market value required under this paragraph must be performed by an individual:

(i) Independent of the loan production and collection processes (if independence cannot be achieved, the credit union must be able to demonstrate clearly that it has prudent safeguards to isolate its collateral valuation program from influence or interference from the loan production process and collection process);

(ii) Having no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction; and

(iii) Qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) *Appraisals to address safety and soundness concerns.* The NCUA reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

(f) *Exemption from appraisals of real estate located in rural areas.* (1) Notwithstanding any other provision of law, an appraisal in connection with a federally related transaction involving real estate or an interest in real estate is not required if:

(i) The real estate or interest in real estate is located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A);

(ii) The transaction value is less than $400,000;

(iii) Any party involved in the transaction that meets the definition of mortgage originator must be subject to oversight by a Federal financial institutions regulatory agency; and

(iv) Not later than three days after the date on which the Closing Disclosure Form, made in accordance with 12 CFR parts 1024 and 1026, relating to the federally related transaction is given to the consumer, the credit union (or other party involved in the transaction that acts as the mortgage originator) or its agent, directly or indirectly:

(A) Has contacted not fewer than three state-certified appraisers or state-licensed appraisers, as applicable, on the credit union's (or other party involved in the transaction that acts as the mortgage originator) approved appraiser list in the market area in accordance with 12 CFR part 226; and

(B) Has documented that no state-certified appraiser or state-licensed appraiser, as applicable, was available within five business days beyond customary and reasonable fee and

timeliness standards for comparable appraisal assignments, as documented by the credit union (or other party involved in the transaction that acts as the mortgage originator) or its agent.

(2) A credit union (or other party involved in the transaction that acts as the mortgage originator) that makes a loan without an appraisal under the terms of paragraph (f)(1) of this section shall not sell, assign, or otherwise transfer legal title to the loan unless:

(i) The loan is sold, assigned, or otherwise transferred to another party by reason of the credit union's (or mortgage originator's) bankruptcy or insolvency;

(ii) The loan is sold, assigned, or otherwise transferred to another party regulated by a Federal financial institutions regulatory agency, so long as the loan is retained in portfolio by the other party;

(iii) The sale, assignment, or transfer is pursuant to a merger of the credit union (or mortgage originator) with another party or the acquisition of the credit union (or mortgage originator) by another party or of another party by the credit union (or mortgage originator); or

(iv) The sale, loan, or transfer is to a wholly owned subsidiary of the credit union (or mortgage originator), provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the credit union (or mortgage originator) under generally accepted accounting principles.

(3)(i) For purposes of this paragraph (f), the term *transaction value* means the amount of a loan or extension of credit, including a loan or extension of credit that is part of a pool of loans or extensions of credit; and

(ii) The term *mortgage originator* has the meaning given the term in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(4) This paragraph (f) does not apply if:

(i) The NCUA requires an appraisal under paragraph (e) of this section; or

(ii) The loan is a high-cost mortgage, as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

[FR Doc. 2019–15708 Filed 7–23–19; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0060; Airspace Docket No. 18–ASO–20]

RIN 2120–AA66

Removal of Area Navigation (RNAV) Route Q–106; Southern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes RNAV route Q–106 which extends between the SMELZ, FL, waypoint (WP) and the GADAY, AL, WP. With the implementation additional Q routes by the Florida Metroplex Q-route Project, the FAA has determined that Q–106 is no longer required.

DATES: Effective date 0901 UTC, October 10, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0060 in the **Federal Register** (84 FR 7308; March 4, 2019) removing RNAV route Q–106. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Area navigation routes are published in paragraph 2006, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The area navigation route listed in this document will be subsequently removed from the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing RNAV route Q–106 that extends between the SMELZ, FL, WP and the GADAY, AL, WP. With the implementation of additional Q routes in the Florida Metroplex Q-route Project (Docket No. FAA–2018–0437, 83 FR 54864; November 1, 2018), the FAA has determined that Q–106 is redundant and no longer required.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of removing RNAV route Q–106 between the SMELZ, FL, WP and the GADAY, AL, WP has no potential to cause any significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment. Therefore, this airspace action has been categorically excluded from further environmental impact review in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR parts 1500–1508, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006—United States Area Navigation Routes Q–106 [Removed]

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

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–15642 Filed 7–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9871]

RIN 1545–BM56

Allocation of Creditable Foreign Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations with respect to a provision of the Internal Revenue Code (Code) that addresses the allocation by a partnership of foreign income taxes. These regulations are necessary to improve the operation of an existing safe harbor rule that determines whether allocations of creditable foreign tax expenditures are deemed to be in accordance with the partners' interests in the partnership. The regulations affect partnerships that pay or accrue foreign income taxes and partners in such partnerships.

DATES:

Effective date: These regulations are effective on July 24, 2019.

Applicability dates: For dates of applicability, see § 1.704–1(b)(1)(ii)(*b*)(*1*).

FOR FURTHER INFORMATION CONTACT: Suzanne M. Walsh, (202) 317–6936 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2016, a notice of proposed rulemaking by cross-reference to temporary regulations (REG–100861–15) under section 704 of the Code and temporary regulations (T.D. 9748) (2016 temporary regulations) were published in the **Federal Register** at 81 FR 5966 and 81 FR 5908, respectively.

Section 1.704–1(b)(4)(viii) provides a safe harbor under which allocations of creditable foreign tax expenditures (''CFTEs'') are deemed to be in accordance with the partners' interests in the partnership. The 2016 temporary regulations revised the rules under this section to clarify the effect of section 743(b) adjustments on the determination of net income in a CFTE category. The 2016 temporary regulations also include special rules regarding how deductible allocations and nondeductible guaranteed payments (that is, allocations that give rise to a deduction under foreign law, and guaranteed payments that do not give rise to a deduction under foreign law) are taken into account for purposes of determining net income in a CFTE category. Finally, the 2016 temporary regulations include a clarification of the rules regarding the treatment of disregarded payments between branches of a partnership for purposes of determining income attributable to an activity included in a CFTE category.

A public hearing was not requested and none was held. However, the Department of the Treasury (''Treasury Department'') and the Internal Revenue Service (''IRS'') received a written comment in response to the notice of proposed rulemaking. After consideration of the comment, the proposed regulations under section 704 are adopted as amended by this Treasury decision. The revisions are discussed in this preamble.

Explanation of Revisions and Summary of Comments

The comment requested revising the regulations to provide that disregarded payments between CFTE categories are taken into account in computing the net income in a CFTE category. The comment argued that the placement of a disregarded payment rule in a paragraph that discusses attribution of income to an activity is potentially confusing and requested that the language be moved to the portion of the regulation that addresses the basic definition of activities and that in its place a statement be added providing that disregarded payments between CFTE categories will reduce net income

in one CFTE category and increase net income in the other category.

The Treasury Department and the IRS have determined the rule is clear as originally drafted in the 2016 temporary regulations. Income in a CFTE category is determined first by assigning items of income to activities. Activities are then grouped together in a CFTE category to the extent the income attributable to activities is allocated using the same allocation percentages. Section 1.704–1(b)(4)(viii)(*c*)(*3*). Disregarded payments are not taken into account in determining income assigned to an activity. However, if a partnership makes allocations to give economic regard to the disregarded payment, it can result in more than one allocation percentage being applied to income within the same activity. Section 1.704–1(b)(4)(viii)(*c*)(*3*)(*iv*). This will result in the activity being subdivided and the subdivided portions being assigned to different CFTE categories. See *Example 24* in § 1.704–1(b)(5)(xxiv). In other words, while the 2016 temporary regulations do not literally provide that a disregarded payment ''reduces'' the net income in a CFTE category in that case, the 2016 temporary regulations provide for a result similar to the result suggested by the comment by instead subdividing an activity and then assigning one sub-activity to a different CFTE category. This approach is more consistent with the fact that income items are determined based on regarded items and not disregarded items, including disregarded payments. These final regulations add a cross reference to the disregarded payment rule for assigning income to an activity in § 1.704–1(b)(4)(viii)(*c*)(*3*)(*iv*) in the paragraph that provides the basic definition of an activity to further highlight the interaction of those two paragraphs. See § 1.704–1(b)(4)(viii)(*c*)(*2*)(*iii*).

The 2016 temporary regulations unintentionally deleted § 1.704–1(b)(4)(viii)(*d*)(*1*)(*i*) and (*ii*). Those paragraphs are restored without change by these regulations. In order to comply with new **Federal Register** formatting requirements, *Examples 25, 36* and *37* in § 1.704–1T(b)(5) in the 2016 temporary regulations appear without further changes in § 1.704–1(b)(6)(i) through (iii) of these final regulations, *Examples 1, 2,* and *3,* respectively.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), the proposed rule preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Suzanne M. Walsh of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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 1.704–1 is amended as follows:

■ 1. In paragraph (b)(0):

■ i. Add a heading for the table.

■ ii. Revise the entries for § 1.704–1(b)(1)(ii)(*b*)(*1*), (b)(4)(viii)(*c*)(*1*) through (*4*), and (b)(4)(viii)(*d*)(*1*) and add an entry for § 1.704–1(b)(6) at the end of the table.

■ 2. Revise paragraph (b)(1)(ii)(*b*)(*1*).

■ 3. Redesignate paragraphs (b)(1)(ii)(*b*)(*3*)(*A*) and (*B*) as paragraphs (b)(1)(ii)(*b*)(*3*)(*i*) and (*ii*), respectively.

■ 4. Revise newly redesignated paragraph (b)(1)(ii)(*b*)(*3*)(*ii*) and paragraphs (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), and (b)(4)(viii)(*d*)(*1*).

■ 5. Add paragraph (b)(6).

The revisions and additions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(0) * * *

TABLE 1 TO PARAGRAPH (b)(0)

Heading	Section
* * * * * * *	*
In general	1.704–1(b)(1)(ii)(*b*)(*1*)
* * * * * * *	*
In general	1.704–1(b)(4)(viii)(*c*)(*1*)
CFTE category	1.704–1(b)(4)(viii)(*c*)(*2*)
Net income in a CFTE category	1.704–1(b)(4)(viii)(*c*)(*3*)
CFTE category share of income	1.704–1(b)(4)(viii)(*c*)(*4*)
* * * * * * *	*
In general	1.704–1(b)(4)(viii)(*d*)(*1*)
* * * * * * *	*
Examples	1.704–1(b)(6)

(1) * * *

(ii) * * *

(*b*) * * *

(*1*) *In general.* Except as otherwise provided in this paragraph (b)(1)(ii)(*b*)(*1*), the provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section (regarding the allocation of creditable foreign taxes) apply for partnership taxable years beginning on or after October 19, 2006. The rules that apply to allocations of creditable foreign taxes made in partnership taxable years

beginning before October 19, 2006 are contained in § 1.704–1T(b)(1)(ii)(*b*)(*1*) and (b)(4)(xi) as in effect before October 19, 2006 (see 26 CFR part 1 revised as of April 1, 2005). However, taxpayers may rely on the provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section for partnership taxable years beginning on or after April 21, 2004. The provisions of paragraphs (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), (b)(4)(viii)(*d*)(*1*), and *Examples 1, 2,* and *3* in paragraphs (b)(6)(i), (ii), and (iii) of this section apply for partnership taxable years that both begin on or after January 1, 2016, and end after February 4, 2016. For the rules that apply to partnership taxable years beginning on or after October 19, 2006, and before January 1, 2016, and to taxable years that both begin on or after January 1, 2016, and end on or before February 4, 2016, see § 1.704–1(b)(1)(ii)(*b*), (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), (b)(4)(viii)(*d*)(*1*), and (b)(5), *Example 25* (as contained in 26 CFR part 1 revised as of April 1, 2015).

* * * * *

(*3*) * * *

(*ii*) *Transition rule.* Transition relief is provided by this paragraph (b)(1)(ii)(*b*)(*3*)(*ii*) to partnerships whose agreements were entered into before February 14, 2012. In such cases, if there has been no material modification to the partnership agreement on or after February 14, 2012, then, for taxable years beginning on or after January 1, 2012, and before January 1, 2016, and for taxable years that both begin on or after January 1, 2012, and end on or before February 4, 2016, these partnerships may apply the provisions of § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) and (b)(4)(viii)(*d*)(*3*) (see 26 CFR part 1 revised as of April 1, 2011). For taxable years that both begin on or after January 1, 2016, and end after February 4, 2016, these partnerships may apply the provisions of § 1.704–1(b)(4)(viii)(*d*)(*3*) (see 26 CFR part 1 revised as of April 1, 2011). For purposes of this paragraph (b)(1)(ii)(*b*)(*3*), any change in ownership constitutes a material modification to the partnership agreement. The transition rule in this paragraph (b)(1)(ii)(*b*)(*3*)(*ii*) does not apply to any taxable year in which persons bearing a relationship to each other that is specified in section 267(b) or section 707(b) collectively have the power to amend the partnership agreement without the consent of any unrelated party (and all subsequent taxable years).

* * * * *

(4) * * *

(viii) * * *

(*a*) * * *

(*1*) The CFTE is allocated (whether or not pursuant to an express provision in the partnership agreement) to each partner and reported on the partnership return in proportion to the partners' CFTE category shares of income to which the CFTE relates; and

* * * * *

(*c*) *Income to which CFTEs relate*—(*1*) *In general.* For purposes of paragraph (b)(4)(viii)(*a*) of this section, CFTEs are related to net income in the partnership's CFTE category or categories to which the CFTE is allocated and apportioned in accordance with the rules of paragraph (b)(4)(viii)(*d*) of this section. Paragraph (b)(4)(viii)(*c*)(*2*) of this section provides rules for determining a partnership's CFTE categories. Paragraph (b)(4)(viii)(*c*)(*3*) of this section provides rules for determining the net income in each CFTE category. Paragraph (b)(4)(viii)(*c*)(*4*) of this section provides rules for determining a partner's CFTE category share of income, including rules that require adjustments to net income in a CFTE category for purposes of determining the partners' CFTE category share of income with respect to certain CFTEs. Paragraph (b)(4)(viii)(*c*)(*5*) of this section provides a special rule for allocating CFTEs when a partnership has no net income in a CFTE category.

(*2*) * * *

(*ii*) *Different allocations.* Different allocations of net income (or loss) generally will result from provisions of the partnership agreement providing for different sharing ratios for net income (or loss) from separate activities. Different allocations of net income (or loss) from separate activities generally will also result if any partnership item is shared in a different ratio than any other partnership item. A guaranteed payment described in paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section, gross income allocation, or other preferential allocation will result in different allocations of net income (or loss) from separate activities only if the amount of the payment or the allocation is determined by reference to income from less than all of the partnership's activities.

(*iii*) *Activity.* Whether a partnership has one or more activities, and the scope of each activity, is determined in a reasonable manner taking into account all the facts and circumstances. In evaluating whether aggregating or disaggregating income from particular business or investment operations constitutes a reasonable method of determining the scope of an activity, the principal consideration is whether the proposed determination has the effect of separating CFTEs from the related foreign income. Relevant considerations include whether the partnership conducts business in more than one geographic location or through more than one entity or branch, and whether certain types of income are exempt from foreign tax or subject to preferential foreign tax treatment. In addition, income from a divisible part of a single activity is treated as income from a separate activity if necessary to prevent separating CFTEs from the related foreign income, such as when income from divisible parts of a single activity is subject to different allocations. See, for example, paragraph (b)(4)(viii)(*c*)(*3*)(*iv*) of this section (special allocations related to disregarded payments can give rise to subdivision of an activity into divisible parts). A guaranteed payment, gross income allocation, or other preferential allocation of income that is determined by reference to all the income from a single activity generally will not result in the division of an activity into divisible parts. See *Example 22* in paragraph (b)(5)(xxii) of this section and *Example 1* in paragraph (b)(6)(i) of this section. The partnership's activities must be determined consistently from year to year absent a material change in facts and circumstances.

(*3*) *Net income in a CFTE category*—(*i*) *In general.* A partnership computes net income in a CFTE category as follows: First, the partnership determines for U.S. Federal income tax purposes all of its partnership items, including items of gross income, gain, loss, deduction, and expense, and items allocated pursuant to section 704(c). For the purpose of this paragraph (b)(4)(viii)(*c*)(*3*)(*i*), the items of the partnership are determined without regard to any adjustments under section 743(b) that its partners may have to the basis of property of the partnership. However, if the partnership is a transferee partner that has a basis adjustment under section 743(b) in its capacity as a direct or indirect partner in a lower-tier partnership, the partnership does take such basis adjustment into account. Second, the partnership must assign those partnership items to its activities pursuant to paragraph (b)(4)(viii)(*c*)(*3*)(*ii*) of this section. Third, partnership items attributable to each activity are aggregated within the relevant CFTE category as determined under paragraph (b)(4)(viii)(*c*)(*2*) of this

section in order to compute the net income in a CFTE category.

(*ii*) *Assignment of partnership items to activities.* The items of gross income attributable to an activity must be determined in a consistent manner under any reasonable method taking into account all the facts and circumstances. Except as otherwise provided in paragraph (b)(4)(viii)(*c*)(*3*)(*iii*) of this section, expenses, losses, or other deductions must be allocated and apportioned to gross income attributable to an activity in accordance with the rules of §§ 1.861–8 and 1.861–8T. Under the rules §§ 1.861–8 and 1.861–8T, if an expense, loss, or other deduction is allocated to gross income from more than one activity, such expense, loss, or deduction must be apportioned among each such activity using a reasonable method that reflects to a reasonably close extent the factual relationship between the deduction and the gross income from such activities. See § 1.861–8T(c). For the effect of disregarded payments in determining the amount of net income attributable to an activity, see paragraph (b)(4)(viii)(*c*)(*3*)(*iv*) of this section.

(*iii*) *Interest expense and research and experimental expenditures.* The partnership's interest expense and research and experimental expenditures described in section 174 may be allocated and apportioned under any reasonable method, including but not limited to the methods prescribed in §§ 1.861–9 through 1.861–13T (interest expense) and § 1.861–17 (research and experimental expenditures).

(*iv*) *Disregarded payments.* An item of gross income is assigned to the activity that generates the item of income that is recognized for U.S. Federal income tax purposes. Consequently, disregarded payments are not taken into account in determining the amount of net income attributable to an activity, although a special allocation of income used to make a disregarded payment may result in the subdivision of an activity into divisible parts. See paragraph (b)(4)(viii)(*c*)(*2*)(*iii*) of this section, *Example 24* in paragraph (b)(5)(xxiv) of this section, and *Examples 2* and *3* in paragraphs (b)(6)(ii) and (iii), respectively, of this section (relating to inter-branch payments).

(*4*) *CFTE category share of income*—(*i*) *In general.* CFTE category share of income means the portion of the net income in a CFTE category, determined in accordance with paragraph (b)(4)(viii)(*c*)(*3*) of this section as modified by paragraphs (b)(4)(viii)(c)(*4*)(*ii*) through (*iv*) of this section, that is allocated to a partner. To the extent provided in paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section, a guaranteed payment is treated as an allocation to the recipient of the guaranteed payment for this purpose. If more than one partner receives positive income allocations (income in excess of expenses) from a CFTE category, which in the aggregate exceed the total net income in the CFTE category, then such partner's CFTE category share of income equals the partner's positive income allocation from the CFTE category, divided by the aggregate positive income allocations from the CFTE category, multiplied by the net income in the CFTE category. Paragraphs (b)(4)(viii)(*c*)(*4*)(*ii*) through (*iv*) of this section require adjustments to the net income in a CFTE category for purposes of determining the partners' CFTE category share of income if one or more foreign jurisdictions impose a tax that provides for certain exclusions or deductions from the foreign taxable base. Such adjustments apply only with respect to CFTEs attributable to the taxes that allow such exclusions or deductions. Thus, net income in a CFTE category may vary for purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to different CFTEs within that CFTE category.

(*ii*) *Guaranteed payments.* Except as otherwise provided in this paragraph (b)(4)(viii)(*c*)(*4*)(*ii*), solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section, net income in the CFTE category from which a guaranteed payment (within the meaning of section 707(c)) is made is increased by the amount of the guaranteed payment that is deductible for U.S. Federal income tax purposes, and such amount is treated as an allocation to the recipient of such guaranteed payment for purposes of determining the partners' CFTE category shares of income. If a foreign tax allows (whether in the current or in a different taxable year) a deduction from its taxable base for a guaranteed payment, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, net income in the CFTE category is increased only to the extent that the amount of the guaranteed payment that is deductible for U.S. Federal income tax purposes exceeds the amount allowed as a deduction for purposes of the foreign tax, and such excess is treated as an allocation to the recipient of the guaranteed payment for purposes of determining the partners' CFTE category shares of income. See *Example 1* in paragraph (b)(6)(i) of this section.

(*iii*) *Preferential allocations.* To the extent that a foreign tax allows (whether in the current or in a different taxable year) a deduction from its taxable base for an allocation (or distribution of an allocated amount) to a partner, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, the net income in the CFTE category from which the allocation is made is reduced by the amount of the allocation, and that amount is not treated as an allocation for purposes of determining the partners' CFTE category shares of income. See *Example 1* in paragraph (b)(6)(i) of this section.

(*iv*) *Foreign law exclusions due to status of partner.* If a foreign tax excludes an amount from its taxable base as a result of the status of a partner, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, the net income in the relevant CFTE category is reduced by the excluded amounts that are allocable to such partners. See *Example 27* in paragraph (b)(5)(xxvii) of this section.

* * * * *

(*d*) *Allocation and apportionment of CFTEs to CFTE categories*—(*1*) *In general.* CFTEs are allocated and apportioned to CFTE categories in accordance with the principles of § 1.904–6. Under these principles, a CFTE is related to income in a CFTE category if the income is included in the base upon which the foreign tax is imposed. See *Examples 2* and *3* in paragraphs (b)(6)(ii) and (iii) of this section, respectively, which illustrate the application of this paragraph in the case of serial disregarded payments subject to withholding tax. In accordance with § 1.904–6(a)(1)(ii) as modified by this paragraph (b)(4)(viii)(*d*), if the foreign tax base includes income in more than one CFTE category, the CFTEs are apportioned among the CFTE categories based on the relative amounts of taxable income computed under foreign law in each CFTE category. For purposes of this paragraph (b)(4)(viii)(*d*), references in § 1.904–6 to a separate category or separate categories mean ''CFTE category'' or ''CFTE categories'' and the rules in § 1.904–6(a)(1)(ii) are modified as follows:

(*i*) The related party interest expense rule in § 1.904–6(a)(1)(ii) shall not apply

in determining the amount of taxable income computed under foreign law in a CFTE category.

(*ii*) If foreign law does not provide for the direct allocation or apportionment of expenses, losses or other deductions allowed under foreign law to a CFTE category of income, then such expenses, losses or other deductions must be allocated and apportioned to gross income as determined under foreign law in a manner that is consistent with the allocation and apportionment of such items for purposes of determining the net income in the CFTE categories for U.S. tax purposes pursuant to paragraph (b)(4)(viii)(*c*)(*3*) of this section.

* * * * *

(6) *Examples*—(i) *Example 1.* (*a*) A contributes $750,000 and B contributes $250,000 to form AB, a country X eligible entity (as defined in § 301.7701–3(a) of this chapter) treated as a partnership for U.S. Federal income tax purposes. AB operates business M in country X. Country X imposes a 20 percent tax on the net income from business M, which tax is a CFTE. In 2016, AB earns $300,000 of gross income, has deductible expenses of $100,000, and pays or accrues $40,000 of country X tax. Pursuant to the partnership agreement, the first $100,000 of gross income each year is specially allocated to A as a preferred return on excess capital contributed by A. All remaining partnership items, including CFTEs, are split evenly between A and B (50 percent each). The gross income allocation is not deductible in determining AB's taxable income under country X law. Assume that allocations of all items other than CFTEs are valid.

(*b*) AB has a single CFTE category because all of AB's net income is allocated in the same ratio. See paragraph (b)(4)(viii)(*c*)(*2*) of this section. Under paragraph (b)(4)(viii)(*c*)(*3*) of this section, the net income in the single CFTE category is $200,000. The $40,000 of taxes is allocated to the single CFTE category and, thus, is related to the $200,000 of net income in the single CFTE category. In 2016, AB's partnership agreement results in an allocation of $150,000 or 75 percent of the net income to A ($100,000 attributable to the gross income allocation plus $50,000 of the remaining $100,000 of net income) and $50,000 or 25 percent of the net income to B. AB's partnership agreement allocates the country X taxes in accordance with the partners' shares of partnership items remaining after the $100,000 gross income allocation. Therefore, AB allocates the country X taxes 50 percent to A ($20,000) and 50 percent to B ($20,000). AB's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the allocations of the CFTE category shares of income to which the country X taxes relate. Accordingly, the country X taxes will be reallocated according to the partners' interests in the partnership. Assuming that the partners do not reasonably expect to claim a deduction for the CFTEs in determining their U.S. Federal income tax liabilities, a reallocation of the CFTEs under paragraph (b)(3) of this section would be 75 percent to A ($30,000) and 25 percent to B ($10,000). If the reallocation of the CFTEs causes the partners' capital accounts not to reflect their contemplated economic arrangement, the partners may need to reallocate other partnership items to ensure that the tax consequences of the partnership's allocations are consistent with their contemplated economic arrangement over the term of the partnership.

(*c*) The facts are the same as in paragraph (b)(6)(i)(*a*) of this section, except that country X allows a deduction for the $100,000 allocation of gross income and, as a result, AB pays or accrues only $20,000 of foreign tax. Under paragraph (b)(4)(viii)(*c*)(*4*)(*iii*) of this section, the net income in the single CFTE category is $100,000, determined by reducing the net income in the CFTE category by the $100,000 of gross income that is allocated to A and for which country X allows a deduction in determining AB's taxable income. Pursuant to the partnership agreement, AB allocates the country X tax 50 percent to A ($10,000) and 50 percent to B ($10,000). This allocation is in proportion to the partners' CFTE category shares of the $100,000 net income. Accordingly, AB's allocations of country X taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii)(*a*) of this section.

(*d*) The facts are the same as in paragraph (b)(6)(i)(*c*) of this section, except that, in addition to $20,000 of country X tax, AB is subject to $30,000 of country Y withholding tax with respect to the $300,000 of gross income that it earns in 2016. Country Y does not allow any deductions for purposes of determining the withholding tax. As described in paragraph (b)(6)(i)(*b*) of this section, there is a single CFTE category with respect to AB's net income. Both the $20,000 of country X tax and the $30,000 of country Y withholding tax relate to that income and are therefore allocated to the single CFTE category. Under paragraph (b)(4)(viii)(*c*)(*4*)(*iii*) of this section, however, net income in a CFTE category is reduced by the amount of an allocation for which a deduction is allowed in determining a foreign taxable base, but only for purposes of applying paragraph (b)(4)(viii)(*a*) of this section to allocations of CFTEs that are attributable to that foreign tax. Accordingly, because the $100,000 allocation of gross income is deductible for country X tax purposes but not for country Y tax purposes, the allocations of the CFTEs attributable to country X tax and country Y tax are analyzed separately. For purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of the CFTEs attributable to the $20,000 tax imposed by country X, the analysis described in paragraph (b)(6)(i)(*c*) of this section applies. For purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of the CFTEs attributable to the $30,000 tax imposed by country Y, which did not allow a deduction for the $100,000 gross income allocation, the net income in the single CFTE category is $200,000. Pursuant to the partnership agreement, AB allocates the country Y tax 50 percent to A ($15,000) and 50 percent to B ($15,000). These allocations are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the partners' CFTE category shares of the $200,000 of net income in the category, which is allocated 75 percent to A and 25 percent to B under the partnership agreement. Accordingly, the country Y taxes will be reallocated according to the partners' interests in the partnership as described in paragraph (b)(6)(i)(*b*) of this section.

(*e*) If, rather than being a preferential gross income allocation, the $100,000 was a guaranteed payment to A within the meaning of section 707(c), the amount of net income in the single CFTE category of AB for purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs would be the same as in the fact patterns described in paragraphs (b)(6)(i)(*b*), (*c*), and (*d*) of this section. See paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section.

(ii) *Example 2.* (*a*) A, B, and C form ABC, an eligible entity (as defined in § 301.7701–3(a) of this chapter) treated as a partnership for U.S. Federal income tax purposes. ABC owns three entities, DEX, DEY, and DEZ, which are organized in, and treated as corporations under the laws of, countries X, Y, and Z, respectively, and as disregarded entities for U.S. Federal income tax purposes. DEX operates business X in country X, DEY operates business Y in country Y, and DEZ operates business Z in country Z. Businesses X, Y, and Z relate to the licensing and sublicensing of intellectual property owned by DEZ. During 2016, DEX earns $100,000 of royalty income from unrelated payors on which it pays no withholding taxes. Country X imposes a 30 percent tax on DEX's net income. DEX makes royalty payments of $90,000 during 2016 to DEY that are deductible by DEX for country X purposes and subject to a 10 percent withholding tax imposed by country X. DEY earns no other income in 2016. Country Y does not impose income or withholding taxes. DEY makes royalty payments of $80,000 during 2016 to DEZ. DEZ earns no other income in 2016. Country Z does not impose income or withholding taxes. The royalty payments from DEX to DEY and from DEY to DEZ are disregarded for U.S. Federal income tax purposes.

(*b*) As a result of these payments, DEX has taxable income of $10,000 for country X purposes on which $3,000 of taxes are imposed, and DEY has $90,000 of income for country X withholding tax purposes on which $9,000 of withholding taxes are imposed. Pursuant to the partnership agreement, all partnership items from business X, excluding CFTEs paid or accrued by business X, are allocated 80 percent to A and 10 percent each to B and C. All partnership items from business Y, excluding CFTEs paid or accrued by business Y, are allocated 80 percent to B and 10 percent each to A and C. All partnership items from business Z, excluding CFTEs paid or accrued by business Z, are allocated 80 percent to C and 10 percent each to A and B. Because only business X has items that are regarded for U.S. Federal income tax purposes (the

$100,000 of royalty income), only business X has partnership items. Accordingly A is allocated 80 percent of the income from business X ($80,000) and B and C are each allocated 10 percent of the income from business X ($10,000 each). There are no partnership items of income from business Y or Z to allocate.

(*c*) Because the partnership agreement provides for different allocations of partnership net income attributable to businesses X, Y, and Z, the net income attributable to each of businesses X, Y, and Z is income in separate CFTE categories. See paragraph (b)(4)(viii)(*c*)(*2*) of this section. Under paragraph (b)(4)(viii)(*c*)(*3*)(*iv*) of this section, an item of gross income that is recognized for U.S. Federal income tax purposes is assigned to the activity that generated the item, and disregarded inter-branch payments are not taken into account in determining net income attributable to an activity. Consequently, all $100,000 of ABC's income is attributable to the business X activity for U.S. Federal income tax purposes, and no net income is in the business Y or Z CFTE category. Under paragraph (b)(4)(viii)(*d*)(*1*) of this section, the $3,000 of country X taxes imposed on DEX is allocated to the business X CFTE category. The additional $9,000 of country X withholding tax imposed with respect to the inter-branch payment to DEY is also allocated to the business X CFTE category because for U.S. Federal income tax purposes the related $90,000 of income on which the country X withholding tax is imposed is in the business X CFTE category. Therefore, $12,000 of taxes ($3,000 of country X income taxes and $9,000 of the country X withholding taxes) is related to the $100,000 of net income in the business X CFTE. See paragraph (b)(4)(viii)(*c*)(*1*) of this section. The allocations of country X taxes will be in proportion to the CFTE category shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 80 percent to A and 10 percent each to B and C.

(iii) *Example 3.* (*a*) Assume that the facts are the same as in paragraph (b)(5)(ii)(*a*) of this section, except that in order to reflect the $90,000 payment from DEX to DEY and the $80,000 payment from DEY to DEZ, the partnership agreement treats only $10,000 of the gross income as attributable to the business X activity, which the partnership agreement allocates 80 percent to A and 10 percent each to B and C. Of the remaining $90,000 of gross income, the partnership agreement treats $10,000 of the gross income as attributable to the business Y activity, which the partnership agreement allocates 80 percent to B and 10 percent each to A and C; and the partnership agreement treats $80,000 of the gross income as attributable to the business Z activity, which the partnership agreement allocates 80 percent to C and 10 percent each to A and B. In addition, the partnership agreement allocates the country X taxes among A, B, and C in accordance with which disregarded entity is considered to have paid the taxes for country X purposes. The partnership agreement allocates the $3,000 of country X income taxes 80 percent to A and 10 percent to each of B and C, and allocates the $9,000 of country X withholding taxes 80 percent to B and 10 percent to each of A and C. Thus, ABC allocates the country X taxes $3,300 to A (80 percent of $3,000 plus 10 percent of $9,000), $7,500 to B (10 percent of $3,000 plus 80 percent of $9,000), and $1,200 to C (10 percent of $3,000 plus 10 percent of $9,000).

(*b*) In order to prevent separating the CFTEs from the related foreign income, the special allocations of the $10,000 and $80,000 treated under the partnership agreement as attributable to the business Y and the business Z activities, respectively, which do not follow the allocation ratios that otherwise apply under the partnership agreement to items of income in the business X activity, are treated as divisible parts of the business X activity and, therefore, as separate activities. See paragraph (b)(4)(viii)(*c*)(*2*)(*iii*) of this section. Because the divisible part of the business X activity attributable to the portion of the disregarded payment received by DEY and not paid on to DEZ ($10,000) and the net income from the business Y activity ($0) are both shared 80 percent to B and 10 percent each to A and C, that divisible part of the business X activity and the business Y activity are treated as a single CFTE category. Because the divisible part of the business X activity attributable to the disregarded payment paid to DEZ ($80,000) and the net income from the business Z activity ($0) are both shared 80 percent to C and 10 percent each to A and B, that divisible part of the business X activity and the business Z activity are also treated as a single CFTE category. See paragraph (b)(4)(viii)(*c*)(*2*)(*i*) of this section. Accordingly, $10,000 of net income attributable to business X is in the business X CFTE category, $10,000 of net income of business X attributable to the net disregarded payments of DEY is in the business Y CFTE category, and $80,000 of net income of business X attributable to the disregarded payment to DEZ is in the business Z CFTE category.

(*c*) Under paragraph (b)(4)(viii)(*d*)(*1*) of this section, the $3,000 of country X tax imposed on DEX's income is allocated to the business X CFTE category. Because the $90,000 on which the country X withholding tax is imposed is split between the business Y CFTE category and the business Z CFTE category, those withholding taxes are allocated on a pro rata basis, $1,000 [$9,000 x ($10,000/$90,000)] to the business Y CFTE category and $8,000 [$9,000 x ($80,000/$90,000)] to the business Z CFTE category. See paragraph (b)(4)(viii)(*d*)(*1*) of this section. To satisfy the safe harbor of paragraph (b)(4)(viii) of this section, the $3,000 of country X taxes allocated to the business X CFTE category must be allocated in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to A and 10 percent each to B and C. The allocation of the $1,000 of country X withholding taxes allocated to the business Y CFTE category would be in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to B and 10 percent each to A and C. The allocation of the $8,000 of country X withholding taxes allocated to the business Z CFTE category would be in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to C and 10 percent each to A and B. Thus, to satisfy the safe harbor, ABC must allocate the country X taxes $3,300 to A (80 percent of $3,000 plus 10 percent of $1,000 plus 10 percent of $8,000), $1,900 to B (10 percent of $3,000 plus 80 percent of $1,000 plus 10 percent of $8,000), and $6,800 to C (10 percent of $3,000 plus 10 percent of $1,000 plus 80 percent of $8,000).

(*d*) ABC's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the partners' CFTE category shares of income to which the country X taxes relate. Accordingly, the country X taxes will be reallocated according to the partners' interests in the partnership.

* * * * *

■ **Par. 3.** Section 1.704–1T is amended by:

■ 1. Removing reserved paragraphs (a) through (b)(1)(ii)(*a*), paragraph (b)(1)(ii)(*b*), and reserved paragraphs (b)(1)(iii) through (b)(2)(iv)(*f*)(*5*).

■ 2. Adding paragraphs (a), (b)(1), and (b)(2) introductory text and reserved paragraphs (b)(2)(i) through (b)(2)(iv)(*e*) and (b)(2)(iv)(*f*)(*1*) through (*5*).

■ 3. Removing reserved paragraphs (b)(2)(iv)(*g*) through (b)(4)(viii)(*a*) introductory text, paragraph (b)(4)(viii)(*a*)(*1*), reserved paragraphs (b)(4)(viii)(*a*)(*2*) through (b)(4)(viii)(*b*), paragraph (b)(4)(viii)(*c*), paragraph (b)(4)(viii)(*d*) heading, paragraph (b)(4)(viii)(*d*)(*1*), reserved paragraphs (b)(4)(viii)(*d*)(*1*)(*i*) through (b)(5) *Example 24,* paragraphs (b)(5) *Examples 24* through *37,* and reserved paragraphs (c) through (e).

■ 4. Adding paragraph (b)(2)(iv)(*g*), reserved paragraphs (b)(2)(iv)(*h*) through (*s*), paragraph (b)(3), reserved paragraphs (b)(4) through (6), paragraph (c), and reserved paragraphs (d) through (e).

■ 5. Removing paragraph (g).

The additions read as follows:

§ 1.704–1T Partner's distributive share (temporary).

(a) For further guidance, see § 1.704–1(a).

(b)(1) For further guidance, see § 1.704–1(b)(1).

(2) For further guidance, see § 1.704–1(b)(2)(i) through (b)(2)(iv)(*f*)(*5*).

(i) through (iii) [Reserved]

(iv)(*a*) through (*e*) [Reserved]
(*f*)(*1*) through (*5*) [Reserved]
* * * * *
(*g*) For further guidance, see § 1.704–1(b)(2)(iv)(*g*) through (*s*).
(*h*) through (*s*) [Reserved]
(3) For further guidance, see § 1.704–1(b)(3) through (6).
(4) through (6) [Reserved]
(c) For further guidance, see § 1.704–1(c) through (e).
(d) through (e) [Reserved]
* * * * *

Approved: May 30, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–15362 Filed 7–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2019–0482]

2019 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between April 2019 and June 2019, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Deborah Thomas, Office of Regulations and Administrative Law, telephone (202) 372–3864.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between April 2019 and June 2019 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2012–1036	Special Local Regulations (Part 100)	Hartford, CT	10/1/2017
USCG–2012–1036	Safety Zones (Parts 147 and 165)	Oakdale, NY	11/24/2018
USCG–2018–1118	Security Zones (Part 165)	San Pedro, California	3/21/2019
USCG–2019–0165	Special Local Regulations (Part 100)	San Diego, CA	4/6/2019
USCG–2019–0110	Safety Zones (Parts 147 and 165)	Charleston, SC	4/6/2019
USCG–2019–0228	Security Zones (Part 165)	Corpus Christi, TX	4/10/2019
USCG–2019–0170	Safety Zones (Parts 147 and 165)	Saline City, MO	4/14/2019
USCG–2019–0280	Safety Zones (Parts 147 and 165)	Peoria, IL	4/19/2019
USCG–2019–0225	Special Local Regulations (Part 100)	Tiburon, CA	4/28/2019
USCG–2019–0226	Special Local Regulations (Part 100)	San Francisco, CA	4/28/2019
USCG–2019–0286	Safety Zones (Parts 147 and 165)	Milwaukee, WI	4/30/2019
USCG–2019–0184	Safety Zones (Parts 147 and 165)	Key West, FL	5/4/2019
USCG–2019–0030	Safety Zones (Parts 147 and 165)	Point Comfort, TX	5/4/2019
USCG–2019–0341	Safety Zones (Parts 147 and 165)	Jacksonville, FL	5/7/2019
USCG–2019–0181	Safety Zones (Parts 147 and 165)	Seattle, WA	5/9/2019
USCG–2019–0318	Safety Zones (Parts 147 and 165)	Savannah, GA	5/16/2019
USCG–2019–0360	Special Local Regulations (Part 100)	Philadelphia, PA	5/17/2019
USCG–2019–0381	Security Zones (Part 165)	Corpus Christi, TX	5/17/2019

Docket No.	Type	Location	Effective date
USCG–2019–0162	Safety Zones (Parts 147 and 165)	Orange, TX	5/18/2019
USCG–2019–0237	Security Zones (Part 165)	New London, CT	5/22/2019
USCG–2019–0342	Safety Zones (Parts 147 and 165)	Miami Beach, FL	5/24/2019
USCG–2019–0327	Safety Zones (Parts 147 and 165)	Detroit Zone	5/26/2019
USCG–2019–0297	Safety Zones (Parts 147 and 165)	San Francisco, CA	5/28/2019
USCG–2019–0424	Safety Zones (Parts 147 and 165)	Morgan City, LA	5/29/2019
USCG–2019–0429	Safety Zones (Parts 147 and 165)	Chattanooga, TN	5/30/2019
USCG–2019–0320	Safety Zones (Parts 147 and 165)	Lower Township, NJ	6/2/2019
USCG–2019–0405	Security Zones (Part 165)	Portland, OR	6/6/2019
USCG–2019–0401	Security Zones (Part 165)	Corpus Christi, TX	6/6/2019
USCG–2019–0439	Security Zones (Part 165)	Corpus Christi, TX	6/7/2019
USCG–2012–1036	Special Local Regulations (Part 100)	Port Long Island Zone	6/8/2019
USCG–2019–0485	Security Zones (Part 165)	Christi, TX	6/12/2019
USCG–2019–0301	Safety Zones (Parts 147 and 165)	Owensboro, KY	6/15/2019
USCG–2019–0406	Safety Zones (Parts 147 and 165)	East Liverpool, OH	6/15/2019
USCG–2019–0281	Safety Zones (Parts 147 and 165)	Tiburon, CA	6/15/2019
USCG–2019–0494	Safety Zones (Parts 147 and 165)	Grand Marais, MI	6/15/2019
USCG–2019–0522	Security Zones (Part 165)	Miami, FL	6/18/2019
USCG–2019–0333	Special Local Regulations (Part 100)	New York City, NY	6/20/2019
USCG–2019–0182	Safety Zones (Parts 147 and 165)	Brookport, IL	6/25/2019
USCG–2019–0559	Safety Zones (Parts 147 and 165)	Port Sault Ste Marie Zone	6/27/2019
USCG–2019–0553	Safety Zones (Parts 147 and 165)	Milwaukee, WI	6/29/2019
USCG–2019–0373	Safety Zones (Parts 147 and 165)	Seattle, WA	6/29/25019

Dated: July 19, 2019.

M.W. Mumbach,

Acting Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2019–15693 Filed 7–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0554]

Safety Zone; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone between mile marker (MM) 95.5 and MM 94.5 above Head of Passes, Lower Mississippi River, LA. This action is necessary to provide for the safety of life on these navigable waters near New Orleans, LA, during a fireworks display on November 22, 2019. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.845 will be enforced from 5:45 p.m. through 6:45 p.m. on November 22, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Commander Corinne Plummer, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Corinne.M.Plummer@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone located in 33 CFR 165.845 for the New Orleans Tourism and Marketing Corporation (NOTMC) firework display event. The regulations will be enforced from 5:45 p.m. through 6:45 p.m. on November 22, 2019. This action is being taken to provide for the safety of life on navigable waterways during this event, which will be located between mile marker (MM) 95.5 and MM 94.5, above Head of Passes, Lower Mississippi River, LA. During the enforcement period, if you are the operator of a vessel in the regulated area, you must comply with directions from Captain of the Port Sector New Orleans or a designated representative.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: July 19, 2019.

K.M. Luttrell,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2019–15698 Filed 7–23–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0179; FRL–9995–63]

Sulfoxaflor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfoxaflor in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) and Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 24, 2019. Objections and requests for hearings must be received on or before September 23, 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–2018–0179, 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–2018–0179 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 September 23, 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–2018–0179, 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 Tolerances

In the **Federal Register** of April 23, 2014 (79 FR 22602) (FRL–9907–39), 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 4F8237) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested to establish tolerances in 40 CFR part 180 for residues of the insecticide, sulfoxaflor (*N*-[methyloxido[1-[6-(trifluoromethyl)-3-pyridinyl]ethyl]-λ^4-sulfanylidene]cyanamide), in or on alfalfa, forage at 7 parts per million (ppm); alfalfa, hay at 20 ppm; alfalfa, seed at 30 ppm; alfalfa, silage at 9 ppm; animal feed, non-grass, group 18, forage at 15 ppm; animal feed, non-grass, group 18, hay at 20 ppm; animal feed, non-grass, group 18, silage at 9 ppm; buckwheat, forage at 1 ppm; buckwheat, grain at 0.08 ppm; buckwheat, hay at 1.5 ppm; buckwheat, straw at 2 ppm; cacao bean, dried bean at 0.15 ppm; clover forage at 15 ppm; clover hay at 20 ppm; clover silage at 8 ppm; corn, field, forage at 0.5 ppm; corn, field, grain at 0.015 ppm; corn, field, stover at 0.8 ppm; corn, pop at 0.015 ppm; corn, pop, stover at 0.8 ppm; corn, sweet, at 0.01 ppm; corn, sweet, forage at 0.6 ppm; corn, sweet, stover at 0.7 ppm; millet, forage at 0.4 ppm; millet, grain at 0.3 ppm; oat, grain at 0.4 ppm; oat, hay at 1 ppm; oat, straw at 2 ppm; pineapple at 0.09 ppm; rye, forage at 1 ppm; rye, grain at 0.08 ppm; rye, hay at 1.5 ppm; rye, straw at 2 ppm; sorghum, forage at 0.4 ppm; sorghum, grain at 0.3 ppm; sorghum, stover at 0.9 ppm; teff, forage at 1 ppm; teff, grain at 0.08 ppm; teff, hay at 1.5 ppm; teff, straw at 2 ppm; teosinte, grain at 0.015 ppm; triticale, forage at 1 ppm; triticale, grain at 0.08 ppm; triticale, hay at 1.5 ppm; and triticale, straw at 2 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in docket number EPA–HQ–OPP–2014–0156, *http://www.regulations.gov.* The petition also requested revisions to the certain existing animal commodity tolerances, as follows: Milk at 1 ppm; fat of cattle, goat, horse and sheep at 0.6 ppm; meat of cattle, goat, horse and sheep at 1 ppm; meat byproducts of cattle, goat, horse and sheep at 2.5 ppm; hog, fat at 0.04 ppm; hog, meat at 0.07 ppm; hog, meat byproducts at 0.2 ppm; egg at 0.08 ppm; poultry, meat at 0.09 ppm; poultry, fat at 0.03 ppm; poultry, meat byproducts at 0.2 ppm. These requested revisions were inadvertently omitted from the April 23, 2014 **Federal Register** notice (79 FR 22602) (FRL–9907–39) but were included in the summary of the petition that was available in the docket. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), 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 8E8666) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of sulfoxaflor (*N*-[methyloxido[1-[6-(trifluoromethyl)-3-pyridinyl]ethyl]-λ^4-sulfanylidene]cyanamide) in or on the following raw agricultural commodities: Artichoke, globe at 0.70 ppm; asparagus at 0.015 ppm; brassica, leafy greens, subgroup 4–16B, except watercress at 2.0 ppm; bushberry subgroup 13–07B at 2.0 ppm; caneberry subgroup 13–07A at 1.5 ppm; celtuce at 2.0 ppm; florence fennel at 2.0 ppm; fruit, stone, group 12–12 at 3.0 ppm; kohlrabi at 2.0 ppm; leafy greens subgroup 4–16A at 6.0

ppm; leaf petiole vegetable subgroup 22B at 2.0 ppm; nut, tree, group 14–12 at 0.015 ppm; sunflower subgroup 20B at 0.30 ppm; and vegetable, brassica, head and stem, group 5–16, except cauliflower at 2.0 ppm. Additionally, the petition requested to amend 40 CFR 180.668 by removing the established tolerances for residues of sulfoxaflor in or on the following raw agricultural commodities: Fruit, stone, group 12 at 3.0 ppm; leafy greens, subgroup 4A at 6.0 ppm; leafy petiole, subgroup 4B at 2.0 ppm; nuts, tree, group 14 at 0.015 ppm; pistachio at 0.015 ppm; and vegetable, brassica, leafy, group 5, except cauliflower at 2.0 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in docket number EPA–HQ–OPP–2018–0179, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what the petitioner requested (PP 8E8666), as authorized under FFDCA section 408(d)(4)(A)(i). Also, the petitioner withdrew the tolerances proposed for buckwheat and clover (PP 4F8237). Since clover is a representative commodity for non-grass animal feeds (group 18), a crop group tolerance cannot be established for that crop group. Additionally, existing tolerances for livestock commodities (*e.g.,* cattle, goats, sheep, and horse) are being revised based upon a recalculation of the livestock dietary burden. 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 sulfoxaflor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sulfoxaflor 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.

Specific information on the studies received and the nature of the adverse effects caused by sulfoxaflor as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of May 17, 2013 (78 FR 29041) (FRL–9371–4). Further discussion of the toxicological profile for sulfoxaflor can be found at *http://www.regulations.gov* in section 4.0 titled ''*Hazard Characterization and Dose-Response Assessment*'' (pages 14–28) of the document titled ''*Sulfoxaflor. Human Health Risk Assessment for New Food Uses on Avocado and Rice*'' and pages 13–26 of the document titled ''*Sulfoxaflor. Human Health Risk Assessment for New Food Uses on Artichoke, Asparagus, Bushberry, Caneberry and Sunflower, and Multiple Crop Group Conversions*'' in docket ID number EPA–HQ–OPP–2018–0179.

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-pesticide.*

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

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFOXAFLOR 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 (Females 13–49 years of age).	NOAEL = 1.8 mg/kg/day. UF_A = 3x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.06 mg/kg/day. aPAD = 0.06 mg/kg/day	Developmental Neurotoxicity Study (DNT). LOAEL = 7.1 mg/kg/day based on decreased neonatal survival (PND 0–4).

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFOXAFLOR 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
Acute dietary (General population including infants and children).	NOAEL = 25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25 mg/kg/day	Acute Neurotoxicity Study. LOAEL = 75 mg/kg/day based on decreased motor activity.
Chronic dietary (All populations)	NOAEL= 5.13 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day. cPAD = 0.05 mg/kg/day	Chronic/Carcinogenicity Study—Rat. LOAEL = 21.3 mg/kg/day based on liver effects including increased blood cholesterol, liver weight, hypertrophy, fatty change, single cell necrosis and macrophages.
Cancer (Oral, dermal, inhalation).	Classification: ''Suggestive Evidence of Carcinogenic Potential.'' Quantification of risk using a non-linear approach (i.e., reference dose (RfD)) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to sulfoxaflor.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. 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 sulfoxaflor, EPA considered exposure under the petitioned-for tolerances as well as all existing sulfoxaflor tolerances in 40 CFR 180.668. EPA assessed dietary exposures from sulfoxaflor 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 sulfoxaflor. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute assessment was based on the maximum observed residue levels from crop field trials and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic assessment assumed average field trial residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that quantification of risk using a non-linear approach (*i.e.,* RfD/cPAD) will adequately account for all chronic toxicity, including carcinogenicity. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and 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.

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

Environmental fate data indicate that the use of sulfoxaflor is likely to result in different residue profiles in surface water and ground water. The residues in surface water are likely to include parent sulfoxaflor and X11719474/X11519540 degradates while X11719474/X11519540 will predominate in ground water. When the residue profiles are coupled with the toxicological database, it becomes apparent that the EDWCs for assessing acute dietary exposure for the general population, acute dietary exposure for women of child-bearing age, and chronic dietary exposure for all populations need to be addressed differently. An explanation of the three scenarios and the rationale for the approaches taken by EPA is provided below.

Acute Exposure: Separate acute endpoints were selected for the general population and females 13 to 49 years of age. For the general population, the point of departure is based on decreased motor activity observed in the acute neurotoxicity study. As there are no data available to examine the potency of X11719474 and X11519540 with respect to this endpoint, EPA has assumed that the two metabolites possess similar toxicity relative to sulfoxaflor in order to assess acute dietary risk for the general population. The EDWC for ground water is significantly greater than the acute estimate for surface water and, per Agency policy, is being used in the acute dietary assessment for the general population. As it is a ground water EDWC, it represents residues of the metabolites.

For females 13 to 49 years of age, the developmental endpoint of increased neonatal deaths was chosen because a single exposure during late gestation can adversely affect the developing fetus via agonism of the muscle nicotinic

acetylcholine receptor (nAChR), and the age group represents women of child-bearing age. Studies with the metabolite X11719474 demonstrated that it does not cause agonism of the fetal rat muscle nAChR. Based on structural similarity between X11719474 and X11519540, the Agency further determined that X1159540 is not likely to result in agonism of the muscle nAChR. Therefore, both metabolites have been excluded from assessment scenarios using the developmental endpoint. Since the ground water EDWC represents residues of only these metabolites, the acute surface water EDWC, which consists of only parent sulfoxaflor, is the appropriate estimate for assessing dietary exposure for women of child-bearing age.

Chronic Exposure: The endpoint for assessing chronic dietary exposure is hepatotoxicity. The Agency has determined that it is appropriate to combine residues of sulfoxaflor, X11719474, and X11519540 when assessing chronic exposure and, furthermore, there is sufficient evidence to adjust the assessment to account for the different potencies of the metabolites. Based on NOAELs in the 28-day oral toxicity studies in rats, the potencies of the metabolites, relative to sulfoxaflor, are 0.3X for X11719474 and 3.4X for X11519540. To account for the relative toxicity, the EDWCs for each metabolite are multiplied by their respective potency factors.

EDWCs Used in the Assessment: For the acute dietary risk assessment of the general population, the groundwater EDWC is greater than the surface water EDWC and was used in the assessment. The residue profile in groundwater is 12 ppb X11719474 and 1.6 ppb X11519540 (totaling 13.6 ppb). Parent sulfoxaflor is not expected in groundwater. For this assessment, the regulatory toxicological endpoint is based on neurotoxicity. There is no information to relate the neurotoxicity of the metabolites to that of sulfoxaflor; therefore, no toxicity adjustment was made to the EDWC.

For the acute dietary risk assessment of females 13 to 49, the regulatory endpoint is attributable only to the parent compound (as previously discussed); therefore, the surface water EDWC is the most appropriate EDWC for this assessment even though it is of a lower value than the groundwater EDWC, which reflects metabolites only. The EDWC of 9.2 ppb was used and no toxicological adjustment was made.

For the chronic dietary risk assessment, the toxicological endpoint is liver effects, for which it is possible to account for the relative toxicities of X11719474 and X11519540 as compared to sulfoxaflor. The groundwater EDWC is greater than the surface water EDWC. The residue profile in groundwater consists of 8 ppb X11719474 and 1.1 ppb X11519540. Adjusting for the relative toxicity results in 2.4 ppb equivalents of X11719474 and 3.7 ppb X11519540 (totaling 6.1 ppb). The adjusted groundwater EDCW is greater than the surface water EDWC and was, therefore, used to assess the chronic dietary exposure scenario.

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). Sulfoxaflor is not registered for any specific use patterns that would result in residential exposure.

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 sulfoxaflor to share a common mechanism of toxicity with any other substances, and sulfoxaflor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sulfoxaflor 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.* Developmental/offspring toxicity, manifested as skeletal abnormalities and neonatal deaths, was observed in rats only. The skeletal abnormalities, forelimb flexure, bent clavicles, and hindlimb rotation likely result from skeletal muscle contraction due to agonism of the muscle nAChR *in utero.* Similarly, contraction of the diaphragm muscle prevents normal breathing in neonates resulting in increased mortality. The skeletal abnormalities were observed at high doses in the developmental and reproduction studies and decreased neonatal survival was consistently observed in the reproduction and developmental neurotoxicity studies. These developmental effects were not observed in the rabbit.

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 sulfoxaflor is complete.

ii. In the acute neurotoxicity study, decreased motor activity and clinical signs associated with neurotoxicity (increased muscle tremors and twitches, convulsions, hindlimb splaying, increased lacrimation and salivation, decreased pupil size and response to touch, gait abnormalities and decreased rectal temperature) were observed. However, the level of concern for neurotoxicity is low because (1) the effects are well characterized; (2) the dose-response curve for these effects is well characterized; (3) clear NOAELs have been identified; and (4) the endpoints chosen for risk assessment are protective for the observed neurotoxicity.

iii. Although there was quantitative susceptibility observed in the DNT and developmental rat studies, there is no residual uncertainty because (1) the effects are well characterized; (2) clear NOAELs were identified; and (3) the endpoints chosen for risk assessment are protective of potential *in utero* and developmental effects. Quantitative susceptibility in the DNT was based on an increased rate of neonatal deaths at a dose where no maternal toxicity was observed. Quantitative susceptibility was also observed in the developmental rat study as decreased fetal weight, forelimb flexure, hindlimb rotation, and bent clavicles at a dose that did not cause maternal toxicity. However, the apparent enhanced sensitivity in this

study may be due to the limited number of evaluations conducted in dams in the study rather than a true sensitivity of the young. In that regard, adverse liver effects were observed in the 90-day rat study at a LOAEL lower than the highest dose tested in the developmental rat study. The dams in the developmental rat study had increased liver weights but clinical chemistry and liver histopathological analysis were not investigated to determine if the effects on the liver were adverse. Qualitative susceptibility was observed in the two-generation reproduction study since neonatal deaths were observed at the same dose that resulted in hepatotoxicity in parental animals. However, these effects occurred at a higher dose compared to the offspring effects observed in the DNT. Finally, there was no evidence of quantitative or qualitative susceptibility in the developmental studies in the rabbit.

iv. There are no residual uncertainties with regard to dietary exposure. The dietary exposure assessments are based on high-end residue estimates, processing factors, and 100 PCT, as well as upper-bound modeled estimates of residues in drinking water. These assessments will not underestimate the exposure and risks posed by sulfoxaflor.

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 sulfoxaflor will occupy 28% of the aPAD for both children 1 to 2 years old and females 13 to 49 years old, the population groups 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 sulfoxaflor from food and water will utilize 47% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for sulfoxaflor.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Short- and intermediate-term adverse effects were identified; however, sulfoxaflor is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or 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 short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for sulfoxaflor.

4. *Aggregate cancer risk for U.S. population.* EPA assessed cancer risk using a non-linear approach (*i.e.,* RfD) since it adequately accounts for all chronic toxicity, including carcinogenicity, that could result from exposure to sulfoxaflor. As the chronic dietary endpoint and dose are protective of potential cancer effects, sulfoxaflor is not expected to pose an aggregate cancer risk.

5. *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 sulfoxaflor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

High performance liquid chromatographic methods with positive-ion electro spray interface (ESI) and tandem mass spectrometric detection (LC/MS/MS) were previously reviewed and found to be acceptable for tolerance enforcement of sulfoxaflor residues (the two metabolites, X11719474 and X11721061, are also quantitated). The limit of quantitation (LOQ), determined as the lowest level of method validation (LLMV), is 0.010 ppm in all matrices.

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.

Codex has established MRLs for residues of sulfoxaflor on broccoli (3 ppm) and head cabbage (0.4 ppm). These commodities are covered in the U.S. crop group 5–16 (vegetable, brassica, head and stem), for which EPA is establishing a tolerance at 2 ppm in this rulemaking. This 2 ppm tolerance is part of a conversion from the existing group 5A, including broccoli and cabbage, to the new crop group 5–16. The old group was not harmonized with the Codex MRL. EPA is not harmonizing the new crop group 5–16 either because the representative commodity data for the new group 5–16 support establishing one tolerance level for all commodities in the group rather than a higher broccoli and lower cabbage tolerance.

In addition, Codex has established MRLs for leafy vegetables at 6 ppm. EPA's leafy vegetable crop group 4–16 is split into two subgroups: 4–16A for leafy greens and 4–16B for Brassica, leafy greens. Although EPA is establishing a subgroup 4–16A tolerance at 6 ppm, which harmonizes with the Codex MRL, EPA is also establishing a subgroup 4–16B tolerance at 2 ppm, which is not harmonized with the Codex MRL. This is because the representative commodity data for mustard greens indicates that lower residues of the pesticide are present on the brassica, leafy greens commodities.

The tolerances in meat and meat byproducts of hogs and poultry are being harmonized with the corresponding Codex MRLs instead of the levels proposed by the petitioner. Therefore, tolerances in hog meat and hog meat byproducts are being established at 0.3 and 0.6 ppm,

respectively (rather than 0.07 and 0.2 ppm), in order to harmonize with MRLs of 0.3 mg/kg in meat from mammals other than marine mammals, and 0.6 mg/kg in mammalian edible offal. Similarly, tolerances in poultry meat and poultry meat byproducts are being established at 0.1 and 0.3 ppm, respectively (rather than 0.09 and 0.2 ppm), in order to harmonize with Codex MRLs of 0.1 mg/kg in poultry meat, and 0.3 ppm in poultry edible offal.

C. Response to Comments

Thirteen comments were received in response to the NOF for petition 4F8237. Nine of these comments were primarily related to bee toxicity, which is not an issue that is relevant to the Agency's evaluation of safety of the sulfoxaflor tolerances under section 408 of the FFDCA, which requires the Agency to evaluate the potential harms to human health, not effects on the environment.

Another four comments were primarily related to a general disapproval of pesticides in general. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these sulfoxaflor tolerances are safe. The commenters have provided no information supporting a contrary conclusion.

D. Revisions to Petitioned-For Tolerances

The Agency is establishing a tolerance of 0.01 ppm in asparagus as opposed to the 0.015 ppm proposed by the petitioner. In the field trials that serve as the basis for the tolerance level, the application rates were exaggerated by 4.2–6.5X the proposed application rate, and the resulting residues in all but one trial were <0.01 ppm and in the other trial the residues measured 0.011 ppm. When sulfoxaflor is used in accordance with the proposed label, all residues are expected to be <0.01 ppm. Therefore, the Agency is establishing the tolerance at the limit of quantification (0.01 ppm).

Tolerances are not being established in clover or buckwheat commodities (as these proposed new uses were subsequently withdrawn by the registrant after submission of the original petition), nor in non-grass feeds (group 18), for which clover is a representative commodity.

In order to maximize global regulatory harmonization, it became EPA policy in April 2011 to use the OECD calculation procedures to derive tolerance levels. As such, the proposed tolerance of 0.9 ppm in sorghum, grain, stover will be listed as 1 ppm; the proposed tolerance of 30 ppm in alfalfa seed will be changed to 40 ppm; the proposed tolerance of 0.09 ppm in pineapple will be changed to 0.1 ppm; and the proposed tolerance of 0.15 ppm in cacao, dried bean will be changed to 0.05 ppm.

For millet, there is no established ''parent'' millet term that covers more than one millet. As such, the tolerances are being established specifying both proso and pearl millet individually.

Tolerances of 0.6 and 2.5 ppm in the fat and meat byproducts, respectively, of cattle, goats, horses and sheep were proposed by the petitioner. However, revised tolerances of 0.2 and 0.8 ppm in these fat and meat byproducts are appropriate since the clover use was withdrawn, resulting in a lower dietary burden to livestock and lower anticipated residues in livestock commodities than originally considered by the petitioner.

Existing tolerances in cattle, meat; goat, meat; sheep, meat; and horse, meat is being revised in this action to 0.4 ppm, consistent with anticipated residues based upon a recalculated dietary burden of sulfoxaflor, and the results of a lactating dairy cattle feeding study.

For several commodities in the IR–4 petition (PP 8E8666), the requested tolerances include an additional significant figure (such as 1.0 ppm rather than 1 ppm). EPA is establishing the tolerances without the trailing zero to be consistent with current rounding practice.

E. International Trade Considerations

In this final rule, EPA is reducing the existing tolerances for arugula; cress, garden; and cress, upland from 6 ppm to 2 ppm. Currently, these commodities are included in leafy greens subgroup 4A, which has a tolerance of 6 ppm. In 2016, EPA moved these commodities to the Brassica leafy greens subgroup 4–16B. (81 FR 26471; FRL–9944–87 (May 3, 2016)). In today's rule, EPA is establishing a tolerance for residues of sulfoxaflor in or on commodities in Brassica leafy greens subgroup 4–16B, which now includes arugula, garden cress, and upland cress, at 2 ppm, based on available residue data. This results in a reduction of tolerance levels for these three commodities.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to notify the WTO of this revision. In addition, the SPS Agreement requires that members provide a ''reasonable interval'' between the publication of a regulation subject to the agreement and its entry into force to allow time for producers in exporting member countries to adapt to the new requirement. At this time, EPA is establishing an expiration date for the existing tolerances to allow those tolerances to remain in effect for a period of six months after the effective date of this final rule, in order to address the requirement to provide a reasonable interval. After the six-month period expires, residues of sulfoxaflor on arugula; cress, garden; and cress, upland cannot exceed the newly established tolerances of 2 ppm.

This reduction in tolerance levels is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. The new tolerance levels are supported by available residue data.

V. Conclusion

Therefore, tolerances are established for residues of sulfoxaflor in or on Alfalfa, forage at 7 ppm; Alfalfa, hay at 20 ppm; Alfalfa, seed at 40 ppm; Alfalfa, silage at 9 ppm; Artichoke, globe at 0.7 ppm; Asparagus at 0.01 ppm; Brassica, leafy greens, subgroup 4–16B, except watercress at 2 ppm; Bushberry subgroup 13–07B at 2 ppm; Cacao, dried bean at 0.05 ppm; Caneberry subgroup 13–07A at 1.5 ppm; Celtuce at 2 ppm; Corn, field, forage at 0.5 ppm; Corn, field, grain at 0.015 ppm; Corn, field, stover at 0.8 ppm; Corn, pop, grain at 0.015 ppm; Corn, pop, stover at 0.8 ppm; Corn, sweet, forage at 0.6 ppm; Corn, sweet, kernel plus cob with husks removed at 0.01 ppm; Corn, sweet, stover at 0.7 ppm; Fennel, Florence, fresh leaves and stalk at 2 ppm; Fruit, stone, group 12–12 at 3 ppm; Kohlrabi at 2 ppm; Leaf petiole vegetable subgroup 22B at 2 ppm; Leafy greens subgroup 4–16A at 6 ppm; Millet, proso, forage at 0.4 ppm; Millet, pearl, forage at 0.4 ppm; Millet, proso, grain at 0.3 ppm; Nut, tree, group 14–12 at 0.015 ppm; Oat, grain at 0.4 ppm; Oat, hay at 1 ppm; Oat, straw at 2 ppm; Pineapple at 0.1 ppm; Rye, forage at 1 ppm; Rye, grain at 0.08 ppm; Rye, hay at 1.5 ppm; Rye, straw at 2 ppm; Sorghum, grain, forage at 0.4 ppm; Sorghum, grain, grain at 0.3 ppm; Sorghum, grain, stover at 1 ppm; Sunflower subgroup 20B at 0.3 ppm; Teff, forage at 1 ppm; Teff, grain at 0.08 ppm; Teff, hay at 1.5 ppm; Teff,

straw at 2 ppm; Teosinte, grain at 0.015 ppm; Triticale, forage at 1 ppm; Triticale, grain at 0.08 ppm; Triticale, hay at 1.5 ppm; Triticale, straw at 2 ppm; and Vegetable, brassica, head and stem, group 5–16, except cauliflower at 2 ppm.

Additionally, the following existing tolerances are revised as follows: Cattle, fat at 0.2 ppm; Cattle, meat at 0.4 ppm; Cattle, meat byproducts at 0.8 ppm; Egg at 0.06 ppm; Goat, fat at 0.2 ppm; Goat, meat at 0.4 ppm; Goat, meat byproducts at 0.8 ppm; Hog, fat at 0.03 ppm; Hog, meat at 0.3 ppm; Hog, meat byproducts at 0.6 ppm; Horse, fat at 0.2 ppm; Horse, meat at 0.4 ppm; Horse, meat byproducts at 0.8 ppm; Milk at 0.3 ppm; Poultry, fat at 0.02 ppm; Poultry, meat at 0.1 ppm; Poultry, meat byproducts at 0.3 ppm; Sheep, fat at 0.2 ppm; Sheep, meat at 0.4 ppm; and Sheep, meat byproducts at 0.8 ppm.

The established tolerances for Fruit, stone, group 12; Leafy greens, subgroup 4A; Leafy petiole, subgroup 4B; Nuts, tree, group 14; Pistachio; and Vegetable, Brassica, leafy, group 5, except cauliflower are removed as unnecessary due to the establishment of the above tolerances.

Lastly, in order to provide a reasonable interval for implementation of certain tolerances being reduced through this rule, EPA is leaving in place the following individual tolerances for a period of six months: Arugula; cress, garden; and cress, upland.

VI. Statutory and Executive Order Reviews

This action establishes and modifies 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 tolerances 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: July 12, 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 § 180.668, amend the table in paragraph (a) as follows:

■ a. Add alphabetically the entries Alfalfa, forage; Alfalfa, hay; Alfalfa, seed; Alfalfa, silage; Artichoke, globe; Arugula; Asparagus; *Brassica,* leafy greens, subgroup 4–16B, except watercress; Bushberry subgroup 13–07B; Cacao, dried bean; Caneberry subgroup 13–07A; Celtuce; Corn, field, forage; Corn, field, grain; Corn, field, stover; Corn, pop, grain; Corn, pop, stover; Corn, sweet, forage; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, stover; Cress, garden; Cress, upland; Fennel, Florence, fresh leaves and stalk; Fruit, stone, group 12–12; Kohlrabi; Leaf petiole vegetable subgroup 22B; Leafy greens subgroup 4–16A; Millet, proso, forage; Millet, pearl, forage; Millet, proso, grain; Millet, pearl, grain; Nut, tree, group 14–12; Oat, grain; Oat, hay; Oat, straw; Pineapple; Rye, forage; Rye, grain; Rye, hay; Rye, straw; Sorghum, grain, forage; Sorghum, grain, grain; Sorghum, grain, stover; Sunflower subgroup 20B; Teff, forage; Teff, grain; Teff, hay; Teff, straw; Teosinte, grain; Triticale, forage; Triticale, grain; Triticale, hay; Triticale, straw; and Vegetable, *brassica,* head and stem, group 5–16, except cauliflower;

■ b. Revise the entries for Cattle, fat; Cattle, meat; Cattle, meat byproducts; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, eggs; Poultry, fat; Poultry, meat; Poultry, meat byproducts; Sheep, fat; Sheep, meat; and Sheep, meat byproducts; and

■ c. Remove the entries for Fruit, stone, group 12; Leafy greens, subgroup 4A; Leafy petiole, subgroup 4B; Nuts, tree, group 14; Pistachio; and Vegetable, *Brassica,* leafy, group 5, except cauliflower.

The revisions and additions read as follows:

§ 180.668 Sulfoxaflor; tolerances for residues

(a) * * *

Commodity	Parts per million
Alfalfa, forage	7
Alfalfa, hay	20
Alfalfa, seed	40
Alfalfa, silage	9
* * * * * * *	
Artichoke, globe	0.7
Arugula [1]	6
Asparagus	0.01
* * * * * * *	
Brassica, leafy greens, subgroup 4–16B, except watercress	2
Bushberry subgroup 13–07B	2
Cacao, dried bean	0.05
Caneberry subgroup 13–07A	1.5
Cattle, fat	0.2
Cattle, meat	0.4
Cattle, meat byproducts	0.8
* * * * * * *	
Celtuce	2
* * * * * * *	
Corn, field, forage	0.5
Corn, field, grain	0.015
Corn, field, stover	0.8
Corn, pop, grain	0.015
Corn, pop, stover	0.8
Corn, sweet, forage	0.6
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.7
* * * * * * *	
Cress, garden [1]	6
Cress, upland [1]	6
* * * * * * *	
Egg	0.06
Fennel, Florence, fresh leaves and stalk	2
* * * * * * *	
Fruit, stone, group 12–12	3
Goat, fat	0.2
Goat, meat	0.4
Goat, meat byproducts	0.8
* * * * * * *	
Hog, fat	0.03
Hog, meat	0.3
Hog, meat byproducts	0.6
Horse, fat	0.2
Horse, meat	0.4
Horse, meat byproducts	0.8
Kohlrabi	2
Leaf petiole vegetable subgroup 22B	2
Leafy greens subgroup 4–16A	6
Milk	0.3
* * * * * * *	
Millet, proso, forage	0.4
Millet, pearl, forage	0.4
Millet, proso, grain	0.3
Millet, pearl, grain	0.3
Nut, tree, group 14–12	0.015
Oat, grain	0.4
Oat, hay	1
Oat, straw	2
* * * * * * *	
Pineapple	0.1

Commodity	Parts per million
Poultry, fat	0.02
Poultry, meat	0.1
Poultry, meat byproducts	0.3
* * * * * * *	
Rye, forage	1
Rye, grain	0.08
Rye, hay	1.5
Rye, straw	2
Sheep, fat	0.2
Sheep, meat	0.4
Sheep, meat byproducts	0.8
Sorghum, grain, forage	0.4
Sorghum, grain, grain	0.3
Sorghum, grain, stover	1
* * * * * * *	
Sunflower subgroup 20B	0.3
Teff, forage	1
Teff, grain	0.08
Teff, hay	1.5
Teff, straw	2
Teosinte, grain	0.015
* * * * * * *	
Triticale, forage	1
Triticale, grain	0.08
Triticale, hay	1.5
Triticale, straw	2
Vegetable, *brassica,* head and stem, group 5–16, except cauliflower	2
* * * * * * *	

[1] This tolerance expires on January 24, 2020.

* * * * *

[FR Doc. 2019–15648 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1005; FRL–9997–06]

Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: In this Order, EPA denies the objections to EPA's March 29, 2017 order denying a 2007 petition from the Pesticide Action Network North America (PANNA) and the Natural Resources Defense Council (NRDC) to revoke all tolerances and cancel all registrations for the insecticide chlorpyrifos. This order is issued under section 408(g)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and constitutes final agency action on the 2007 petition. The objections were filed by Earthjustice on behalf of 12 public interest groups, the North Coast Rivers Alliance, and the States of New York, Washington, California, Massachusetts, Maine, Maryland, and Vermont.

DATES: This Order is effective July 24, 2019.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2007–1005, 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: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0206; email address: *OPPChlorpyrifosInquiries@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

In this document, EPA denies all objections in response to a March 29, 2017 order denying the 2007 PANNA and NRDC petition requesting that EPA revoke all tolerances and cancel all pesticide product registrations for chlorpyrifos. In addition to the Petitioners, this action may be of interest to agricultural producers, food manufacturers or pesticide manufacturers, and others interested in food safety issues generally. 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), *e.g.,* agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), *e.g.,* cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), *e.g.,* agricultural workers; farmers;

greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

- Pesticide manufacturing (NAICS code 32532), *e.g.,* agricultural workers; commercial applicators; farmers, greenhouse, nursery, and floriculture workers; residential users.

B. What action is the agency taking?

In this order, EPA denies objections to EPA's order of March 29, 2017 (the Denial Order), in which EPA denied a 2007 petition (the Petition) from PANNA and NRDC (the Petitioners) that requested that EPA revoke all tolerances for the pesticide chlorpyrifos established under FFDCA section 408. (Ref. 1) The Petition also sought the cancellation of all chlorpyrifos pesticide product registrations under section 6 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d.

The Petition raised the following claims regarding both EPA's 2006 FIFRA reregistration decision and active registrations of chlorpyrifos in support of the request for tolerance revocations and product cancellations:

1. EPA has ignored genetic evidence of vulnerable populations.

2. EPA has needlessly delayed a decision regarding endocrine disrupting effects.

3. EPA has ignored data regarding cancer risks.

4. EPA's 2006 cumulative risk assessment (CRA) for the organophosphates misrepresented risks and failed to apply FQPA 10X safety factor. (*Note:* For convenience's sake, the legal requirements regarding the additional safety margin for infants and children in FFDCA section 408(b)(2)(C) are referred to throughout this response as the ''FQPA 10X safety factor'' or simply the ''FQPA safety factor.'' Due to Congress' focus on both pre- and post-natal toxicity, EPA has interpreted this additional safety factor as pertaining to risks to infants and children that arise due to pre-natal exposure as well as to exposure during childhood years.)

5. EPA has over-relied on registrant data.

6. EPA has failed to properly address the exporting hazard in foreign countries from chlorpyrifos.

7. EPA has failed to quantitatively incorporate data demonstrating long-lasting effects from early life exposure to chlorpyrifos in children.

8. EPA has disregarded data demonstrating that there is no evidence of a safe level of exposure during pre-birth and early life stages.

9. EPA has failed to cite or quantitatively incorporate studies and clinical reports suggesting potential adverse effects below 10% cholinesterase inhibition.

10. EPA has failed to incorporate inhalation routes of exposure.

EPA's Denial Order denied the Petition in full (82 FR 16581). Prior to issuing that order, EPA provided the Petitioners with two interim responses on July 16, 2012 and July 15, 2014. The July 16, 2012 response denied claim 6 (export hazard) completely, and that portion of the response was a final agency action. The remainder of the July 16, 2012 response and the July 15, 2014 response expressed EPA's intention to deny six other petition claims (1–5 and 10). (*Note:* In the 2012 response, EPA did, however, inform Petitioners of its approval of label mitigation (in the form of rate reductions and spray drift buffers) to reduce bystander risks, including risks from inhalation exposure, which in effect partially granted Petition claim 10.) EPA made clear in both the 2012 and 2014 responses that, absent a request from Petitioners, EPA's denial of those six claims would not be made final until EPA finalized its response to the entire Petition. Petitioners made no such request, and EPA therefore finalized its response to those claims in the Denial Order.

The remaining Petition claims (7–9) all related to same issue: Whether the potential exists for chlorpyrifos to cause neurodevelopmental effects in children at exposure levels below EPA's existing regulatory standard (10% cholinesterase inhibition). Because these claims raised novel, highly complex scientific issues, EPA originally decided it would be appropriate to address these issues in connection with the registration review of chlorpyrifos under FIFRA section 3(g) and decided to expedite that review, intending to finalize it several years in advance of the October 1, 2022 registration review deadline. EPA decided as a policy matter that it would address the Petition claims raising these matters on a similar timeframe. Although EPA had expedited its registration review to address these issues, the Petitioners were not satisfied with EPA's progress in responding to the Petition, and they brought legal action in the Ninth Circuit Court of Appeals to compel EPA to either issue an order denying the Petition or to grant the Petition by initiating the tolerance revocation process. Following several rounds of litigation (see discussion of the litigation in Unit III. of this Order), EPA was ordered by the Ninth Circuit to issue either a tolerance revocation rule or an order denying the Petition by March 31, 2017. *In re Pesticide Action Network of North America* v. *EPA,* 840 F.3d (9th Cir. 2016). Accordingly, in compliance with the court's order, the Denial Order also finalized EPA's response on claims 7–9. As to those claims, EPA concluded that, despite several years of study, the science addressing neurodevelopmental effects remains unresolved and that further evaluation of the science during the remaining time for completion of registration review was warranted regarding whether the potential exists for adverse neurodevelopmental effects to occur from current human exposures to chlorpyrifos. EPA therefore denied the remaining Petition claims, concluding that it was not required to complete—and would not complete—the human health portion of the registration review or any associated tolerance revocation of chlorpyrifos without resolution of those issues during the ongoing FIFRA registration review of chlorpyrifos.

In June 2017, several public interest groups and states filed objections to the Denial Order pursuant to the procedures in FFDCA section 408(g)(2). Specifically, Earthjustice submitted objections on behalf of the following 12 public interest groups: Petitioners PANNA and NRDC, United Farm Workers, California Rural Legal Assistance Foundation, Farmworker Association of Florida, Farmworker Justice, GreenLatinos, Labor Council for Latin American Advancement, League of United Latin American Citizens, Learning Disabilities Association of America, National Hispanic Medical Association and Pineros y Campesinos Unidos del Noroeste. Another public interest group, the North Coast River Alliance, submitted separate objections. With respect to the states, New York, Washington, California, Massachusetts, Maine, Maryland, and Vermont submitted a joint set of objections (Ref. 2).

The objections focus on three main topics: (1) The Objectors assert that the FFDCA requires EPA apply to the FFDCA safety standard in reviewing any petition to revoke tolerances and that EPA's decision to deny the Petition failed to apply that standard; (2) The Objectors contend that the record before EPA demonstrates that chlorpyrifos results in unsafe drinking water exposures and adverse neurodevelopmental effects and that EPA must therefore issue a final rule revoking all chlorpyrifos tolerances; and (3) The Objectors claim that EPA committed procedural error in failing to respond to comments, and they specifically point to comments related to neurodevelopmental effects, inhalation risk, and Dow AgroSciences'

physiologically based pharmacokinetic model (PBPK model) used in EPA's risk assessment. Dow AgroSciences, which is now Corteva AgriScience, will be referred to as Corteva throughout the remainder of this Order.

On June 5, 2017, the same the day the Objectors were required to submit their objections to EPA, the League of United Latin American Citizens (LULAC) and the other 11 public interest Objectors represented by Earthjustice filed suit in the U.S. Court of Appeals for the 9th Circuit directly challenging the Denial Order, asserting that the court could review the order directly, even in the absence of EPA's final order under FFDCA section 408(g)(2)(C) responding to the objections they had just submitted. *LULAC, et al.* v. *Wheeler, et al.,* No. 17–71636. In their pleadings, Petitioners alternatively asked the court to issue a mandamus order compelling EPA to respond to the June 2017 objections within 60 days. On August 9, 2018, a three-judge panel of the 9th Circuit vacated the Denial Order and ordered EPA to revoke all chlorpyrifos tolerances and cancel all chlorpyrifos registrations within 60 days. *Id.,* 899 F.3d 814. EPA sought rehearing of that decision before an *en banc* panel of the 9th Circuit, a request that was granted on February 6, 2019, effectively vacating the August 9, 2018 panel decision. On April 19, 2019, the *en banc* panel granted the request for mandamus and directed EPA to respond to the objections not later than 90 days from that date. The court did not otherwise address the claims in the case.

After reviewing the objections, EPA has determined that the objections related to Petition claims regarding neurodevelopmental toxicity must be denied because the objections and the underlying Petition are not supported by valid, complete, and reliable evidence sufficient to meet the Petitioners' burden under the FFDCA, as set forth in EPA's implementing regulations. Further, for reasons stated in the Denial Order, EPA has concluded that it is also appropriate to deny the objections related to new issues raised after EPA's 2006 tolerance reassessment and reregistration of chlorpyrifos. These issues are being addressed according to the schedule for EPA's ongoing registration review of chlorpyrifos. EPA is also denying all claims related to drinking water risk and the use of the Corteva PBPK model in EPA's 2014 risk assessment and 2015 proposed rule because these claims were not made in the Petition and the objections process cannot be used to raise new issues and restart the petition process. Finally, EPA is denying the objections claiming procedural error, as EPA is not required to respond to comments made during the rulemaking process in this adjudication denying petition objections. Any response to comments will be completed in connection with EPA's final action in registration review.

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

The procedure for filing objections to EPA's final rule or order issued under FFDCA section 408(d) and EPA's authority for acting on such objections is contained in FFDCA section 408(g) (21 U.S.C. 346a(g)) and EPA's regulations at 40 CFR part 178.

II. Statutory and Regulatory Background

In this unit, EPA provides background on the relevant statutes and regulations governing the objections as well as on pertinent Agency policies and practices.

A. FFDCA and FIFRA Standards

EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food and feed commodities under FFDCA section 408. Without a tolerance or an exemption from the requirement of a tolerance, food containing a pesticide residue is ''adulterated'' under FFDCA section 402 and may not be legally moved in interstate commerce. FFDCA section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104– 170, 110 Stat. 1489 (1996)), which established a detailed safety standard for pesticides and integrated EPA's regulation of pesticide food residues under the FFDCA with EPA's registration and re-evaluation of pesticides under FIFRA. The standard to establish, leave in effect, modify, or revoke a tolerance is stated in FFDCA section 408(b)(2)(A)(i). ''The Administrator may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe.'' *Id.* ''The Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe.'' *Id.* ''Safe'' is defined by FFDCA section 408(b)(2)(A)(ii) 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.'' Among the factors that must be addressed in making a safety determination, FFDCA section 408(b)(2)(D) directs EPA to consider ''validity, completeness, and reliability of the available data from studies of the pesticide chemical and pesticide chemical residue.''

Risks to infants and children are given special consideration. Specifically, FFDCA section 408(b)(2)(C)(i)(II) requires that EPA assess the risk of pesticides based on ''available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals . . . .'' (21 U.S.C. 346a(b)(2)(C)(i)(II)). This provision also creates a presumption that EPA will use an additional safety factor for the protection of infants and children. Specifically, it directs that ''[i]n the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' *Id.*

While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA section 3(a) requires the approval of pesticides prior to their sale and distribution and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of federal law. In the FQPA, Congress integrated action under the two statutes by requiring that the safety standard under the FFDCA be used as a criterion in FIFRA registration actions for pesticide uses that result in residues in or on food, (*see* FIFRA section 2(bb)), and directing that EPA coordinate, to the extent practicable, revocations of tolerances with pesticide cancellations under FIFRA. (*see* FFDCA section 408(l)(1)). FIFRA section 4 directed EPA to determine whether pesticides first registered prior to 1984 should be reregistered, including whether any associated FFDCA tolerances are safe and should be left in effect (*see* FIFRA section 4(g)(2)(E)). FFDCA section 408(q) directed EPA to complete that tolerance reassessment (which included the reassessment of all chlorpyrifos tolerances) by 2006. Following the

completion of FIFRA reregistration and tolerance reassessment, FIFRA section 3(g) requires EPA to re-evaluate pesticides under the FIFRA standard—which includes a determination whether to leave in effect existing FFDCA tolerances—every 15 years under a program known as ''registration review.'' The deadline for completing the current registration review for chlorpyrifos is October 1, 2022.

B. Procedures for Establishing, Modifying, or Revoking Tolerances

Tolerances are established, modified, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, a tolerance rulemaking is initiated by the party seeking to establish, modify, or revoke a tolerance by means of filing a petition with EPA. (*See* FFDCA section 408(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. After reviewing the petition and submitted comments, FFDCA section 408(d)(4) provides that EPA may issue a final rule establishing, modifying, or revoking the tolerance; issue a proposed rule to do the same; or issue an order denying the petition.

Once EPA takes action granting or denying the petition, FFDCA section 408(g)(2) allows any party to file objections with EPA and seek an evidentiary hearing on those objections. Objections and hearing requests must be filed within 60 days after the date on which EPA issues its rule or order under FFDCA section 408(d). A party may not raise issues in objections unless they were part of the petition and an objecting party must state objections to the EPA decision and not just repeat the allegations in its petition. *Corn Growers* v. *EPA,* 613 F.3d 266 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 2931 (2011). EPA's final order on the objections, issued under FFDCA section 408(g)(2)(C), is subject to judicial review. (21 U.S.C. 346a(h)(1)).

III. Chlorpyrifos Regulatory Background

Chlorpyrifos (0,0-diethyl-0–3,5,6-trichloro-2-pyridyl phosphorothioate) is a broad-spectrum, chlorinated organophosphate (OP) insecticide that has been registered for use in the United States since 1965. By pounds of active ingredient, it is the most widely used conventional insecticide in the country. Currently registered use sites include a large variety of food crops (*e.g.,* tree fruits and nuts; many types of small fruits and vegetables, including vegetable seed treatments; grain/oilseed crops; cotton), and non-food use settings (*e.g.,* ornamental and agricultural seed production; non-residential turf; industrial sites/rights of way; greenhouse and nursery production; sod farms; pulpwood production; public health; and wood protection). For some of these crops, chlorpyrifos is currently the only cost-effective choice for control of certain insect pests. In 2000, the chlorpyrifos registrants reached an agreement with EPA to voluntarily cancel all residential use products except those registered for ant and roach baits in child-resistant packaging and fire ant mound treatments (*e.g.,* 65 FR 76233 (Dec. 6, 2000); 66 FR 47481 (Sept. 12, 2001).

The OPs are a group of closely related pesticides that affect functioning of the nervous system. The OPs were included in the Agency's first priority group of pesticides to be reviewed under FQPA. In 2006, EPA completed FIFRA section 4 reregistration and FFDCA tolerance reassessment for chlorpyrifos and the OP class of pesticides and determined those tolerances were safe and should be left in effect (Ref. 3). Having completed reregistration and tolerance reassessment, EPA is required to complete the next re-evaluation of chlorpyrifos under the FIFRA section 3(g) registration review program by October 1, 2022. Given ongoing scientific developments in the study of the OPs generally, in March 2009 EPA announced its decision to prioritize the FIFRA section 3(g) registration review of chlorpyrifos by opening a public docket and releasing a preliminary work plan to complete the chlorpyrifos registration review by 2015—7 years in advance of the date required by law.

The registration review of chlorpyrifos has proven to be far more complex than originally anticipated. The OPs presented EPA with numerous novel scientific issues that the agency has taken to multiple FIFRA Scientific Advisory Panel (SAP) meetings since the completion of reregistration in 2006. (*Note:* The SAP is a federal advisory committee created by FIFRA section 25(d) and serves as EPA's primary source of peer review for significant regulatory and policy matters involving pesticides.) Many of these complex scientific issues formed the basis of the 2007 petition filed by PANNA and NRDC, specifically issues related to potential human health risks associated with volatilization and neurodevelopmental effects. During the registration review process, EPA reviews the currently available body of scientific data, including animal and epidemiology data, and the assessment of potential risks from various routes of exposure. Therefore, when EPA began the registration review for chlorpyrifos in March 2009, the Agency indicated that the Agency had decided to address the Petition on a similar timeframe to EPA's expedited registration review schedule.

Although EPA has expedited the chlorpyrifos registration review to address the novel scientific issues raised by the Petition in advance of the statutory deadline, the complexity of the issues has precluded EPA from finishing this review according to the Agency's original timeframe. The Petitioners were dissatisfied with the pace of EPA's response efforts and sued EPA in federal court on three separate occasions to compel a faster response to the Petition. As explained in Unit I. of this Order, EPA addressed 7 of the 10 claims asserted in the Petition by either denying the claim, issuing a preliminary denial or approving label mitigation to address the claims, but notwithstanding these efforts, on August 10, 2015, the court issued a mandamus order directing EPA to ''issue either a proposed or final revocation rule or a full and final response to the administrative Petition by October 31, 2015.'' *In re Pesticide Action Network of North America* v. *EPA,* 798 F.3d (9th Cir. 2015).

In response to that order, EPA issued a proposed rule to revoke all chlorpyrifos tolerances on October 30, 2015 (published in the **Federal Register** on November 6, 2015 (80 FR 69080)), based on its unfinished registration review risk assessment. EPA acknowledged it had insufficient time to complete its drinking water assessment and its review of data addressing the potential for neurodevelopmental effects.

On December 10, 2015, the Ninth Circuit issued a further order requiring EPA to complete any final rule (or petition denial) and fully respond to the Petition by December 30, 2016. On June 30, 2016, EPA sought a six-month extension to that deadline in order to allow EPA to fully consider the most recent views of the FIFRA SAP with respect to chlorpyrifos toxicology. The FIFRA SAP report was finalized and made available for EPA consideration on July 20, 2016 (Ref. 4). On August 12, 2016, the court rejected EPA's request for an extension and ordered EPA to complete its final action by March 31, 2017 (effectively granting EPA a three-month extension). On November 17, 2016, EPA published a notice of data availability (NODA) seeking public comment on both EPA's revised risk and water assessments and reopening the comment period on the proposal to revoke all chlorpyrifos tolerances (81 FR

81049). The comment period for the NODA closed on January 17, 2017.

Following the close of the comment period on the NODA, EPA issued the Denial Order on March 29, 2017, as described in Unit I. of this Order. As noted, in June 2017, EPA received objections to the Denial Order from both public interest groups and states, and some of those same organizations simultaneously filed suit in the Ninth Circuit seeking to challenge the Denial Order in advance of EPA's response to the submitted objections. That litigation is summarized in Unit I. of this Order.

IV. The Petition and EPA's Petition Response

As explained in Unit I. of this Order, PANNA and NRDC submitted the Petition in 2007, raising 10 claims in support of their request that EPA revoke all chlorpyrifos tolerances under the FFDCA and cancel all chlorpyrifos registrations under FIFRA. EPA's Denial Order denied the Petition in full. The following is a summary of EPA's response in the Denial Order to the 10 Petition claims.

A. Claim 1: Genetic Evidence of Vulnerable Populations

The Petitioners claimed that as part of EPA's 2006 reregistration and tolerance reassessment decision the Agency failed to calculate an appropriate intra-species uncertainty factor (*i.e.,* within human variability) for chlorpyrifos in both its aggregate and cumulative risk assessments (CRA). They asserted that certain data (the ''Furlong study'') addressing intra-species variability in the behavior of the detoxifying enzyme paraoxonase (PON1), indicates that the Agency should have applied an intra-species safety factor ''of at least 150X in the aggregate and cumulative assessments'' rather than the 10X factor EPA applied.

In the Denial Order, EPA explained that it carefully considered the issue of PON1 variability and determined that data addressing PON1 in isolation are not appropriate for use alone in deriving an intra-species uncertainty factor and that the issue is more appropriately handled using a PBPK model. Further, the derivation of an intra-species factor of over 150X advocated by the Petitioners is based on combining values from humanized mice with human measured values with a range from highest to lowest; the Furlong study derivation is inappropriate and inconsistent with international risk assessment practice. In addition, the 2008 FIFRA SAP did not support the PON1 data used in isolation. Finally, Petitioners' statement that the Furlong study supports an intra-species uncertainty factor of at least 150X likely overstates potential variability. EPA therefore denied this aspect of the Petition.

B. Claim 2: Endocrine Disrupting Effects

Petitioners summarized a number of studies evaluating the effects of chlorpyrifos on the endocrine system, asserting that, taken together, the studies ''suggest that chlorpyrifos may be an endocrine disrupting chemical, capable of interfering with multiple hormones controlling reproduction and neurodevelopment.''

EPA denied this claim because the Petition did not explain whether and how endocrine effects should form the basis of a decision to revoke tolerances. The basis for seeking revocation of a tolerance is a showing that the pesticide is not ''safe.'' Petitioners neither asserted that EPA should revoke tolerances because effects on the endocrine system render the tolerances unsafe, nor did Petitioners submit a factual analysis demonstrating that aggregate exposure to chlorpyrifos presents an unsafe risk to humans based on effects on the endocrine system.

EPA noted that while the cited studies provide qualitative information that exposure to chlorpyrifos may be associated with effects on the androgen and thyroid hormonal pathways, these data alone do not demonstrate that current human exposures from existing tolerances are unsafe. Further, EPA explained that in June 2015, it completed an Endocrine Disruption Screening Program weight-of-evidence conclusion for chlorpyrifos. That analysis evaluated all observed effects induced, the magnitude and pattern of responses observed across studies, taxa, and sexes, and the Agency also considered the conditions under which effects occurred, in particular whether or not endocrine-related responses occurred at dose(s) that also resulted in general systemic or overt toxicity. The Agency concluded that, based on weight-of-evidence considerations, further testing was not recommended for chlorpyrifos since there was no evidence of potential interaction with the estrogen, androgen, and thyroid pathways.

C. Claim 3: Cancer Risks

Petitioners claim that the Agency ''ignored'' a December 2004 National Institutes of Health Agricultural Health Study showing that the incidence of lung cancer has a statistically significant association with chlorpyrifos exposure. Petitioners did not otherwise explain whether and how these data support the revocation of tolerances or the cancellation of pesticide registrations. Specifically, Petitioners did not present any fact-based argument demonstrating that aggregate exposure to chlorpyrifos poses an unsafe carcinogenic risk. Accordingly, EPA denied the Petition to revoke chlorpyrifos tolerances or cancel chlorpyrifos registrations to the extent the Petition relies on claims pertaining to carcinogenicity. EPA went on to note, however, that while there is initial suggestive epidemiological evidence of an association between chlorpyrifos and lung cancer, it is reasonable to conclude chlorpyrifos is not a carcinogen in view of the lack of carcinogenicity in the rodent bioassays and the lack of a genotoxic or mutagenic potential.

D. Claim 4: CRA Misrepresents Risks, Failed To Apply FQPA 10X Safety Factor

Petitioners asserted that EPA relied on limited data and inaccurate interpretations of a specific study (the ''Zheng study'') to support its decision to remove the FQPA safety factor in the 2006 OP cumulative risk assessment (CRA). Petitioners claimed the Zheng study showed an obvious difference between juvenile and adult responses to chlorpyrifos that supported retention of the 10X safety factor for chlorpyrifos in the CRA. EPA concluded that Petitioners' assertions did not provide a sufficient basis for revoking chlorpyrifos tolerances. The Petitioners' claim that the data EPA relied upon support a different FQPA safety factor for chlorpyrifos in the CRA did not amount to a showing that chlorpyrifos tolerances are unsafe as Petitioners did not present a factual analysis demonstrating that the lack of a 10X safety factor in the CRA for chlorpyrifos poses unsafe cumulative exposures to the OPs. For this reason, EPA denied the Petitioners' request to revoke chlorpyrifos tolerances or cancel chlorpyrifos registrations on the basis of the FQPA safety factor in the CRA.

Despite the inadequacy of Petitioners' FQPA CRA safety factor claims, EPA nonetheless examined the evidence Petitioners cited regarding the Zheng study. EPA acknowledged that in that study, pups appeared to be more sensitive than adults at the tested high dose. However, at the low-dose end of the response curve, relevant for human exposures, little to no difference was observed. This result is consistent with a comparative cholinesterase study submitted by Corteva that specifically compared the dose-response relationship in juvenile and adult rats and found no basis for concluding that juveniles are more sensitive, further

supporting EPA's use of an FQPA safety factor of 1X for the AChE inhibition endpoint used in the 2006 OP CRA.

E. Claim 5: Over-Reliance on Registrant Data

Petitioners asserted that in reregistering chlorpyrifos EPA ''cherry picked'' data, ''ignoring robust, peer-reviewed data in favor of weak, industry-sponsored data to determine that chlorpyrifos could be re-registered and food tolerances be retained.'' As such, Petitioners argued that the Agency's reassessment decision is not scientifically defensible. EPA concluded that this Petition claim was not purported to be an independent basis for revoking chlorpyrifos tolerances or cancelling chlorpyrifos registrations but simply support for Petitioners' arguments in other parts of the Petition. While Petitioners claim that EPA ignored robust, peer-reviewed data in favor of weak, industry-sponsored data for the reregistration of chlorpyrifos, Petitioners did not cite to any studies other than those used to support their other claims. In general, Petitioners did not provide any studies in the Petition that EPA failed to evaluate. Since the specific studies cited by Petitioners were not associated with this claim, but rather their other claims, EPA's response to the specific studies were, therefore, addressed in its responses to Petitioners' other claims. EPA went on to explain, however, that the Agency does not ignore robust, peer-reviewed data in favor of industry-sponsored data and that EPA has a public and well-documented set of procedures that it applies to the use and significance of all data utilized to inform risk management decisions. EPA does rely on registrant-generated data submitted in response to FIFRA and FFDCA requirements, as these data are conducted and evaluated in accordance with a series of internationally harmonized and scientifically peer-reviewed study protocols designed to maintain a high standard of scientific quality and reproducibility. But EPA does not end its review there. To further inform the Agency's risk assessment, EPA is committed to the consideration of other sources of information such as data identified in the open, peer-reviewed literature and information submitted by the public as part of the regulatory evaluation of a pesticide.

F. Claim 6: EPA Failed to Properly Address the Exporting Hazard in Foreign Countries From Chlorpyrifos

In the July 16, 2012 interim Petition response, EPA issued a final denial of this claim, as it was not a claim subject to the FFDCA, which provides for an administrative objections process following the denial of a petition. EPA explained in the interim response that it lacked authority to address the risks chlorpyrifos may pose to workers in foreign countries who may not utilize worker protection equipment that the United States requires. Further, EPA noted that it has no authority to ban the export of pesticides to foreign countries regardless of whether those pesticides may be lawfully used in the United States. Accordingly, EPA denied this claim, and that denial constituted final agency action.

G. Claims 7–9: EPA Failed to Quantitatively Incorporate Data Demonstrating Long-Lasting Effects From Early Life Exposure to Chlorpyrifos in Children; EPA Disregarded Data Demonstrating That There Is no Evidence of a Safe Level of Exposure During Pre-Birth and Early Life Stages; and EPA Failed To Cite or Quantitatively Incorporate Studies and Clinical Reports Suggesting Potential Adverse Effects Below 10% Cholinesterase Inhibition.

The Petitioners asserted that human epidemiology and rodent developmental neurotoxicity data suggest that pre-natal and early life exposure to chlorpyrifos can result in long-lasting, possibly permanent damage to the nervous system and that these effects are likely occurring at exposure levels below 10% cholinesterase inhibition, EPA's existing regulatory standard for chlorpyrifos and other OPs. They assert that EPA has therefore used the wrong endpoint as a basis for regulation and that, taking into account the full spectrum of toxicity, chlorpyrifos does not meet the FFDCA safety standard or the FIFRA standard for registration.

EPA grouped these claims together because they fundamentally all raised the same issue: Whether the potential exists for chlorpyrifos to cause neurodevelopmental effects in infants and children from exposures (either to mothers during pregnancy or directly to infants and children) that are lower than those resulting in 10% cholinesterase inhibition—the basis for EPA's long-standing point of departure (POD) in regulating chlorpyrifos and other OPs. EPA noted that these claims were not challenges to EPA's 2006 reregistration decision for chlorpyrifos, but rather, new challenges to EPA's ongoing approval of chlorpyrifos under FIFRA and the FFDCA because they rely in large measure on data published after EPA completed both its 2001 chlorpyrifos Interim Reregistration Decision and the 2006 OP CRA that concluded the reregistration process for chlorpyrifos and all other OPs. As matters that largely came to light after the completion of reregistration, EPA made clear that these Petition issues are being addressed as part of the registration review of chlorpyrifos—the next round of re-evaluation under FIFRA section 3(g). The Denial Order noted that the question of OP neurodevelopmental toxicity was, and remains, an issue at the cutting edge of science, involving significant uncertainties.

During registration review, EPA conducted an in-depth analysis of the available OP and chlorpyrifos biomonitoring data and of the available epidemiologic studies from three major children's health cohort studies in the U.S., specifically from the Columbia Center for Children's Environmental Health (CCCEH), Center for the Health Assessment of Mothers and Children of Salinas (CHAMACOS), and Mt. Sinai. EPA three times, in 2008, 2012, and 2016 has presented approaches and proposals to the FIFRA SAP for evaluating this epidemiologic data exploring the possible connection between *in utero* and early childhood exposure to chlorpyrifos and adverse neurodevelopmental effects. The SAP's reports have rendered numerous recommendations for additional study and sometimes conflicting advice for how EPA should consider (or not consider) the epidemiology data in conducting EPA's registration review human health risk assessment for chlorpyrifos and served to underscore that the science on this question is not resolved and would benefit from additional inquiry. Indeed, EPA explained in the Denial Order that the comments received by EPA indicate that there are considerable areas of uncertainty with regard to what the epidemiology data show and deep disagreement over how those data should be considered in EPA's risk assessment. In August 2016, the Ninth Circuit made clear, however, that EPA was to provide a final response to the Petition by March 31, 2017, and that no more extensions would be granted—regardless of whether the science remains unsettled and irrespective of whatever options may exist for resolution of these issues during the registration review process.

While EPA acknowledged its obligation to respond to the Petition as required by the court, EPA noted that the court's order did not and could not compel EPA to complete the registration review of chlorpyrifos and the issues required for that determination in advance of the October 1, 2022 deadline

provided in FIFRA section 3(g), 7 U.S.C. 136a(g). Although past EPA Administrators had proposed to attempt to complete that review several years in advance of the statutory deadline (and respond to the Petition on the same time frame), it was not possible to fully address these registration issues earlier than the registration review period. As a result, EPA concluded that it needed to adjust the schedule for chlorpyrifos so that it could complete its review of the science addressing neurodevelopmental effects prior to making a final registration review decision whether to retain, limit, or remove chlorpyrifos from the market. Accordingly, EPA denied the Petition claims and stated its intention to complete a full and appropriate review of the neurodevelopmental data before either finalizing the proposed rule of October 30, 2015, or taking an alternative regulatory path.

EPA explained that that denial of the Petition on these grounds provided was consistent with governing law because the petition provision in FFDCA section 408(d) does not address the timing for responding to a petition, nor does it limit the extent to which EPA may coordinate or stage its petition responses with the registration review provisions of FIFRA section 3(g). Provided EPA completes registration review by October 1, 2022, Congress otherwise gave the EPA Administrator the discretion under FIFRA to determine the schedule and timing for completing the review of the over 1000 pesticide active ingredients currently subject to evaluation under FIFRA section 3(g). EPA may lawfully re-prioritize the registration review schedule developed by earlier administrations provided that decision is consistent with law and an appropriate exercise of discretion. *See Federal Communications Commission* v. *Fox Television Stations,* 129 S.Ct. 1800 (2009) (Administrative Procedure Act does not require that a policy change be justified by reasons more substantial than those required to adopt a policy in the first instance). Nothing in FIFRA section 3(g) precludes EPA from altering a previously established registration review schedule. Given the absence of a clear statutory directive, FIFRA and the FFDCA provide EPA with discretion to take into account EPA's registration review of a pesticide in determining how and when the Agency responds to FFDCA petitions to revoke tolerances. As outlined previously, given the importance of this matter and the fact that critical questions remained regarding the significance of the data addressing neurodevelopmental effects, EPA asserted that there is good reason to extend the registration review of chlorpyrifos and therefore to deny the Petition. To find otherwise would effectively give petitioners under the FFDCA the authority to re-order scheduling decisions regarding the FIFRA registration review process that Congress has vested in the Administrator.

H. Claim 10: Inhalation Exposure From Volatilization

Petitioners assert that when EPA completed its 2006 OP CRA, EPA failed to consider and incorporate significant exposures to chlorpyrifos-contaminated air that exist for some populations in communities where chlorpyrifos is applied. Petitioners assert that these exposures exceeded safe levels when considering cholinesterase inhibition as a POD and that developmental neurotoxicity may occur at even lower exposure levels than those resulting in cholinesterase inhibition.

To the extent Petitioners are asserting that human exposure to chlorpyrifos spray drift and volatilized chlorpyrifos present neurodevelopmental risks for infants and children, EPA denied this claim for the reasons stated in EPA's response to claims 7–9.

With respect to Petitioners' claim that exposures to spray drift and volatilized chlorpyrifos present a risk from cholinesterase inhibition, EPA denied the Petition for the reasons identified in EPA's Spray Drift Mitigation Decision of July 16, 2012, and EPA's interim response of July 15, 2014, addressing chlorpyrifos volatilization. Specifically, in the Spray Drift Mitigation Decision, EPA determined that the chlorpyrifos registrants' adoption of label mitigation (in the form of label use rate reductions and no-spray buffer zones) eliminated risk from cholinesterase inhibition as a result of spray drift. As for risks presented by volatilized chlorpyrifos that may occur following application, EPA's July 15, 2014 interim response to the Petition explained that vapor-phase inhalation studies for both chlorpyrifos and chlorpyrifos-oxon made clear that neither vapor-phase chlorpyrifos nor chlorpyrifos oxon presents a risk of cholinesterase inhibition.

V. Objections

The three separate sets of objections to the Denial Order filed with EPA in June 2017 raise similar concerns and can be reduced to the following three primary arguments:

- The Objectors argue that EPA's Denial Order applied the wrong legal standard. (Note: All persons filing objections will be referred to as ''Objectors.'') They assert that neither ''scientific uncertainty'' nor the October 2022 deadline for registration review under FIFRA section 3(g), nor the widespread agricultural use of chlorpyrifos, provide a basis for denying petitions to revoke. They claim that EPA has unlawfully left chlorpyrifos tolerances in place without making the safety finding required by the FFDCA.
- The Objectors assert that EPA has previously found that chlorpyrifos tolerances are unsafe and has not disavowed those findings. Specifically, they claim that EPA has found that chlorpyrifos results in unsafe drinking water exposures and results in adverse neurodevelopmental effects to children and that EPA must therefore revoke the tolerances.
- The Objectors argue that EPA's Denial Order committed a procedural error by failing to address significant concerns raised in the comments on EPA's 2014 risk assessment and 2015 proposed revocation that EPA's assessment fails to protect children. In particular, the Objectors focus on concerns raised in comments asserting that (1) EPA's use of 10% cholinesterase as a regulatory standard is not protective for effects to children's developing brains; (2) EPA has not properly accounted for effects from inhalation of chlorpyrifos from spray drift and volatilization; and (3) EPA inappropriately used the Corteva PBPK model to reduce inter- and intra-species safety factors because the model is ethically and scientifically deficient.

VI. Corteva's Comments on the Objections

Corteva, the primary registrant of chlorpyrifos products registered for use in agriculture, submitted a response to the objections on August 27, 2018, raising specific detailed scientific concerns with the objections (Ref. 4). In addition, Corteva states that there is nothing in the FFDCA suggesting that statute requires EPA to make a safety finding in order to deny a response to a petition and that the FFDCA's implementing regulations place the burden on a petitioner to prove that a pesticide is unsafe. Corteva argues that to find otherwise would lead to the result that EPA is required to renew its safety finding every time a petition is filed, irrespective of the strength and quality of the evidence cited and regardless of whether EPA is engaged in an ongoing scientific review of issues addressed in the petition through FIFRA registration review.

VII. EPA's Response to Objections

EPA's responses to the specific objections summarized in Unit V. are provided in this unit.

A. Claims Regarding the Legal Standard for Reviewing Petitions To Revoke

Before addressing the specific legal objections, EPA notes that the Objectors' concerns focus primarily on EPA's denial of Petition claims 7–10 as they relate to the potential for adverse neurodevelopmental effects to children from exposure to chlorpyrifos in food, drinking water, and from spray drift. These concerns fundamentally relate to issues EPA is evaluating in its current registration review of chlorpyrifos. EPA is in the process of completing revised risk assessments to address new data and advancements in risk assessment methodology since EPA's 2006 safety finding for chlorpyrifos as part of FIFRA section 4 reregistration and FFDCA section 408(q) tolerance reassessment to review tolerances for pesticide residues in effect (Ref. 3). The Objectors have not materially challenged EPA's denial of Petition claims that related to matters before EPA at the time of EPA's 2006 safety finding. Specifically, they have not raised objections to the denial of claims relating to the genetic evidence for human vulnerability with respect to the detoxifying enzyme paraoxonase, endocrine-related effects, or carcinogenicity (claims 1–3). Nor have Objectors challenged most aspects of EPA's conclusions in the Denial Order respecting the potential for current chlorpyrifos exposures to result in acetyl cholinesterase inhibition—the regulatory POD used in EPA's 2006 reregistration and tolerance reassessment decisions.

In sum, the objections are focused on EPA's ongoing work in FIFRA registration review to evaluate more recent information addressing the risk of adverse neurodevelopmental effects. With respect to these claims, EPA has concluded, after many years of attempting to obtain information necessary to validate this information, that the objections and the underlying petition fail to provide evidence of neurodevelopmental effects that is sufficiently valid, complete, and reliable at this time to meet the burden petitioners for revocation bear in presenting a case that tolerances are unsafe, pursuant to the standard under FFDCA section 408(b)(2). In addition, as provided in the Denial Order, EPA has concluded that it is also appropriate to deny the petition to allow EPA to complete its assessment of the potential for adverse neurodevelopmental outcomes in connection with the ongoing chlorpyrifos FIFRA registration review.

1. *Burden of coming forward with valid, complete, and reliable evidence.* In response to the Objectors' claims that EPA applied an incorrect legal standard in denying the Petition, EPA disagrees that the FFDCA requires EPA to make a new safety determination in response to every petition to revoke under FFDCA section 408(d) or that it must revoke tolerances in the absence of making a renewed safety determination in response to a petition. Petitioners cite the FFDCA safety definition and the findings EPA must make to establish a tolerance or leave a tolerance in effect when reassessing the safety of tolerance under FFDCA section 408(q) and FIFRA section 3(g). None of their arguments, however, specifically focus on the FFDCA section 408(d) petition process to modify or revoke a tolerance and EPA's implementing procedural regulations that require persons seeking tolerance revocation to come forward with evidence sufficient to support a finding that the applicable safety standard has not been met. In other words, even if one were to assume, *arguendo,* that the same safety standard applies to EPA action on a petition to revoke a tolerance as applies to the Agency's initial establishment of a tolerance, that is a separate issue from the evidentiary burden a petitioner must meet to support its position. As explained in this unit, in this case, EPA reasonably construes the FFDCA and the Agency's implementing regulations to require petitioners seeking withdrawal of a tolerance to support this request with valid, complete and reliable data that set forth why the tolerances are unsafe, a burden Petitioners here have failed to meet.

By way of background, it is important to note that while Congress addressed the requirements for petitions to establish a tolerance with considerable specificity, *see* FFDCA section 408(d)(2)(A), it by contrast expressly left the specific requirements for petitions to modify or revoke a tolerance to EPA's rulemaking discretion. Id., FFDCA section 408(d)(2)(B). In turn, EPA's long-standing regulations require petitions seeking modification or revocation of a tolerance based on ''new data'' to furnish that data in the same form required for petitions seeking to establish tolerances, to the extent applicable. 40 CFR 180.32(b) (''New data should be furnished in the form specified in 180.7(b) [pertaining to ''[p]etitions proposing tolerances''] for submitting petitions, as applicable.''). Thus, Congress expressly conferred discretion on EPA to specify the requirements for withdrawal of an existing tolerance, and EPA's long-standing regulations require a petitioner seeking revocation to meet the same standard of data reliability as a petitioner seeking to establish a tolerance.

FFDCA section 408(b)(2)(D)(i) requires that all actions of the Administrator to establish, modify, leave in effect, or revoke tolerances must consider, among other factors, ''the validity, completeness, and reliability of the available data from studies of the pesticide chemical and pesticide chemical residue.'' Consistent with this obligation, EPA regulations provide that a petitioner has a burden to provide ''reasonable grounds'' for revocation, including an assertion of facts to justify the modification or revocation of the tolerance (40 CFR 180.32(b)). Further, the regulations also make clear that persons seeking revocation have an initial evidentiary burden that must be met before the question of whether the applicable safety standard under FFDCA section 408(b)(2) is met is properly placed before EPA. *See* 40 CFR 179.91 (Party requesting revocation hearing has initial burden of going forward with evidence). This longstanding interpretation of the statute and the procedures Congress established is permissible and entitled to substantial deference. *Sebelius* v. *Auburn Reg'l Med. Ctr.,* 133 S. Ct. 817, 826–827 (2013) (citing *National Cable & Telecomm. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005)). Notably, this regulation mirrors EPA's implementing FIFRA hearing regulations at 40 CFR 164.80(a), which likewise make clear that a person seeking cancellation or suspension must present the case that the standards for those actions have been met.

Recently, in *Ellis* v. *Housenger,* 252 F. Supp. 3d 800, 809 (N.D. Cal. 2017), the U.S. District for the Northern District of California interpreted those regulations, explaining that the FIFRA hearing regulations place the burden on the proponent of a regulatory action to present an affirmative case for action, and that initial burden is properly applied to petitions seeking immediate action. Similarly, before the question whether the applicable safety standard under FFDCA section 408(b)(2) is met is properly placed before the EPA, petitioners must first meet their burden of coming forward with sufficient evidence to show that pesticide tolerances to be modified or revoked are not safe.

EPA concludes that Petitioners have not met that burden. Petitioners have

not presented evidence to establish that chlorpyrifos tolerances must be revoked because of the risk of neurodevelopmental effects at levels lower than EPA's currently regulatory standard. After several years and numerous, significant efforts to evaluate the petition claims related to neurodevelopmental toxicity, including communications with study authors and researchers in an effort to obtain underlying data and validate and replicate reported results, EPA concludes that the information yet presented by Petitioners is not sufficiently valid, complete, and reliable to support abandoning the use of AChE inhibition as the critical effect for regulatory purposes under the FFDCA section 408.

Cholinesterase inhibition and the cholinergic effects (*i.e.,* the physiological or behavioral changes) caused by organophosphorous pesticides, including chlorpyrifos, have long been the endpoints that EPA and nearly every other pesticide regulatory body in the world have used in assessing potential human health hazards. EPA has regarded data showing cholinesterase inhibition in brain, red blood cell (RBC), or plasma, and data on physiological or behavioral changes as critical effects for regulatory purposes. Guideline animal toxicity studies have historically been used in support of the 10% RBC acetylcholinesterase (AChE) inhibition point of departure (POD) for chlorpyrifos in EPA risk assessments.

EPA's 2006 Registration Eligibility Decision (RED) for chlorpyrifos relied on AChE inhibition results from laboratory animals for deriving the POD. Although not acknowledged by the Petitioners and Objectors, in conducting risk assessments in support of the chlorpyrifos RED, EPA also considered the emerging new information from laboratory studies that identified potential concern for increased sensitivity and susceptibility for the young from neurodevelopmental effects unrelated to AChE inhibition. At that time, EPA did not believe those studies support a neurodevelopmental POD for quantitative risk assessment, but it did provide the support for EPA's retention of the FQPA 10X factor in the 2001 chlorpyrifos IRED (Ref. 5).

While Petitioners and Objectors are correct that EPA did not retain the FQPA 10X for chlorpyrifos in the OPs 2006 cumulative risk assessment, that assessment dealt only with the established common mechanism of toxicity for the OPs—AChE inhibition—not with potential hazards that relate to the OPs individually. Accordingly, EPA did not reduce the 10X safety factor as it relates to chlorpyrifos specifically in its 2006 tolerance reassessment and reregistration determination that chlorpyrifos tolerances are safe. To the extent the Objectors are therefore arguing that EPA must, at a minimum, retain the FQPA 10X factor for chlorpyrifos because of the potential for neurodevelopmental effects, those objections are denied as moot. EPA's most recent assessment of the chlorpyrifos tolerances that was challenged in the Petition did retain the FQPA 10X, in part because of neurodevelopmental studies.

The Petition and the objections also argue, however, that EPA should not simply retain the FQPA 10X safety factor but should revoke chlorpyrifos tolerances because of evidence showing the potential for neurodevelopmental effects to occur well below EPA's existing regulatory standard. In sum, they believe EPA should be using the results of existing epidemiologic data to set a regulatory POD for chlorpyrifos at levels that would require EPA to revoke all chlorpyrifos tolerances.

EPA has, since the issuance of the 2006 RED, consistently concluded that the available data support a conclusion of increased sensitivity of the young to the neurotoxic effects of chlorpyrifos and for the susceptibility of the developing brain to chlorpyrifos. This conclusion comes from an evaluation across multiples lines of evidence including mechanistic studies and newer *in vivo* laboratory animal studies, but particularly with the available epidemiology reports along with feedback from the 2012 and 2016 FIFRA SAP meetings. As noted, EPA has retained the FQPA 10X safety factor on these grounds. However, EPA and the FIFRA SAP have also consistently cited the lack of robustness of these data for deriving a POD for neurodevelopmental effects given (1) the absence of a clear mechanism of action for chlorpyrifos in the developing brain; (2) the dosing regimen in *in vivo* studies that differs from internationally accepted protocols; and (3) the lack of any meaningful raw data from the epidemiologic data that are the centerpiece of this area of inquiry.

The lack of a mechanistic understanding for effects on the developing brain precludes EPA from validly or reliably assessing potential differences (and similarities) between laboratory animals and humans with respect to dose-response and temporal windows of susceptibility. In the absence of this information, EPA has no valid or reliable ways to bridge the scientific interpretation of the laboratory studies and epidemiology studies with chlorpyrifos. In addition, the dosing regimen used in the *in vivo* studies means the data are not sufficiently valid, complete and reliable for regulatory purposes given the problems they present for the quantitative interpretation and extrapolation of the results. Specifically, the *in vivo* laboratory animal studies generally use fewer days of dosing that are aimed at specific periods of rodent fetal or early post-natal development compared to internationally adopted guideline studies which are intended to cover both pre- and post-gestational periods. The degree to which these shorter dosing periods coincide with comparable windows of susceptibility in human brain development is unclear. In addition, except for some studies conducted recently, most of the *in vivo* laboratory studies use doses that are higher than doses that cause 10% RBC AChE inhibition. These studies are therefore are not useful quantitatively to evaluate whether EPA's current regulatory standard is or is not sufficient to preclude the potential for neurodevelopmental effects.

Finally, and most significantly, despite numerous requests over the last decade, the authors of the epidemiologic studies that provide potentially the most relevant information regarding effects to humans have never provided the underlying data from their studies to EPA to allow EPA and others to independently verify the validity and reliability of the results reported in their published articles. EPA believes it is necessary to first replicate the statistical analyses used in the studies to ensure their accuracy. In addition, EPA wants to examine the raw data used in the analysis to ensure appropriate handling of data points and in potentially conducting alternative statistical analyses. For example, EPA would want to evaluate the elimination of certain study participants from the CCCEH study that were deemed to be outliers in order to determine whether their exclusion was proper and how it may have affected the results. The lack of publicly available raw data does not necessarily preclude EPA from reliance on such information for the purpose of risk assessment. Given the long history and internationally harmonized use of acetylcholinesterase inhibition as the point of departure for chlorpyrifos, however, EPA reasonably requires more complete information regarding the studies in the published articles to establish a POD and that threshold has not been met in this instance. Due to these limitations, EPA does not believe the Petition, or the objections make the

case for EPA to establish a POD based on neurodevelopmental effects, which remains central to the Petitioners' claims 7–9.

EPA understands that this conclusion is at odds with its revised risk assessment that it published for comment with the NODA in November 2016. By way of explanation, EPA notes that it has undertaken considerable efforts to assess the available chlorpyrifos data, including the references cited by the Petitioners in support for their claims related to neurodevelopmental effects. Specifically, in Chapter 4 and Appendices 2–4 of the 2014 human health risk assessment, EPA provides a detailed discussion of the strengths and uncertainties associated with the epidemiology studies. For example, although the studies used US-based exposure profiles in real world situations, EPA noted that the lack of data on the timing of chlorpyrifos applications was a key concern in the exposure assessment. EPA conducted a preliminary review of available literature and research on epidemiology in mothers and children following exposures chlorpyrifos and other OPs, laboratory studies on animal behavior and cognition, AChE inhibition, and mechanisms of action, and took it to the SAP in 2008.

The CCCEH study used concentrations of pesticides (including chlorpyrifos) in umbilical cord blood as a measure of exposure, while two other birth cohorts used urinary biomarkers in the mothers to estimate pesticide exposure. In 2012, the EPA convened another meeting of the FIFRA SAP to review the latest experimental data related to AChE inhibition, cholinergic and non-cholinergic adverse outcomes, including neurodevelopmental studies on behavior and cognition effects. The EPA also performed an in-depth analysis of the available chlorpyrifos biomonitoring data and of the available epidemiologic studies from three major children's health cohort studies in the U.S., including those from the CCCEH, Mt. Sinai, and CHAMACOS. The EPA explored plausible hypotheses on mode of actions/adverse outcome pathways (MOAs/AOPs) leading to neurodevelopmental outcomes seen in the biomonitoring and epidemiology studies.

EPA convened another meeting of the FIFRA SAP in April 2016, which was unique in focus compared to the previous meetings in that EPA explicitly proposed using information directly from the CCCEH published articles for deriving the POD. The 2016 SAP did not support the ''direct use'' of the cord blood and working memory data for deriving the regulatory endpoint for several reasons, among them, the lack of raw data from the epidemiology study (Ref. 4).

This feedback is consistent with concerns raised in public comments EPA received on the use of the epidemiology data throughout the course of registration review from the grower community, pesticide registrants, and the U.S. Department of Agriculture. The final FIFRA SAP report provides a detailed account of the concerns associated with the Agency's April 2016 proposed approach to selecting the point of departure (POD) and its use in quantitative risk assessment. Specifically, the SAP report noted that ''[t] he majority of the panel stated that using cord concentrations for derivation of the POD could not be justified by any sound scientific evaluation. The Panel was conflicted with respect to the importance of a 2% change in working memory.'' *Id.* at 19. The Panel went on to note that ''the Agency's inability to confidently estimate previous exposure patterns and/or intensity hinders the use of cord blood at delivery as an anchor from which to extrapolate back to a more toxicologically meaningful internal exposure metric.'' *Id.* at 42. The SAP also noted the insufficient information about timing of chlorpyrifos applications in relation to cord blood concentrations at the time of birth, as well as uncertainties about the prenatal window(s) of exposure linked to reported effects.

EPA acknowledges that the 2012 and 2016 SAPs note effects in the epidemiology and experimental studies below 10% AChE inhibition. In addition, both the 2008 and 2012 SAP commented on the strengths of the CCCEH epidemiologic studies and the value of the information they provide. However, despite these strengths, both the 2008 and 2012 Panels recommended that AChE inhibition remain as the source of data for the PODs. The 2016 SAP expressed significant reservations about the proposed approach to use the cord blood as the source of data for the POD. It noted the incompleteness of the information, including the lack of raw data, reproducibility of analytical blood data, and knowledge about chlorpyrifos application timing relative to pregnancy. EPA has evaluated the SAP's concerns, as well as public comments received on the 2016 updated human health risk assessment echoed a number of the SAP's concern regarding use of the CCCEH study. Based on the uncertainties identified by the 2016 SAP, the published articles from CCCEH are not complete for deriving a POD. EPA acknowledges this conclusion differs from the position supported in the 2016 revised human health risk assessment, but EPA believes the shortcomings of the data identified raise issues of validity, completeness and reliability under the FFDCA that direct against using the data for risk assessment at this time. As stated in the Denial Order, EPA intends to continue its exploration of the uncertainty around using neurodevelopmental effects to establish a POD as it works to complete registration review, including renewed efforts to obtain the raw data from the epidemiologic studies that are the central to consideration of potential neurodevelopmental effects.

Notably, EPA has made requests to CCCEH, CHAMACOS, and Mt. Sinai to obtain the raw data, and visited Columbia University in an attempt to better understand their study results and what raw data exist. EPA also requested the original CCCEH study protocol to determine whether its specific questions regarding exposure timing could be addressed with the raw data. EPA was informed the CCCEH protocol was not available, and EPA did not receive the raw data from any of those research institutions. Columbia made a public commitment to ''share all data gathered,'' however, to date, CCCEH has not provided EPA with the data, citing subject privacy concerns. In 2018, EPA explored options for blinding the data to eliminate this concern. However, through these conversations, CCCEH indicated there is no effective way to remedy this issue, citing that since the cohort is from a very small geographic area, subject identification would still be possible, and therefore, was still of concern.

In addition, EPA actively sought clarification on the kinds of residential application methods of chlorpyrifos used in New York City (NYC) during the time the CCCEH study was conducted (1998–2000) in order to provide additional context to the results of the CCCEH study conclusions. Through a series of email and telephone conversations with NYC pest control officials in 2016, EPA consistently heard that chlorpyrifos was typically applied as a crack and crevice application between 1998 and 2000. Unfortunately, EPA has no way to verify that this use pattern aligns with the exposures of participants in the CCCEH study and would not be able to corroborate the correlation between crack and crevice application and the observed neurodevelopmental effects.

As indicated, EPA has undertaken considerable efforts to assess the CCCEH

study, including submitting EPA's evaluation of the CCCEH study to multiple SAPs. Given that CCCEH has not shared the raw data or the results of their exploratory analyses, EPA cannot validate or confirm the data analysis performed, the degree to which the statistical methods employed were appropriate, or the extent to which (reasonable or minor) changes in assumptions may have changed any final results or conclusions. EPA has been unable to conduct its own evaluation of the study conclusions utilizing the raw data nor has EPA has been able to address the issues identified by the 2016 SAP. While EPA has retained the FQPA 10x safety factor in order to address this potential uncertainty, given the shortcomings to date of the published epidemiology data, EPA does not have sufficiently complete information to currently support using the epidemiology studies as the POD in place of AChE inhibition as the POD.

In conclusion, the epidemiologic studies are central to the Petitioner's claims regarding neurodevelopmental effects, yet the Petitioners and Objectors rely only on summaries in publications to present their case. Petitioners have not presented the raw data from the epidemiology studies for consideration of their claims. EPA has likewise been unable to obtain this critical information, though the FIFRA SAP and commenters have raised many questions about it. So, EPA has not been able to verify the conclusions of the epidemiology studies due to this lack of raw data. Further, the lack of a clear mechanism of action and the lack of an internationally accepted dosing regimen in the *in vivo* data also preclude EPA from determining the relevance of the limited animal data addressing the potential for neurodevelopmental effects. The Petitioners have therefore failed to meet their initial burden of providing sufficiently valid, complete, and reliable evidence that neurodevelopmental effects may be occuring at levels below EPA's current regulatory standard and no information submitted with the objections addresses this shortcoming of the Petition.

2. *Reconciling FFDCA petitions to revoke and FIFRA Registration Review.* EPA also continues to conclude that denial is appropriate for claims related to matters that are the subject of registration review, specifically for chlorpyrifos, claims related to neurodevelopmental toxicity. In this case, the data deficiencies in the Petition related to neurodevelopmental toxicity that EPA is currently studying in a more up-to-date, thorough and methodical fashion in conjunction with the statutorily prescribed FIFRA re-registration process. In this context, it is particularly appropriate for EPA to take into account the substantive work that it is conducting under FIFRA in reaching its decision on the Petition.

As EPA explained in the Denial Order, to reconcile the FFDCA petition procedures with the FIFRA registration review provisions that require EPA to conduct periodic reviews of all pesticides, EPA must be able to take account of the FIFRA registration review schedule for a pesticide in determining how and when to respond to an FFDCA petition that raises issues that are also the subject of a current registration review. As noted, the Denial Order fully responded to Petitioners' claims that address the substance of EPA's 2006 safety finding, and Petitioners and the other Objectors could have chosen to challenge and litigate that determination through the petition and judicial review provisions of the FFDCA, had they wished. The objections, however, do not for the most part go to the substance of EPA's 2006 safety finding. Those claims have largely been abandoned and instead the objections now focus only on compelling EPA to resolve on a petitioner-dictated schedule new issues regarding the potential for neurodevelopmental toxicity that are part of an ongoing evaluation in registration review in advance of the statutory deadline (October 1, 2022) provided by Congress in FIFRA section 3(g) for completing that assessment. To that end, Objectors argue that the fact Congress established a 2022 deadline for registration review is no license for EPA to delay its response to an FFDCA petition and that EPA is in fact prohibited from relying on registration review as a basis for determining how to complete other reviews of a pesticide. Specifically, they cite to language in FIFRA section 3(g)(1)(C) that states that ''[n]othing in this subsection shall prohibit the Administrator from undertaking any other review of a pesticide under this chapter.'' Objectors have overlooked the critical language at the end of this passage (''under this chapter'') that by its terms only speaks to how EPA should reconcile registration review with other reviews under FIFRA. The language does not address reviews under the FFDCA, much less prohibit EPA from reconciling its responses to FFDCA petitions with the timeframe for registration review under FIFRA. The Objectors also do not point to any language in the FFDCA prohibiting the reconciliation of a response to a petition to revoke tolerances with the registration review schedule for reviewing the pesticide—which includes a determination whether to leave existing tolerances in effect. The 15-year registration review interval reflects Congress's effort to balance the need for EPA to assure that pesticides meet the FFDCA and FIFRA standards, while at the same time recognizing that completing scientific evaluations for over 1000 active ingredients is both time-consuming and resource-intensive. During a registration review, EPA is required to ''assess changes since a pesticide's last [registration] review,'' including new risk assessment methods, new studies and new data on pesticides. 40 CFR 155.53(a). This is precisely the assessment EPA is in the process of undertaking in the chlorpyrifos registration review with respect to the Petition claims addressing new information on the potential for adverse neurodevelopmental effects. If, as Petitioners and Objectors argue, EPA were required to truncate its ongoing registration review process to make a new FFDCA safety finding every time it received a petition to modify or revoke tolerances, petitioners would effectively have the authority to re-order the Administrator's scheduling of registration review decisions under FIFRA and dictate the extent of inquiry EPA may put to a matter before reaching a resolution. EPA continues to believe that with the passage of FIFRA section 3(g) and the 15-year review cycle created by that provision, Congress directed the Administrator, not FFDCA petitioners, to determine the appropriate timing and process for completing the review of dietary risk within that 15-year review period. EPA therefore concludes that it is also appropriate to deny the objections and the underlying petition to the extent they seek to compel EPA's consideration of neurodevelopmental toxicity issues raised during the course of the current registration review in advance of the schedule provided by Congress under FIFRA section 3(g).

As described previously, EPA has compelling reasons to follow its regulatory process through registration review. Specifically, EPA is working to update a number of assessments that will result in a more complete, accurate assessment of the risks of chlorpyrifos than if EPA were compelled to truncate that review now. The key components of EPA's updates to its analysis are (1) Review of five new laboratory animal studies for consideration in the updated human health risk assessment, and (2) Incorporating refined use information

into the 2016 updated drinking water assessment.

With respect to the animal data, in 2018, the California Department of Pesticide Regulation (CDPR) proposed to adopt a regulation designating chlorpyrifos as a toxic air contaminant (TAC) in California. As part of this determination, CDPR developed its ''Final Toxic Air Contaminant Evaluation of Chlorpyrifos Risk Characterization of Spray Drift, Dietary, and Aggregate Exposures to Residential Bystanders.'' The CDPR risk characterization document cites five new laboratory animal studies not previously reviewed by EPA (Gomez-Gimenez et al., 2017, 2018; Silva et al., 2017; Lee et al., 2015; Carr et al., 2017). It is appropriate for EPA to review these five new studies in order to complete EPA's evaluation of potential neurodevelopmental effects. CDPR is using these studies as the main source of information for their new POD for acute oral exposure, so it is prudent for EPA to evaluate the data's quality and whether it provides the strong support for the conclusion that effects on the developing brain may occur below a dose eliciting 10% AChE inhibition that would be used to establish a new POD for the EPA's risk assessment. EPA is conducting its review in accordance with OPP's Guidance for Considering and Using Open Literature Toxicity Studies to Support Human Health Risk Assessment. It has contacted the primary investigators associated with the new animal studies in July–August 2018, and received the raw data associated with one of these studies.

As for EPA's drinking water assessment, the Agency identified certain uses, application rates, and practices described in the current chlorpyrifos labels that are not actually being used in the field and are contributing to an over-estimate of potential drinking water concentrations. EPA has requested additional information from the registrants to confirm the accuracy of these assumptions and anticipates including these updates in the Proposed Interim Decision.

To be clear, EPA remains committed to expediting its registration review determination so that it is completed well in advance of the October 2022 deadline. To that end, EPA anticipates making available any updates to the human health and drinking water assessments for public availability and comment by summer of 2020. Updates will also include EPA's response to public comments from the previous comment periods. In addition, EPA has been engaged in discussions with the chlorpyrifos registrants that could result in further use limitations affecting the outcome of EPA's assessment. The Proposed Interim Decision incorporating these updated assessments is anticipated for public availability and comment by October 2020. If EPA were compelled to act in advance of these registration review activities, none of these assessments would be available to inform that review. For example, OPP is pursuing the use of surface water monitoring data to confidently estimate pesticide concentrations in surface water that may be sourced by community water systems. A meeting of the FIFRA Scientific Advisory Panel is planned for obtaining expert feedback on tools and methodologies currently in development for using surface water monitoring data quantitatively in drinking water assessments. While the focus of the SAP is not specific to chlorpyrifos, the EPA will consider any recommendations from the SAP that are appropriate for inclusion in the chlorpyrifos drinking water assessment.

B. Objections Asserting That EPA Has Found Chlorpyrifos To Be Unsafe

The Objectors argue that EPA not only failed to make a safety finding in denying the Petition, but that it has never disavowed previous EPA findings that it could not conclude chlorpyrifos is safe with respect to both the potential for adverse neurodevelopmental effects and harmful drinking water exposures. In particular, the objections point to various statements in EPA risk assessments and in EPA's 2015 proposed tolerance revocation action asserting that EPA is unable to conclude that chlorpyrifos tolerances are safe.

Contrary to these assertions, as noted by Corteva in its response to the objections, EPA has not made any findings that chlorpyrifos tolerances are not safe. In fact, EPA's last final action with respect to the safety of chlorpyrifos tolerances was its determination in 2006 that chlorpyrifos and the other pesticides in the organophosphate class meet the FFDCA safety standard in connection with FIFRA section 4 reregistration and FFDCA section 408(q) tolerance reassessment. This is the only regulatory finding currently in effect for chlorpyrifos as EPA has taken no final action on the proposed rule it published in 2015 to comply with the Ninth Circuit mandamus order in the *PANNA* v. *EPA* decision. Proposed rules are just that—proposals; they do not bind federal agencies. Indeed, EPA made clear it was issuing the proposal because of the court order, without having resolved many of the issues critical to EPA's FFDCA determination and without having fully considered comments previously submitted to the Agency (69 FR 69079, 69081–83). Similarly, risk assessments that underly proposed rules are not final agency actions and likewise are not binding.

At this stage, EPA may choose to finalize, modify or withdraw the proposal based on the comments received and EPA's evaluation following its review of the comments. Until such time, EPA's statements in the proposed rule are not binding pronouncements with respect to EPA's decision whether to grant or deny the Petition. See, *e.g., Northwest Coalition for Alternatives to Pesticides* v. *EPA,* 544 F.3d 1043, 1051 (9th Cir. 2008) (''as long as agencies follow the proper administrative procedures, they have the authority to change their minds before issuing a final order''); *Public Citizen Health Research Grp.* v. *FDA,* 740 F.2d 21 (D.C. Cir. 1984) (''Neither the substance of the decision to require further study nor the circumstances leading to the decision . . . suffice, however, to permit us to leapfrog back over the Secretary's decision . . . hold the agency to its preliminary decision to promulgate a labeling requirement. In connection with the registration review of chlorpyrifos, which EPA expects to complete in advance of the October 1, 2022 statutory deadline, EPA will make a determination regarding the safety of chlorpyrifos and will either finalize, modify or withdraw the proposal at that time.

With respect to objections related to drinking water, as explained in Unit II., a party may not raise issues in objections unless they were part of the petition. *Corn Growers* v. *EPA,* 613 F.3d 266 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 2931 (2011). The Petition did not identify drinking water exposure as a basis for seeking tolerance revocation, and the Objectors cannot therefore raise that concern as a basis for challenging EPA's denial of the Petition. The mere fact that EPA is considering the potential impact of chlorpyrifos exposures in drinking water in the Agency's FIFRA section 3(g) registration review does not somehow provide Petitioners and Objectors with a vehicle for introducing that topic in the objections process on the Petition denial. And the objections phase of the petition process does not provide Petitioners a means to effectively start the petition process over again by raising issues that were not originally raised in the 2007 petition to revoke. Accordingly, EPA denies all objections regarding drinking water exposures. To be clear, however, EPA is continuing its

FIFRA section 3(g) registration review and to complete its evaluation of drinking water exposures to chlorpyrifos. EPA will address these issues in its upcoming registration review decision.

C. Objections Asserting That the Denial Order Failed To Respond to Significant Concerns Raised in Comments

The Objectors claim that EPA has committed procedural error in failing to respond to certain comments raised in comments to EPA's 2014 Revised Human Health Risk Assessment and the 2015 proposed revocation. The Objectors appear to assert that in the absence of any comment response document in the record, EPA has violated the requirements of section 553(c) of the Administrative Procedure Act (APA) which requires agencies to give consideration to relevant matter submitted during the comment period on proposed rules. While these objections correctly recite the requirements of the APA rulemaking provisions, the requirement to respond to comments on proposed rules applies to the ''rules adopted'' by agencies—*i.e.,* final rules—and EPA has neither finalized nor withdrawn the 2015 proposed revocation rule. Further, the FFDCA does not require EPA to respond to rulemaking comments in issuing petition denial orders under FFDCA section 408(d)(4). In connection with EPA's completion of the FIFRA section 3(g) registration review of chlorpyrifos, EPA will either finalize or withdraw the proposed rule and address significant comments on the proposal at that time. But EPA has no obligation to respond to rulemaking comments in denying the Petition or responding to objections, both of which are adjudicatory actions that are not part of the rulemaking process.

In addition to raising procedural error, Objectors appear to adopt as their own substantive objections some of the comments on the proposed rule and risk assessment. Specifically, they focus on comments asserting that (1) EPA's use of 10% cholinesterase as a regulatory standard is not protective for effects to children's developing brains; (2) EPA inappropriately used Corteva's PBPK model, which is ethically and scientifically deficient, to reduce inter and intra-species safety factors; and (3) EPA has not properly accounted for effects from inhalation of chlorpyrifos from spray drift and volatilization.

The comments adopted by the Objectors regarding effects on the developing brain mirror the claims raised in the Petition regarding the potential for adverse neurodevelopmental effects. Accordingly, EPA restates its response provided in Unit VII.A.1. that the Petition and the objections fail to meet burden of presenting evidence sufficiently valid, complete and reliable to demonstrate that chlorpyrifos results in neurodevelopmental effects that render its tolerances not safe.

With respect to EPA's use of the Corteva PBPK model, these claims, as with claims respecting drinking water, were not raised in the Petition and cannot be raised for the first time in the objections phase of the petition process. Further, the Objections appear to oppose EPA's use of the PBPK model in conducting the assessment underlying EPA's 2014 and 2016 risk assessments and 2015 proposed tolerance revocation and do not appear to address EPA's Petition denial. This objection therefore does not appear to be relevant to the Denial Order. For these reasons, this objection is also denied.

Regarding the objections related to inhalation risk, Objectors raise three distinct issues from the public comments that relate to EPA's completed inhalation exposure assessment addressing the potential for bystanders to experience cholinesterase inhibition from exposure to spray drift at the time of application and volatilized chlorpyrifos following application. First, the Objectors dispute EPA' s legal authority not to consider in its risk assessment exposures to chlorpyrifos from illegal spraying prohibited by product labeling. Second, the Objectors assert that the Denial Order inappropriately relied on two recent Corteva studies on the effects of chlorpyrifos in its vapor phase to conclude that volatilized chlorpyrifos presents no risk of cholinesterase inhibition. Third, the Objectors assert that documented poisoning incidents demonstrate that the no-spray buffer-zones that EPA approved on product labeling in 2012 are inadequate to address harm from spray drift. Objectors point specifically to a May 2017 poisoning incident in Kern County, California, involving a total of 50 people who were either harmed or put at risk, as evidence for their concern.

In response, EPA believes it is lawful and appropriate for it to consider federally enforceable chlorpyrifos product labeling restrictions in assessing the extent of bystander risk from spray drift under both the FFDCA and FIFRA. Under FIFRA, pesticide labeling use instructions are enforceable limits on the use of the product that serve as the basis for EPA's evaluation of potential risks. Indeed, in registering pesticides, FIFRA section 3(c)(5) directs EPA to register pesticides when, among other things, a pesticide ''will perform its intended function without unreasonable effects on the environment'' and ''when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.'' These directives functionally instruct EPA to consider the intended, widespread and commonly recognized use of a pesticide as set forth on proposed product labeling in determining whether the pesticide will cause unreasonable adverse on the environment. While these provisions do not serve as a bar to EPA considering the impacts from unlawful misuse, unless such misuse is a widespread or commonly recognized practice, it does not provide a basis for regulatory action under FIFRA or a basis for determining that current tolerance levels are unsafe. Rather, misuse is first and foremost a matter for enforcement under FIFRA. It should also be noted that because chlorpyrifos is a restricted use pesticide, applicators must have specific training meant, in part, to assure proper pesticide application. When these restrictions are followed, exposures are significantly limited. To be clear, while drift is minimized when applicators follow label directions, EPA does assume that some residues may settle off-target, and that there may be dermal and incidental oral exposure from contacting residential turf adjacent to treated fields. To address the potential for cholinesterase inhibition from these exposures, EPA assessed the risk from these exposures and establishes appropriate distances between such locations and the site of application. Accordingly, following EPA's assessment of spray drift in 2012, the chlorpyrifos registrants agreed to place additional limitations on use to include use rate reductions and spray drift buffers that are sufficient to eliminate a risk of cholinesterase inhibition from lawful use.

With respect to the objections concerning volatility and the potential for cholinesterase inhibition, EPA has not changed its position set forth in the Denial Order and does not believe it is disregarding the potential for volatilization exposures. Exposure to low levels of vapor-phase chlorpyrifos following application near treated fields is possible. After the Agency's 2011 preliminary risk assessment, Corteva submitted toxicity data that measured cholinesterase inhibition resulting from acute exposure to vapors of chlorpyrifos and its oxon rather than exposure to

aerosols of these compounds as was done for previous assessments. Since inhalation exposure to bystanders will be only to vapor phase chlorpyrifos rather than aerosols due to spray drift restrictions, use of these data to assess inhalation risk of cholinesterase inhibition to bystanders is appropriate. In these vapor-phase toxicity studies, test animals were exposed in atmospheres containing saturation concentrations of chlorpyrifos and its oxon, the maximum potential level of the compounds in air. No cholinesterase inhibition was observed, and the studies were determined to have been conducted properly using saturation concentrations of the compounds and controls appropriate for these types of studies, *i.e.,* animals receiving no pesticide exposure, as further explained in ''*Chlorpyrifos: Reevaluation of the Potential Risks from Volatilization in Consideration of Chlorpyrifos Parent and Oxon Vapor Inhalation Toxicity Studies, W. Britton, W. Irwin, 6/25/14.*''

EPA has also done a comprehensive review of chlorpyrifos incidents and found that most were due to accidents and misuse as specified in EPA's most recent final incident review ''*Chlorpyrifos: Tier II Incident Report, S. Recore and K. Oo, 7/27/11.*'' The agency is aware of the referenced Kern County chlorpyrifos incident that occurred in 2017 in which the pesticide appears to have been applied in a manner in which direct drift onto bystanders occurred, a case of misuse. Spray drift buffers address exposure to bystanders when chlorpyrifos is applied as required by the pesticide label. In addition, it should be noted that EPA's 2000 cancellation of homeowner products and many indoor and outdoor non-residential uses (*e.g.,* schools and parks where children may be exposed) has led, according to data from 2002–2010, to a 95% decrease in the number of incidents reported in residential areas. In sum, EPA does not believe available incident data suggests that there exists a widespread and commonly recognized practice of misusing chlorpyrifos and EPA therefore believes it is appropriate to use the enforceable label instructions as the basis for evaluating the potential for inhalation exposure from spray drift and volatilization.

VIII. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's order denying objections filed under FFDCA section 408. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

X. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. The Petition from NRDC and PANNA and EPA's various responses to it are available in docket number EPA–HQ–OPP–2007–1005 available at *http://www.regulations.gov.*
2. The objections submitted on the Petition Denial are available in docket number EPA–HQ–OPP–2007–1005 available at *http://www.regulations.gov.*
3. For additional information on the organophosphate cumulative risk assessment, see *http://www.epa.gov/pesticides/cumulative/2006-op/op_cra_main.pdf.*
4. FIFRA Scientific Advisory Panel (2016). ''Chlorpyrifos: Analysis of Biomonitoring Data''. Available at: *https://www.epa.gov/sap/meeting-materials-april-19-21-2016-scientific-advisory-panel.*
5. For additional information on the 2000 chlorpyrifos IRED and 2006 chlorpyrifos RED, see *https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-059101_1-Jul-06.pdf.*
6. FIFRA Scientific Advisory Panel (2008). ''Scientific Issues Associated with Chlorpyrifos and PON1''. Available in docket number EPA–HQ–OPP–2008–0274 available at *http://www.regulations.gov.*
7. EPA, 2012. ''Guidance for Considering and Using Open Literature Toxicity Studies to Support Human Health Risk Assessment'' as well as it's ''Framework for Incorporating Human Epidemiologic & Incident Data in Health Risk Assessment.'' Available at *https://www.epa.gov/sites/production/files/2015-07/documents/lit-studies.pdf.*
8. EPA, 2016. Record of Correspondence. Available in docket number EPA–HQ–OPP–2015–0653.

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2019–15649 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 190325272–9537–02]

RIN 0648–XP002

Western and Central Pacific Fisheries for Highly Migratory Species; 2019 Bigeye Tuna Longline Fishery Closure

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean because the fishery has reached the 2019 catch limit. This action is necessary to ensure compliance with NMFS regulations that implement decisions of the Western and Central Pacific Fisheries Commission (WCPFC).

DATES: Effective 12:01 a.m. local time July 27, 2019, through December 31, 2019.

ADDRESSES: NMFS prepared a plain language guide and frequently asked questions that explain how to comply with this rule; both are available at *https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0085.*

FOR FURTHER INFORMATION CONTACT: Rebecca Walker, NMFS Pacific Islands Region, 808–725–5184.

SUPPLEMENTARY INFORMATION: Pelagic longline fishing in the western and central Pacific Ocean is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act (Act). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart O.

NMFS established a calendar year 2019 limit of 3,554 metric tons (t) of bigeye tuna (*Thunnus obesus*) that may be caught and retained in the U.S. pelagic longline fishery in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the

Western and Central Pacific Ocean (Convention Area) (83 FR 33851, July 18, 2018). NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the fishery will reach the 2019 catch limit by July 27, 2019.

In accordance with 50 CFR 300.224(e), this rule serves as notification to fishermen, the fishing industry, and the public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed during the dates provided in the **DATES** heading. The fishery is scheduled to reopen on January 1, 2020. This rule does not apply to the longline fisheries of American Samoa, Guam, or the Northern Mariana Islands, collectively ''the territories,'' as described below.

During the closure, a U.S. fishing vessel may not retain on board, transship, or land bigeye tuna caught by longline gear in the Convention Area, except that any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and landed, provided that they are landed within 14 days of the start of the closure, that is, by August 10, 2019.

During the effective period of the restrictions, longline-caught bigeye tuna may be retained on board, transshipped, and landed if either of these conditions is met:

(1) The fish are caught by a vessel with a valid American Samoa longline permit; or

(2) The fish are landed in the territories.

In either case, the following conditions must be met:

(1) The fish are not caught in the U.S. Exclusive Economic Zone (EEZ) around Hawaii;

(2) Other applicable laws and regulations are followed; and

(3) The vessel has a valid permit issued under 50 CFR 660.707 or 665.801.

Bigeye tuna caught by longline gear during the closure may also be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a valid specified fishing agreement under 50 CFR 665.819(c), in accordance with 50 CFR 300.224(f)(1)(iv). Bigeye tuna caught under a specified fishing agreement shall be attributed to the territory that is party to that agreement.

During the closure, a U.S. vessel is also prohibited from transshipping bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel with a valid permit issued under 50 CFR 660.707 or 665.801.

The catch limit and this closure do not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. To ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, however, the following requirements apply during the closure period (see 50 CFR 300.224):

(1) Longline fishing both inside and outside the Convention Area is not allowed during the same fishing trip. An exception would be a fishing trip that is in progress on July 27, 2019. In that case, the catch of bigeye tuna must be landed by August 10, 2019; and

(2) If a longline vessel fishes outside the Convention Area and the vessel then enters the Convention Area during the same fishing trip, the fishing gear must be stowed and not readily available for fishing in the Convention Area. Specifically, hooks, branch lines, and floats must be stowed and the mainline hauler must be covered.

The above two additional prohibitions do not apply to vessels operating in the longline fisheries of the territories. This includes vessels included in a valid specified fishing agreement under 50 CFR 665.819(c), in accordance with 50 CFR 300.224(f)(1)(iv). This group also includes vessels with valid American Samoa longline permits and vessels landing bigeye tuna in one of the territories, as long as the bigeye tuna were not caught in the EEZ around Hawaii, the fishing was compliant with all applicable laws, and the vessel has a valid permit issued under 50 CFR 660.707 or 665.801.

Classification

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because it would be unnecessary and contrary to the public interest. This rule closes the U.S. longline fishery for bigeye tuna in the Convention Area as a result of reaching the applicable bigeye tuna catch limit. The limit was established after opportunity for public comment (83 FR 33851, July 18, 2018), and is codified in Federal regulations based on agreed limits established by the Western and Central Pacific Fisheries Commission. 50 CFR 300.224(e) notifies the public that fishing prohibitions will be placed in effect when the limit is reached. NMFS forecasts that the fishery will reach the 2019 limit by July 27, 2019. Longline fishermen have been subject to longline bigeye tuna limits in the western and central Pacific since 2009. They have received ongoing, updated information about the 2019 catch and progress of the fishery in reaching the Convention Area limit via the NMFS website, social media, and other means. This constitutes adequate advance notice of this fishery closure. Additionally, the publication timing of this rule provides longline fishermen with seven days advance notice of the closure date, and allows two weeks to return to port and land their catch of bigeye tuna.

For the reasons stated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this temporary rule. NMFS must close the fishery as soon as possible to ensure that fishery does not exceed the catch limit. NMFS implemented the catch limit to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish stocks in the Western and Central Pacific Ocean, to which it is a contracting party. Failure to close the fishery immediately would result in violation of regulations that implement WCPFC decisions.

This action is required by 50 CFR 300.224 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: July 19, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–15722 Filed 7–19–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 142
Wednesday, July 24, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2018–0037]

RIN 0584–AE62

Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: Section 5(a) of the Food and Nutrition Act of 2008, as amended, provides that households in which each member receives benefits under a State program funded under part A of Title IV of the Social Security Act (SSA) (also known as Temporary Assistance for Needy Families (TANF) block grants [1]) shall be categorically eligible for the Supplemental Nutrition Assistance Program (SNAP). Currently, SNAP regulations broadly interpret ''benefits'' to mean cash assistance and non-cash or in-kind benefits or services from any TANF-funded program.[2] In operation, this has allowed categorical eligibility for SNAP to be conferred on households based on receipt of minimal benefits issued by TANF-funded programs which may not conduct a robust eligibility determination and do not meaningfully move families toward self-sufficiency. The Food and Nutrition Act has clear parameters regarding the income and resource limits that SNAP households must meet, and categorical eligibility is intended to apply only when the conferring program has properly determined eligibility. Extending categorical eligibility to participants who have not been screened for eligibility compromises program integrity and reduces public confidence that benefits are being provided to eligible households.

Therefore, the Department proposes updating the regulations to refine categorical eligibility requirements based on receipt of TANF benefits. Specifically, the Department proposes: (1) To define ''benefits'' for categorical eligibility to mean ongoing and substantial benefits; and (2) to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare. The proposed rule would also require State agencies to inform FNS of all non-cash TANF benefits that confer categorical eligibility.

The proposed revisions would create a clearer and more consistent nationwide policy that ensures categorical eligibility is extended only to households that have sufficiently demonstrated eligibility by qualifying for ongoing and substantial benefits from TANF-funded programs designed to assist households and move them towards self-sufficiency.

In addition, the revisions would help ensure that receipt of nominal, one-time benefits or services do not confer categorical eligibility and would address program integrity issues that have surfaced since the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed the programs whose benefits confer categorical eligibility. The Department believes these revisions will maintain categorical eligibility's dual purpose of streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households.

DATES: Written comments must be received on or before September 23, 2019 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. Email: Send comments to *SNAPPDBRules@usda.gov.* Include Docket ID Number [FNS–2018–0037], ''Revision of Categorical Eligibility in the Supplemental Nutrition Assistance'' in the subject line of the message.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. *SNAPPDBRules@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) outlines specific income and resource eligibility standards for SNAP. Generally, the statute requires that SNAP households who do not have elderly or disabled members must have a monthly gross income equal to or lower than 130% of the Federal Poverty Level (FPL) and a net income equal to or lower than 100% of the FPL in order to be eligible for SNAP.[3] The statute also requires that SNAP households meet specific resource limits: One for households with elderly or disabled members, and one for all other households.

Section 5(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(a)) provides categorical eligibility for households in which all members receive TANF

[1] State programs funded under part A of Title IV of the SSA include programs funded by Federal TANF block grant funds, as well as programs not funded by Federal TANF block grants but funded by State maintenance-of-effort dollars that allow a State to receive Federal TANF block grant funds. For simplicity, this proposed rule will refer to all State programs funded under part A of Title IV of the SSA as ''TANF-funded programs,'' and to benefits from such programs as ''TANF benefits.''

[2] While some benefits that meet the TANF definition of ''assistance'' at 45 CFR 260.31, such as transportation and childcare, would be considered ''non-cash benefits'' in this proposed rule, references to ''assistance'' and ''benefits'' in this proposed rule are for SNAP categorical eligibility purposes only. The terms are not intended to align with the TANF use of ''assistance'' or ''benefits'' in 45 CFR 260.31.

[3] Households with an elderly or disabled member need only meet the net income test. All eligible one- and two-person households are guaranteed a minimum benefit.

benefits.[4] Categorical eligibility simplifies the SNAP application process for both SNAP State agencies and households by reducing the amount of information that must be verified if a household already qualifies and has been determined eligible to receive benefits from another assistance program.

Categorical eligibility has changed significantly over time because of changes in the Social Security Act (SSA) (42 U.S.C. 601). Section 5(a) of the Food and Nutrition Act dates back to the Food Security Act of 1985 (Pub. L. 99–198), which made households in which all members receive Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) benefits categorically eligible for SNAP. AFDC was an entitlement program intended to support needy families by providing cash welfare payments to households who met certain State eligibility requirements. While each State designed its own eligibility criteria and benefit levels, these requirements were governed by Federal limitations; States received matching Federal funds for the cash payments to eligible households.[5] [6] Therefore, categorical eligibility as outlined in the Food and Nutrition Act was contemplated when State AFDC programs conferring categorical eligibility had specific income eligibility and resource [7] criteria that were targeted toward low-income households. While States had some flexibility, overarching Federal parameters for AFDC meant there was greater consistency across States and general alignment with the standards for SNAP.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) (PRWORA) amended the SSA and replaced the cash AFDC program with the TANF block grant, providing a set amount of funding for States to design and implement TANF-funded programs. Section 401 of the SSA outlined four broad purposes for TANF block grants: (1) To provide assistance to needy families so that children can be cared for in their own homes; (2) to reduce the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and (4) to encourage the formation and maintenance of two-parent families. The State Maintenance-of-Effort (MOE) requirement in Section 409(a)(7) of the SSA (42 U.S.C. 609(a)(7)) requires States to spend a certain amount of their own funds for qualified purposes under TANF to receive Federal TANF block grants. PRWORA allowed States to use Federal TANF and State MOE funds to provide cash and non-cash benefits to serve needy families under TANF purposes one and two, as well as potentially broader populations under TANF purposes three and four.

Under PRWORA, States gained significant flexibility in TANF-funded program administration, resulting in a wide array of programs designed to further TANF's four purposes, including ones that may not have meaningful eligibility criteria.[8] For example, States define ''needy'' for TANF purposes one and two and may develop their own eligibility criteria absent any Federal requirement or standard of ''need''. As a result, TANF-funded programs vary greatly from State to State,[9] with some States focusing more on basic cash assistance for needy households and other States developing programs that are less likely to focus on low-income households, and may not have appropriate income or resource tests.

Prior to PRWORA, categorical eligibility for SNAP was conferred by receipt of cash AFDC benefits, as non-cash AFDC benefits did not exist. While PRWORA did not modify the categorical eligibility provision in Section 5(a) of the Food and Nutrition Act, the Department recognized that the changes enacted by PRWORA and the move from AFDC to TANF meant that categorical eligibility could be conferred by both cash and non-cash benefits. As a result, programs conferring categorical eligibility would change in scope and types of benefits offered and might not target families in need. The Department issued regulations (65 FR 70133 (November 21, 2000)) that further defined and limited the conferring of non-cash categorical eligibility. Specifically, the Department determined that, to appropriately limit categorical eligibility to needy households, those TANF-funded programs serving purposes three and four must have income eligibility criteria at or below 200% of the FPL. As discussed in the preamble to the November 21, 2000 rule, this threshold was based on advice provided to the Department by the U.S. Department of Health and Human Services (HHS), the agency with oversight of the TANF block grant program. HHS analysis indicated that most services with income eligibility criteria had income limits set at 200% FPL or lower.

However, after the change from AFDC to TANF, under current regulations, States have significant flexibility to determine what types of non-cash TANF-funded services and benefits can confer categorical eligibility for SNAP and what the eligibility criteria for those benefits should be. As of March 2019, 43 States have used this flexibility to expand categorical eligibility to households that receive non-cash TANF benefits, resulting in significant variation across States in the SNAP eligibility determination process, and in program rules and operations.[10] When using non-cash TANF benefits as the basis of categorical eligibility decisions, many States use income thresholds and resource limits that are higher than the Federal standards for SNAP. Due to the current broad flexibility afforded States in the construction of TANF-funded programs, these households, who would not otherwise have qualified for SNAP due to their income or resources, are considered categorically eligible and therefore able to receive SNAP. As a result of these policies, it is estimated that 4.1% of currently participating SNAP households (767,000 households or 1.4 million individuals) have resources above the SNAP limit and 4.9% have incomes above the Federal SNAP gross income limit of 130% FPL

[4] Section 5(a) also provides categorical eligibility for SNAP based on receipt of Supplemental Security Income (SSI) and General Assistance (GA). SSI and GA benefits are not affected by this proposed rule.

[5] *https://aspe.hhs.gov/system/files/pdf/167036/1history.pdf,*

[6] *https://aspe.hhs.gov/aid-families-dependent-children-afdc-and-temporary-assistance-needy-families-tanf-overview-0.*

[7] ''States determined eligibility thresholds and benefit amounts. However, Federal law established a gross income limit (185% of the state-determined need standard); an asset test (no more than $1,000 in countable assets); and rules for how states count different forms of income, including earnings.'' Gene Falk, The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History, Congressional Research Service 11 (April 2, 2019), *https://fas.org/sgp/crs/misc/R44668.pdf.*

[8] Congressional Research Service, ''The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,'' updated December 14, 2017, *https://crsreports.congress.gov/product/pdf/RL/RL32748,* p.13; Congressional Research Service, ''The Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions'', updated June 3, 2019, *https://crsreports.congress.gov/product/pdf/RL/RL32760.*

[9] *https://www.acf.hhs.gov/ofa/resource/tanf-and-moe-spending-and-transfers-by-activity-fy-2017-contains-national-state-pie-charts.* In Fiscal Year 2017, 22.7 percent of combined TANF Federal and State MOE funds were used for basic assistance (*e.g.,* cash); 10.5 percent were used for work, education, and training activities; and 16.1 percent were used for child care. In Fiscal Year 2017, 27 States used less than 50 percent of their TANF Federal and State MOE funds on a combination of basic assistance; work, education, and training activities; and child care.

[10] *https://fns-prod.azureedge.net/sites/default/files/snap/BBCE.pdf.*

(914,000 households or 1.7 million individuals).

Current Issues With Categorical Eligibility

While categorical eligibility based on the receipt of non-cash TANF benefits reduces administrative burden for State agencies and households, and particularly benefits working households, the current regulation on categorical eligibility has created several issues. The current broad interpretation of ''benefits,'' which includes any non-cash or in-kind benefits or services, and the significant variation across State TANF-funded programs permits nominal non-cash benefits or services, such as TANF-funded brochures or hotline numbers, to confer categorical eligibility for SNAP.[11] [12]

Federal auditors have raised program integrity concerns about the wide adoption of categorical eligibility policies and the prevalence of TANF benefits with minimal value. A 2012 General Accountability Office (GAO) audit found that the expansion of categorical eligibility beyond pure cash programs resulted in States conferring categorical eligibility to households in some cases without actually providing the TANF-funded benefit or service necessary to confer the categorical eligibility determination for SNAP.[13] In some cases households may not receive the TANF-funded benefit until *after* their SNAP eligibility determination, may only receive the benefit upon request, or may not receive it at all, which weakens the intended linkage between the two programs. For example, a USDA Office of Inspector General (OIG) audit found that households who were determined categorically eligible based on the receipt of a family planning brochure did not actually receive the brochure unless they specifically requested it from the State.[14]

Further, because of the flexibility afforded States in the design and operation of TANF-funded programs, it is also possible that households who may not have undergone a meaningful TANF financial eligibility determination through the TANF-funded program become categorically eligible for SNAP. Policies in 41 States indicate that they have an income limit of 200% or less for their expanded categorical eligibility program, however, they also indicate that ''all households are eligible'' for the expanded categorical eligibility benefit.[15] For example, four States utilize TANF funds to print their multi-benefit applications for SNAP, TANF, and other programs and include information and referrals to other services on those applications. The applications are provided to anyone who requests one, regardless of their gross income, and confer expanded categorical eligibility at the time the household receives the application. Conferring categorical eligibility in such cases compromises the integrity of SNAP by allowing households that did not undergo a financial eligibility determination before receiving TANF-funded benefits, to then be deemed categorically eligible to receive SNAP.

In 2016, FNS issued subsequent guidance [16] to State agencies following these audits regarding the proper procedures under which categorical eligibility may be conferred. The Department has determined, however, that due to the nominal nature of many benefits offered under current expanded categorical eligibility programs, further rulemaking is required in order to narrow the scope of potential TANF benefits conferring categorical eligibility, to ensure that applicant eligibility is properly assessed. Therefore, the Department wishes to further strengthen the requirements through this rulemaking to ensure that TANF-funded programs conferring categorical eligibility align more closely with SNAP eligibility standards outlined in the Food and Nutrition Act. The Department has an obligation to expend taxpayer funds in a fiscally responsible manner and in alignment with the intent of the Food and Nutrition Act to alleviate hunger among low-income households. Prior rulemaking regarding categorical eligibility was intended to use the streamlined approach of categorical eligibility to support households in need. The Department has seen that, given the significant operational flexibilities inherent in TANF-funded programs, current regulations are insufficient to achieve this goal. As a result, the Department thinks revising the categorical eligibility regulations at 7 CFR 273.2(j)(2) and limiting categorical eligibility to those households receiving ongoing and substantial benefits from TANF-funded programs strikes a prudent and reasonable balance between administrative flexibility and program integrity. With this proposed rule, the Department intends to ensure consistency across TANF-funded programs whose benefits confer categorical eligibility and to discourage the types of practices that States developed for conferring categorical eligibility with TANF non-cash benefits. The Department believes that instituting an ongoing and substantial threshold for both cash and non-cash TANF benefits, as described below, is an appropriate way to achieve this goal.

Summary of Proposed Approach

Given the substantial variation across all TANF State program operations, and in the interest of program integrity, the Department proposes revising the requirements for cash and non-cash TANF benefits that would confer categorical eligibility for SNAP. Such revisions would create a clearer and more consistent nationwide policy regarding the cash and non-cash TANF benefits that confer categorical eligibility. This proposal would limit cash and non-cash categorical eligibility to households that receive ongoing and substantial benefits. In addition, non-cash categorical eligibility would be limited to specific types of TANF benefits—subsidized employment, work supports, and/or childcare—that support family self-sufficiency. It is the Department's understanding that programs providing such benefits have meaningful eligibility determinations because of the value of the benefits provided. As SNAP and TANF eligibility determinations may be accomplished concurrently, the Department also understands that a household may not yet be in receipt of the TANF benefit (*e.g.,* be in physical possession of a voucher or payment) at the time categorical eligibility is conferred. However, it is the Department's intent that the household be enrolled in a TANF-funded program expected to start on a date certain. Such programs would need to be ongoing and substantial in order to be considered one that could confer categorical

[11] USDA Office of Inspector General, ''FNS Quality Control Process for SNAP Error Rate Audit Report 27601–0002–41,'' *https://www.usda.gov/oig/webdocs/27601-0002-41.pdf.*

[12] Examples of nominal benefits are brochures provided to clients that explain referrals to social services, pregnancy prevention, or the 2–1–1 hotline. Additionally, States may simply provide information about these services or a phone number to contact for more information on the application for multiple benefit programs.

[13] *https://www.gao.gov/assets/600/593070.pdf* The GAO estimated that in fiscal year 2010, 2.6 percent (473,000) of households that received Supplemental Nutrition Assistance Program (SNAP) benefits would not have been eligible for the program without expanded categorical eligibility because their incomes were over the Federal SNAP eligibility limits (95% confidence interval of 2.4–2.8%).

[14] USDA Office of Inspector General, ''FNS Quality Control Process for SNAP Error Rate Audit Report 27601–0002–41,'' *https://www.usda.gov/oig/webdocs/27601-0002-41.pdf.*

[15] *https://fns-prod.azureedge.net/sites/default/files/snap/BBCE.pdf.*

[16] *https://fns-prod.azureedge.net/sites/default/files/snap/clarification-bbce-memo.pdf.*

eligibility for SNAP. The Department requests comments to better understand the eligibility determination and enrollment processes for TANF-funded programs. Specifically, the Department is interested in comments on the processes by which TANF-funded programs actually determine applicant financial and non-financial eligibility for the conferring programs, and at what point in the TANF enrollment process this determination and delivery of benefit(s) to the household may take place relative to the SNAP eligibility determination.

The Department believes the policies explained further below will ensure SNAP benefits reach those most in need while balancing administrative efficiency, customer service, and program integrity.

Simplification of Terminology

The proposed rule simplifies some of the terminology used when addressing categorical eligibility. Current regulations at § 273.2(j)(2) provide for categorical eligibility based on the receipt of ''non-cash or in-kind benefits or services.'' Because no meaningful distinction exists between ''non-cash'' and ''in-kind,'' or ''benefits'' and ''services,'' in this context, the Department proposes simply using ''non-cash benefits'' in the revised § 273.2(j)(2)(i)(B).

Move From TANF Purposes to TANF Benefits

Current regulations at § 273.2(j)(2)(i)(B) and (C) allow non-cash programs designed to further TANF block grant purposes one through four to confer categorical eligibility. The flexibility afforded States under the TANF block grant allows for variation in how States link their various TANF-funded programs to TANF purposes. The Department has learned through consultation with HHS that, for example, one State may designate a given benefit as furthering purposes one and two of the TANF block grant, while another State offering a substantially similar benefit may designate it as furthering TANF purposes three and four. Since the distinction between purposes is not necessarily meaningful in conferring non-cash categorical eligibility, the Department proposes to link categorical eligibility to specific types of TANF *benefits* rather than to TANF block grant *purposes.* Specifically, the Department is proposing to limit categorical eligibility to TANF non-cash benefits that support meaningful work opportunities—specifically, subsidized employment, work supports, and childcare support—that help move families from welfare to self-sufficiency. The Department's proposal would remove mention of TANF block grant purposes in § 273.2(j)(2)(i)(B) and eliminate § 273.2(j)(2)(i)(C) and instead describe TANF benefits in § 273.2(j)(2)(i)(B)(2).

As described below, the Department is proposing that these non-cash benefits be both ongoing and substantial to confer categorical eligibility for SNAP.

Ongoing and Substantial Benefits in Conferring Programs

This proposed rule would revise the interpretation of ''benefits'' under Section 5(a) of the Food and Nutrition Act to mean that, for purposes of categorical eligibility, TANF or State-MOE funded benefits must be ''ongoing'' and ''substantial''. The Department also proposes that, for the purposes of alignment across all types of TANF benefits, these thresholds be set for both cash and non-cash benefits.

Current regulations at § 273.2(j)(2)(i)(B) and (C) provide for categorical eligibility based on the receipt of ''non-cash or in-kind benefits or services,'' without further detail. As explained above, such a policy means an individual may be categorically eligible for SNAP even if the individual receives a one-time, minimal, non-cash TANF benefit such as an information brochure, hotline number, or referral to other services.[17] This practice threatens the integrity of categorical eligibility, the purpose of which is to streamline services to households who have received an eligibility determination from a means-tested program.

To help address these issues, the Department proposes clarifying in § 273.2(j)(2)(i)(B)(1) that, to be considered ''ongoing'', ''benefits'' under Section 5(a) must be those that a household receives or is authorized to receive for a period of at least six months. In the TANF context, this might include a household that would be eligible to receive benefits for a period of at least six months, barring changes in financial status or compliance. In addition, six months is the certification period length for many SNAP households and a mid-point for the most common certification period length of 12 months.[18] The Department believes that six months is long enough to be considered ongoing, and would maintain program alignment. The Department welcomes comments about using the six-month standard, including whether another timeframe would be more appropriate. These proposed changes are reflected in § 273.2(j)(2)(i)(A)(1) and § 273.2(j)(2)(i)(B)(1).

The Department also proposes requiring in § 273.2(j)(2)(i)(A)(2) and § 273.2(j)(2)(i)(B)(2) that cash and non-cash benefits be ''substantial'' to confer categorical eligibility. In defining substantial, the Department wants to eliminate the practice of conferring categorical eligibility based on receipt of benefits that are nominal and of minimal value. Allowing categorical eligibility based on the receipt of benefits nominal in value may encourage cursory or nonexistent eligibility determinations because the amount of those TANF benefits do not warrant the cost of staff time and resources to administer. However, by requiring the benefits to be substantial, the proposed rule limits categorical eligibility to those TANF benefits for which a State is more likely to establish a meaningful eligibility determination and dedicate resources. The Department consulted with HHS to determine an appropriate definition of ''substantial''. Based on this consultation, the Department proposes that the benefit be valued at a minimum of $50 per month in order to confer categorical eligibility. There is no minimum benefit amount currently required by TANF, in keeping with the flexibility afforded to States by that program. However, should that ever change, the Department also proposes in § 273.2(j)(2)(i)(A) that, should HHS develop a minimum threshold amount for TANF cash benefits, the Department would select the higher of the two standards.

Because the types and amounts of TANF benefits vary greatly among States, the Department is particularly seeking comments on appropriate measures for ''substantial'' and ''ongoing'' benefits, as well as comments on the proposed $50 threshold. The Department will consider these comments when formulating the final rulemaking.

Types of Non-Cash Benefits Conferring Categorical Eligibility

The President's Executive Order on Reducing Poverty in America by Promoting Opportunity and Economic Mobility (April 10, 2018) directed the

[17] *https://fns-prod.azureedge.net/sites/default/files/snap/BBCE.pdf.*

[18] *https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2016.pdf.* In Fiscal Year 2016, across all SNAP households the average certification period length was 13 months. 25% of all SNAP households and 37% of SNAP households with children have a certification period length of 6 months. 50% of all SNAP households and 54% of SNAP households with children have a certification period length of 12 months.

Department to review its regulations and to determine whether they are consistent with the principles of increasing self-sufficiency, well-being and economic mobility. In keeping with the principles of the Executive order, and the Administration's focus on encouraging self-sufficiency, the Department has determined that the types of benefits conferring categorical eligibility should be limited to those that, in addition to being ongoing and substantial, also provide meaningful opportunities for households to obtain employment and financial stability.

Therefore, the Department proposes in § 273.2(j)(2)(i)(B)(2) to limit the conferring of categorical eligibility to those non-cash TANF benefits that provide subsidized employment, work supports, and childcare benefits, that are substantial and ongoing as defined earlier. Based on consultation with HHS, the Department is proposing to limit these conferring benefits to the following types:

- Subsidized employment for which the employer or a third party receives a subsidy to offset some or all of the wages and costs of employing an individual;
- Work supports, including transportation benefits or vouchers to assist families to participate in employment or work activities; and/or
- Childcare subsidies or vouchers to support working families.

The Department believes the existence of a ready market valuation for benefits conferring categorical eligibility is important for administrative ease and ensuring a consistent nationwide policy. The Department understands that additional non-cash TANF benefits, such as education and training, job search assistance, or work experience, are provided on an hourly or weekly basis to program participants. The Department is unsure how to determine a ready market valuation for such benefits, which are less concrete and measurable than subsidized employment, work supports, and child care benefits, which can be easily valued at a cash equivalent. However, the Department is interested in public comment as to whether and how the benefits from such hourly-based programs could be valued for the purposes of conferring categorical eligibility, or other ways to determine whether such benefits could be ongoing and substantial.

Treatment of Non-Cash Benefit Conferring Programs

The Department is seeking comments on the current regulation's distinction among non-cash TANF-funded programs conferring categorical eligibility based on the amount of Federal TANF and State MOE funding for the non-cash TANF-funded programs. Under current regulations, a non-cash TANF-funded program funded by more than 50 percent Federal TANF/State MOE funds and serving TANF purposes one and two must confer categorical eligibility (§ 273.2(j)(2)(i)(B)). At the State's option, categorical eligibility may be conferred if the TANF-funded program is funded by less than 50 percent Federal TANF/State MOE funds (§ 273.2(j)(2)(ii)). In such cases, the State must inform FNS if the program serves TANF purposes one and two. Programs serving TANF purposes three and four, no matter the funding makeup, must have income limits below 200 percent FPL; those funded by less than 50 percent Federal TANF/State MOE funds must also be approved by FNS.

The proposed rule would maintain the funding distinction by: (1) Requiring that States confer categorical eligibility when a TANF-funded program providing ongoing and substantial non-cash benefits is funded with 50 percent or more of combined Federal TANF or State MOE money (§ 273.2(j)(2)(i)(B)); and (2) allowing States the option to confer categorical eligibility when a TANF-funded program that issues ongoing and substantial non-cash benefits is funded by less than 50 percent of a combination of Federal TANF or State MOE money. However, the Department seeks comments to better understand current State funding mixes for TANF-funded programs, and to learn whether these funding distinctions and practices have an impact on the type and scope of benefits provided to households. The Department is interested in whether eliminating the distinction, or adjusting the 50 percent funding threshold would help streamline SNAP regulations, ensure consistency in serving households through categorical eligibility, and simplify administration. The Department will take these comments into consideration in determining whether and how to adjust these requirements in final rulemaking.

The Department would update the regulatory language at § 273.2(j)(2)(i)(B) and 273.2(j)(2)(ii) to reflect the proposed shift from conferring categorical eligibility based on TANF purposes to receipt of ongoing and substantial non-cash TANF benefits. In addition, the Department proposes to clarify the funding threshold. The regulatory language currently at § 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A) and 273.2(j)(2)(ii)(B) describe TANF-funded programs that are ''more than 50 percent'' and ''less than 50 percent'' funded by Federal TANF or State MOE money. The Department proposes in this rulemaking to change references from ''more than 50 percent'' to ''50 percent or more'' so that it is clear into which category programs funded with 50 percent Federal TANF or State MOE money should fall. The Department also proposes conforming changes to § 273.8 (e)(17) to align with the proposed definition of ''ongoing and substantial'' benefits and to strike paragraph references that would no longer be applicable given the changes this proposed rule would make to § 273.2(j)(2)(i)(B) and § 273.2(j)(2)(ii).

The proposed rule retains the policy regarding household categorical eligibility based on an individual household member's receipt of qualifying benefits currently at § 273.2(j)(2)(iii). Under this policy, if one member receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household would be categorically eligible. This policy allows a household to be categorically eligible for SNAP based on receipt of non-cash benefits that, while provided at the individual level, support overall family self-sufficiency. For example, a State may determine that a TANF-funded childcare voucher provided to a mother actually supports and benefits her and her two children; pursuant to such a determination, the entire household would be categorically eligible, thereby streamlining the family's process of applying for SNAP assistance. The Department proposes incorporating this policy into the revised § 273.2(j)(2)(i)(B) and § 273.2(j)(2)(ii) to consolidate the criteria for non-cash TANF benefit categorical eligibility.

State Notification to FNS of Non-Cash Conferring Benefits

For appropriate oversight purposes, the proposed § 273.2(j)(2)(i)(B) would also require State agencies to inform FNS of the non-cash TANF benefits that confer categorical eligibility. Current regulations require that State agencies inform FNS if they elect the option to confer categorical eligibility through a program that is less than 50 percent funded by Federal TANF or State MOE dollars, and that furthers purposes one and two of the TANF block grant. States are not currently required to inform FNS of conferring programs that are more than 50 percent funded and that further purposes one and two. Under the proposed rule, a State would be required to inform FNS of all non-cash TANF benefits that confer categorical

eligibility. The notification requirement would ensure appropriate monitoring and transparency, as well as help ensure consistency nationwide. States would be required to report when this rule takes effect and any time there is a subsequent change to the conferring programs. The Department expects the notification requirement would not unduly burden most State agencies because the TANF benefits that confer categorical eligibility do not frequently change.

Procedural Matters

Executive Order 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, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

The Department estimates the net reduction in Federal spending associated with the proposed rule to be approximately $9.386 billion over the five years 2019–2023. Included in this is an estimated reduction in Federal transfers of approximately $10.543 billion over the five-year period as well as a $1.157 billion increase in Federal administrative costs. The Department estimates an additional $1.157 billion in Federal reimbursement of administrative costs to State agencies (for a total of $2.314 billion in additional administrative costs). In addition, the Department estimates that households that remain eligible for SNAP and new SNAP applicants will face additional burden associated with the application process, at a cost of approximately $5 million annually. The proposed rule may also negatively impact food security and reduce the savings rates among those individuals who do not meet the income and resource eligibility requirements for SNAP or the substantial and ongoing requirements for expanded categorical eligibility.

The Department estimates that approximately 9 percent of currently-participating SNAP households (an estimated 1.7 million households in FY 2020, containing 3.1 million individuals) will not otherwise meet SNAP's income and asset eligibility prerequisites under the proposed rule. These households are nearly evenly split between those that fail the Federal SNAP income test (4.9 percent) and those that fail the Federal resource test (4.1 percent). Collectively, these households receive about 5 percent of total SNAP benefits. However, households who would not meet the eligibility requirements due to the resource test account for 80 percent of the expected reduction in benefits. This is because they have lower incomes relative to households that fail the Federal income test, and thus receive larger monthly SNAP allotments.

Households with one or more elderly individual(s) and/or earned income would be disproportionately affected. Approximately 13.2 percent of all SNAP households with elderly members will lose benefits (7.4 percent will fail the income test and 5.8 percent will fail the resource test), as will 12.5 percent of households with earnings (8.6 percent will fail the income test and another 3.9 percent will fail the resource test). The proposed rule is relatively less likely to affect households with children—only 7.4 percent are expected to no longer meet eligibility requirements (4.1 percent will fail the income test and 3.4 percent will fail the resource test).

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. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because the proposed rule primarily impacts State agencies and SNAP participants. State agencies in affected States will need to revise their procedures for processing SNAP applications and recertifications and will face increased administrative costs associated with the revised procedures.

Small entities, such as smaller SNAP-authorized retailers, would not be subject to any new requirements. However, all retailers would likely see a drop in the amount of SNAP benefits redeemed at stores if these provisions were finalized, but impacts on small retailers are not expected to be disproportionate to the impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (nearly 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up most authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits.

The proposed rule is expected to reduce SNAP benefit payments by about $3 billion per year. This would equate to about a $183 loss of revenue per small authorized retailer on average per month [(3 billion × 15%)/(200,000 stores/12 months)]. In 2017, the average small store redeemed about $3,800 in SNAP each month; the potential loss of benefits represents less than 5 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 store data, a 4.8 percent reduction in SNAP redemptions represented between 0.01 and 0.95 percent of these stores' average gross sales.

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 expected to be an Executive Order 13771 regulatory action. We estimate that it would impose $415 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is necessary, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost

effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains Federal mandates (under the regulatory provisions of Title II of the UMRA) that are expected to result in aggregate expenditures by State, local and tribal governments or the private sector of more per year. Thus, the rule is subject to the requirements of sections 202 and 205 of the UMRA.

The Regulatory Impact Analysis conducted by FNS in connection with this proposed rule includes a cost/benefit analysis and explains the alternatives considered to modify categorical eligibility regulations. Based on this analysis, the Department believes there are no alternatives to the proposal that would accomplish the stated objectives in a less burdensome manner. However, the Department invites comments regarding less burdensome approaches to achieving the stated objectives. Per the Food and Nutrition Act, the Federal government would pay 50 percent of allowable State administrative costs required under this proposed rule.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the **Federal Register** notice, published June 24, 1983 (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

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 and timely implementation. This rule is not intended to have retroactive effect. Before any judicial challenge to the provisions of the final 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 any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that there is a potential for civil rights impacts to result if the proposed action is implemented because more elderly individuals may not otherwise meet the SNAP eligibility requirements.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require tribal consultation under E.O. 13175. FNS briefed Tribes on this rule at the February 14, 2019, listening session; Tribes were subsequently provided the opportunity for consultation on the issue, but the Department received no feedback. If a tribe requests consultation in the future, FNS will work with OTR to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) 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.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule contains existing information collection requirements that are subject to review and approval by the Office of Management and Budget; therefore, the Department is submitting for public comment the changes in the information collection burden that would increase the OMB burden inventory as a result of adoption of the proposals in the rule. These existing requirements impact a current collection that has been used without a valid OMB control number or expiration date. The Department plans to bring these burden requirements into compliance, contingent upon OMB approval under the Paperwork Reduction Act of 1995. FNS plans to account for and maintain these burden hours under a new OMB control number assigned by OMB. Written comments on the information collection in this information must be received by September 23, 2019. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Requests for additional information or copies of this information collection should be directed to Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. E-mail: Send comments to *SNAPPDBRules@usda.gov*. For further information, or for copies of the information collection requirements, please contact the Program Design Branch at the address indicated above. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and 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 those who are to respond, including use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

Title: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program.

OMB Number: 0584–NEW.

Expiration Date: [Not Yet Determined.]

Type of Request: New collection.

Abstract: Section 5(a) of the Food and Nutrition Act of 2008, as amended, (the Act), provides that households in which each member receives benefits under a State program funded under part A of Title IV of the Social Security Act (SSA) (also known as Temporary Assistance for Needy Families (TANF) block grants) shall be categorically eligible for SNAP. Originally, categorical eligibility was intended to reduce administrative burden for States and households, making the application process easier for households that qualified for benefits under means-tested programs similar to SNAP by removing the requirement that these households verify eligibility twice for two separate programs. However, TANF-funded programs provide States with considerable flexibility in program administration, resulting in programs that vary greatly from State to State.

Under current regulations, all States must confer categorical eligibility to households in which all members receive cash assistance from TANF, General Assistance (GA), or SSI. States have significant flexibility to determine what types of non-cash TANF-funded services and benefits can confer categorical eligibility for SNAP. Currently, 43 States have expanded categorical eligibility to households that receive non-cash TANF benefits and thirty-seven of these States currently have no resource test.

The proposed rule would provide a clearer and more consistent nationwide policy that limits categorical eligibility to households that qualify for TANF-funded programs designed to help move them towards self-sufficiency and ensure that receipt of nominal, one-time benefits or services does not confer categorical eligibility. Section 5(j) of the Act indicates that households who are considered to be categorically eligible are considered to have met the SNAP resource standards and therefore these households do not undergo another resource determination. The proposed restriction of categorical eligibility would *reduce* the number of households who would be categorically eligible and, therefore, would require States to assess more households' income and resources to determine if they are eligible for SNAP benefits. Under current policies, it is estimated that 4.9% of SNAP households have resources above the SNAP limit and 4.1% have incomes above the Federal SNAP gross income limit of 130% FPL. However, the proposed rule has a greater impact on the need to verify resources since all households (both eligible and ineligible) that are not categorically eligible would be subject to the resource verification requirements, and as noted earlier, this rule would reduce the number of households who are categorically eligible.

As discussed further below, to date, FNS has been conducting the information collection and imposing burden for a limited set of States and SNAP applicant households regarding resource verification without OMB approval.

This is an existing collection in use without an OMB control number and FNS is seeking OMB approval. FNS is requesting a new OMB Control Number for these requirements in this proposed rule, Revision of Categorical Eligibility in SNAP. Because State agencies do not verify resources for applicants that are currently considered categorically eligible per 5(j) of the Act, they would be required to make changes to their application process to assess the resources of those households' that would no longer be categorically eligible. Out of 53 State agencies, 43 State agencies have adopted expanded categorical eligibility policies: Therefore, only 10 States are currently collecting resource information as part of the SNAP eligibility determination process. The ten (10) State agencies that have not taken the option to expand categorical eligibility will be unaffected by this proposed rule; these States are currently conducting the information collection and imposing burden for States and SNAP applicant households regarding resource verification without OMB approval.

There is no new recordkeeping burden required for this new information collection request. The recordkeeping burden for State agencies is currently covered under the approved information collection burden for application processing, OMB Control Number 0584–0064 (expiration date: 7/31/2020), which already accounts for the casefile documentation that States must maintain for each SNAP household at § 273.2(f)(6).

Description of Costs and Assumptions: This rule will narrow the types of programs whose benefits may confer categorical eligibility. The proposed restriction of categorical eligibility would reduce the number of households who would be categorically eligible for SNAP and, therefore, would require States to assess more households' resources to determine if they are eligible for SNAP benefits; under the rule, all 53 State agencies (including the 10 States currently collecting this data without OMB approval) will now be required to collect resource information from more households. For example, States and households will need to contact financial institutions, Departments of Motor Vehicles and other entities to obtain documentation of household's resources.

Reporting Burden Activities: Currently, all applicant households are required to meet the SNAP resource limits at § 273.8 (Resource eligibility standards); applicants who are categorically eligible are considered to have met the SNAP resource standards (Section 5(j) of the Food and Nutrition Act). Recent data [19] shows that 21.9% of SNAP households are pure public assistance households (*i.e.,* categorically eligible through receipt of SSI, cash TANF or GA); these households are considered to have met the SNAP income and resource requirements. Therefore, the household estimates in this burden narrative do not include the 21.9% of households who would remain categorically eligible through their pure public assistance status, and therefore not subject to any additional burden under this rulemaking. Under this rulemaking, fewer SNAP households will be categorically eligible through their receipt of non-cash TANF benefits and therefore considered to have met the resource standards. As fewer SNAP households will be categorically eligible, more households will therefore need to have their resources evaluated by SNAP eligibility workers to determine whether or not these households meet the SNAP resource standards. Resources are one of several elements of eligibility that are used to determine SNAP eligibility and are subject to verification if questionable (§ 273.2 (f)(2)). To come up with a reporting burden estimate of how much burden would be added to SNAP state agencies and households, FNS consulted with States to learn about current State practices around resource verification.

[19] Characteristics of SNAP Households, FY2017, Table B.12; *https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf.*

State Agency Burden Assessment Feedback

FNS first needed to estimate the amount of time that resource verification would take for State agencies. To do so, FNS consulted with eight States that currently do not have expanded categorical eligibility and, therefore, subject SNAP households to a resource test and asked these States to provide estimates of the amount of time that State agency staff spent verifying resources with clients at initial and recertification. FNS learned that four of these States verify resources when resources are close to the resource limit, two States only verify resources when questionable and two States verified resources at all times. FNS therefore estimates that, of the 43 States who, under this proposed rule, would now be required to conduct substantially more resource verification, 22 would adopt a policy to verify a household's resources if close to the resource limit (for the purposes of this discussion, ''High Limit States''), 10 would verify resources only when deemed questionable (''Self-Attestation States'') and 11 would verify resources for households at all times (''Always'' States). The burden table column ''Estimated Total Burden Hours'' also accounts for the 10 States that are currently collecting resource information without OMB approval (5 ''High Limit'' States, 3 ''Self-Attestation States'' and 2 ''Always'' States; so that the total burden reflected in the table is for all 53 State agencies at both initial as well as recertification.

Using the estimates that each group of States provided for the amount of time needed to verify resources and averaging the responses, FNS estimates that State agency staff in States with a policy to verify resources if close to the limit or questionable would on average spend 12.3 minutes (0.205 hours) per case at initial certification and 7.4 minutes (0.123 hours) per case at recertification. FNS estimates that State agency staff in States who would adopt a policy to verify resources at all times would have a higher burden: 43.75 minutes (0.729 hours) per case at initial certification and 26.25 minutes (0.4375 hours) per case at recertification.

FNS then needed to estimate the percentage of a State's caseload that would be subject to these resource verification requirements in order to calculate the State agency burden. In the estimated 13 States where caseworkers would verify resources at all times, the entire caseload would be subject to verification. In ''High Limit'' and ''Self-Attestation'' States, only a certain percent of SNAP applicants would meet the criteria (*e.g.* substantial resources or questionable information) that would necessitate the caseworker undertaking resource verification. Using caseload data on households' resource levels from a recent study to determine how many households would have resources close to the resource limit,[20] FNS estimates that States that verify resources near the limit (27) would have to verify about 27% of the time; FNS rounded up to 30% to take into account caseworker discretion to verify when questionable. For the States that verify only when questionable (13) FNS estimates that resources would be verified 10% of the time. Accordingly, in the burden tables the estimated number of households whose resources would be verified by a caseworker are adjusted to 30% of the caseload in the estimated 22 ''High Limit'' States and 10% of the caseload in the estimated 10 ''Self-Attestation'' States. The estimated number of households for the 13 ''Always'' States would be all SNAP applicant households in those States.

This rule would also require State agencies to inform FNS of the types of non-cash TANF benefits that confer categorical eligibility in their States. This specific reporting would be a new reporting requirement under this rule. FNS estimates that it would take one hour of a State agency staff person's time to prepare and send this information to FNS. As 10 States do not currently have non-cash TANF-funded programs that confer categorical eligibility and would not be required to report to FNS, FNS anticipates that only the current 43 States with non-cash programs would be required to report to FNS under the new rule. This additional burden is included in the burden tables below. The Department seeks additional comment on how long it would take States to gather, review and report this information.

Household Burden

The Department then had to estimate the burden hours for households to provide verification. FNS referenced the currently approved estimated number of applicants in OMB Control Number 0584–0064; Expiration Date: 7/31/2020 and updated these numbers to reflect the most recently available participation data (FY18) for SNAP initial applicants and recertification applicant households.[21]

The Department finds it reasonable to use the estimates from OMB approved Information Collection 0054–0064 regarding household burden for providing verification and estimates that providing verification would take 4 minutes or .0668 hours per household at initial certification and 6 minutes or .1002 hours at recertification. Using the estimates above for the number of households in each State subject to verification requirements (100% in 11 States, 30% in 22 States and 10% in 10 States), we then calculated the total number of households that would have to participate in this annual burden. We have rounded these burden times in the chart below.

The Department is very interested in States comments on the requested information burden, as the vast majority of households in most States have been certified under expanded categorical eligibility, and therefore have not been subject to resource verification in recent years. All comments will be reviewed and considered in the rulemaking process. To date, The Department has been conducting the information collection and imposing burden for States and SNAP applicant households regarding resource verification without OMB approval; however, as discussed earlier, due to expanded categorical eligibility policies, few States are currently collecting resource information as part of the SNAP eligibility determination process. The Department has estimated the current reporting burden for the States without expanded categorical eligibility policies and provided these numbers in the chart.

The burden estimates we are using without OMB approval is for the current ten states without expanded categorical eligibility; the overall burden collected without OMB approval is 833,745.10 burden hours, this burden total includes 691,092.51 total annual burden hours and 1,747,515.79 total annual responses for State agencies and 142,652.58 total annual burden hours and 1,747,515.79 total annual responses for Individuals/Households (SNAP Participants). The overall estimated burden we are requesting for both the Individuals/Households and State agencies is 5,154,728.15 total annual burden hours and 20,602,334 total annual responses. The reporting burden details are provided below for State Agencies and SNAP applicant households. This

[20] Ratcliffe, Caroline, Sara Armstrong, Emma Kalish, Signe-Mary McKernan, Christina Oberlin, Catherine Ruggles, and Laura Wheaton. 2016. ''Asset Limits, SNAP Participation, and Financial Stability.'' Washington, DC. Prepared by the Urban Institute and Orlin Research for the U.S. Food and Nutrition Service. Available online: *https://fns-prod.azureedge.net/sites/default/files/ops/SNAPAssets.pdf.*

[21] National Data Bank data from FY2018, FNS 366–B, Total Initial Applications and Total Recertification Applications.

request associated with rulemaking reflects an increase of 3,622,736.20 total annual burden hours and 8,553,672.90 total annual responses for State agencies and 698,246.85 total annual burden hours and 8,553,629.901 total annual responses for Households (SNAP Participants).

Estimated Number of Respondents: 53 State Agencies.

Estimated Frequency of Responses per Year: 643,822.61.

Estimated Total Annual Responses: 10,301,188.69.

Estimated Time per Response: 0.418769993.

Estimated Total Annual Burden Hours: 4,313,828.72.

Estimated Number of Respondents: 10,301,146 (SNAP households).

Estimated Frequency of Response per Year: 1.

Estimated Total Annual Responses: 10,301,146.

Estimated Time per Response: 0.081631642.

Estimated Total Annual Burden Hours: 840,899.43.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, REVISION OF CATEGORICAL ELIGIBILITY IN THE SUPPLEMENTAL NUTRITION ASSISTANCE

Reg. section	Respondent type	Description of activity	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous burden in use without approval	Differences due to program changes	Difference due to adjustments	Hourly wage rate*	Estimated cost to respondents
Affected Public: State Agencies												
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying all resources).	13	255,661.04	3,323,593.55	0.7292	2,423,564.42	372,856.06	0.00	2,050,708.35	$21.45	$51,985,456.79
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying resources if questionable).	13	25,566.10	332,359.36	0.205	68,133.67	15,723.15	0.00	52,410.51	21.45	1,461,467.18
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying resources if close to limit).	27	76,698.31	2,070,854.44	0.205	424,525.16	78,615.77	0.00	345,909.39	21.45	9,106,064.71
273.2(f)(8)(i)	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying all resources).	13	204,211.53	2,654,749.93	0.4375	1,161,453.09	178,685.09	0.00	982,768.00	21.45	24,913,168.86
273.2(f)(8)(i)	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying resources if questionable).	13	20,421.15	265,474.99	0.123	32,653.42	7,535.41	0.00	25,118.02	21.45	700,415.95
273.2(f)(8)(i)	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying resources if close to limit).	27	61,263.46	1,654,113.42	0.123	203,455.95	37,677.03	0.00	165,778.92	21.45	4,364,130.13
273.2(j)(2)(ii) & 273.2(j)(2)(i)(B).	State Agencies ..	Inform FNS of TANF programs that confer categorical eligibility.	43	1	43	1	43	0	43.00	0.00	19.47	837.21
Sub-Total State Agencies			53	643,822.61	10,301,188.69	0.41877	4,313,828.72	691,092.51	0.00	3,622,736.20	21.17	92,531,540.82
Affected Public: Individual/Households												
273.2(f)(1) & (2)	Applicants for initial certification.	Verification of resources at initial application.	5,726,807	1	5,726,807	0.0668	382,550.73	64,897.00	317,653.73	0.00	7.25	2,773,492.80
273.2(f)(8)(i)	Applicants for recertification.	Verification of resources at recertification.	4,574,338	1	4,574,338	0.1002	458,348.70	77,755.58	380,593.12	0.00	7.25	3,323,028.09
Sub-Total Individual/Households			10,301,146	1	10,301,146	0.0816316	840,899.43	142,652.58	698,246.85	0.00	7.25	6,096,520.89
Grand Total Reporting Burden with both affected public			10,301,199	0	20,602,334	0.2502012	5,154,728.15	833,745.10	4,320,983.05	0.00	7.25	98,628,061.71

Note: The column "Estimated number of respondents" for rows with the regulatory citation 273.2(f) (1) & (2) and 273.2(f)(8)(i) includes both the 10 State Agencies collecting this information without OMB approval and the 43 that would collect this information as a result of the rulemaking, for a total of 53 State agencies affected at application and recertification.

Based on the Bureau of Labor Statistics May 2017 Occupational and Wage Statistics—the salaries of the eligibility workers are considered to be "Eligibility Interviewers, Government Programs" functions performed by State and local agency staff are valued at $21.45 per staff hour 43–4061 (*http://www.bls.gov/oes/current/oes434061.htm*). Social and Human Service Assistants 21–1093 functions are valued at $19.74 and the $7.25 used to calculate a cost to applicants is the Federal minimum wage.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, 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 in 7 CFR Part 273

Administrative practices and procedure, Grant programs-social programs, Supplemental Security Income (SSI), Reporting and recordkeeping.

Accordingly, 7 CFR part 273 is proposed to be amended to read as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for 7 CFR part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.2:
■ a. Revise paragraph (j)(2)(i)(A);
■ b. Revise paragraph (j)(2)(i)(B);
■ c. Remove and reserve paragraph (j)(2)(i)(C);
■ d. Revise paragraph (j)(2)(ii) introductory text and remove (j)(2)(ii)(A) and (B);
■ e. Remove and reserve paragraph (j)(2)(iii); and
■ f. Amend paragraph (j)(2)(iv) by removing the phrase ''paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii)'' and adding in its place ''paragraphs (j)(2)(i) and (j)(2)(ii)''.

The revisions and additions read as follows:

§ 273.2 Office operations and application processing

* * * * *

(j) * * *

(2) * * *

(i) * * *

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial cash benefits through a PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A;

(*1*) For the purposes of this paragraph (j)(2)(i)(A), ongoing cash benefits are benefits that a household receives or is authorized to receive for at least six months.

(*2*) For the purposes of this paragraph (j)(2)(i)(A), substantial cash benefits are benefits that a household receives or is authorized to receive that are valued at a minimum of $50 per month or any minimum threshold determined by the Secretary of Health and Human Services for Title IV–A programs, whichever is higher.

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial non-cash benefits, as specified in paragraphs (j)(2)(i)(B)(1) and (2) of this section, from a program that is funded with 50 percent or more State money counted for MOE purposes under Title IV–A of the Social Security Act (Pub. L. 74–271) or Federal money under Title IV–A of the Social Security Act. States must inform FNS of the types of non-cash TANF benefits that confer categorical eligibility under this paragraph. If one household member receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household shall be categorically eligible (except those listed in (j)(2)(vii) of this section).

(*1*) For the purposes of paragraphs (j)(2)(i)(B) and (j)(2)(ii) of this section, ongoing non-cash benefits are benefits a household receives or is authorized to receive for at least six months.

(*2*) For the purposes of paragraphs (j)(2)(i)(B) and (j)(2)(ii) of this section, substantial non-cash benefits are benefits that a household receives or is authorized to receive that are valued at a minimum of $50 per month and that are of at least one of the following types: Subsidized employment for which the employer or a third party receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual; work supports, including transportation benefits or other allowances for work-related expenses; and/or child care subsidies or vouchers.

(C) [Reserved] * * *

* * * * *

(ii) The State agency, at its option, may extend categorical eligibility to any households (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial non-cash benefits, as specified in paragraphs (j)(2)(i)(B)(1) and (2) of this section, from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A of the Social Security Act (Pub. L. 74–271) or Federal money under Title IV–A of the Social Security Act. States must inform FNS of the types of non-cash TANF benefits that confer categorical eligibility under this paragraph. If one household member receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household shall be categorically eligible (except those listed in (j)(2)(vii) of this section). The State agency may exercise this option only if doing so will further the purposes of the Food and Nutrition Act of 2008.

(iii) [Reserved]

* * * * *

■ 3. In § 273.8, revise the third sentence of paragraph (e)(17).

The additions and revisions read as follows:

§ 273.8 Resource Eligibility Standards

* * * * *

(e) * * *

(17) * * * For purposes of this paragraph (e)(17), if an individual receives ongoing and substantial non-cash benefits from a program specified in §§ 273.2(j)(2)(i)(B) or (j)(2)(ii), the State agency must determine whether the individual or the household benefits from the assistance provided. * * *

* * * * *

Dated: July 16, 2019.

Brandon Lipps,

Acting Deputy Under Secretary Food, Nutrition, and Consumer Services.

[FR Doc. 2019–15670 Filed 7–23–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105476–18]

RIN 1545–BO60

Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notification of hearing.

SUMMARY: This document provides a notification of public hearing on proposed regulations to implement certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States.

DATES: The public hearing is being held on Monday, August 26, 2019, at 10:00

a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Thursday, August 8, 2019.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–105476–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–105476–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–105476–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Chadwick Rowland, 202–317–6937; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers), *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–105476–18) that was published in the **Federal Register** on Monday, May 13, 2019 (84 FR 21198).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by July 12, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Thursday, August 8, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901(not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

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

[FR Doc. 2019–15676 Filed 7–23–19; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0382; FRL–9996–83–Region 1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration; PM_{10}, $PM_{2.5}$ and NO_X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Rhode Island's State Implementation Plan (SIP) relating to the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as ''$PM_{2.5}$''), PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), and nitrogen oxides (NO_X) within the context of Rhode Island's Prevention of Significant Deterioration (PSD) permitting program. The EPA is also proposing to take action on other minor changes to Rhode Island's PSD permitting program. In addition, EPA is proposing to convert several conditionally approved infrastructure SIP elements to fully approved elements in relation to the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). These actions are being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 23, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2019–0382 at *https://www.regulations.gov,* or via email to *dahl.donald@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://www.epa.gov/dockets/commenting-epa-dockets.* 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. The 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: Donald Dahl, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1 Regional Office, 5 Post Office Square—Suite 100, Mail Code 5–02, Boston, MA 02109–3912, tel. (617) 918–1657, email: *dahl.donald@epa.gov.*

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

Table of Contents

I. Background and Purpose
II. Analysis of Rhode Island's SIP Revision
III. Proposed Action
IV. Incorporation by Reference
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I. Background and Purpose

The State of Rhode Island's PSD permitting program is established in Title 250—Rhode Island Department of Environmental Management, Chapter 120—Air Resources, Subchapter 05—Air Pollution Control, Part 9—Air Pollution Control Permits (Part 9). Revisions to the PSD program were last approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383). Rhode Island has authority to issue and enforce PSD permits under its SIP-approved PSD program.

On March 26, 2018, the Rhode Island Department of Environmental Management (RI DEM) submitted to the EPA a formal revision to its SIP. On February 6, 2019, RI DEM submitted to the EPA a letter clarifying its intent to only incorporate certain elements of its March 2018 submittal for inclusion into the Rhode Island SIP. The RI DEM SIP submittal, and subsequent clarification letter, were submitted to address $PM_{2.5}$ and PM_{10} in PSD permitting regulations, to specifically address NO_X as a precursor for ozone, and to revise other minor changes to Rhode Island's PSD permitting program. This submittal also sought to satisfy an April 20, 2016 conditional approval (81 FR 23175) for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIPs (I–SIPs) only as it relates to the aspects of the PSD program pertaining to NO_X as a precursor for ozone and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of $PM_{2.5}$.

In the EPA's April 20, 2016 conditional approval, we cite a February 18, 2016 letter from RI DEM which commits to making the necessary changes to address the deficiencies in the Rhode Island SIP. RI DEM's March 2018 SIP submittal and February 2019 clarification letter satisfy the State's earlier commitment.

II. Analysis of Rhode Island's SIP Revision

The EPA performed a review of Rhode Island's proposed revisions and has determined that they are consistent with EPA's PSD program regulations and also rectify the deficiencies indicated in our April 20, 2016 conditional approvals.

Since the EPA's last approval of amendments to RI DEM's Part 9, the State has undertaken a new codification system that results in different citations between the current state regulations and the Rhode Island SIP. Due to the State's new codification system, there are instances where the state regulation being submitted for approval into the SIP at this time does not mesh precisely within the existing codification structure of the Rhode Island SIP. As a matter of substantive legal requirements, however, the regulations approved into the Rhode Island SIP, including those we are approving today, are harmonious and clear.

Below, we describe exactly how each definition and provision within Part 9, as adopted by Rhode Island and in effect on April 5, 2018, and that we are approving into Rhode Island's SIP through this notice, is consistent with the EPA's regulations and how it will be incorporated into the SIP. In most instances, the proposed amendments to the SIP are straightforward, aligning with existing provisions in EPA's PSD regulations at 40 CFR part 51.166 and thus need no detailed explanation other than clarification as to how the proposed amendments will mesh with the existing SIP's structure and codification. Our analysis of each proposed amendment is provided below:

1. Amendment to the definition of ''Baseline concentration'' in Section 9.5.C.2., which corresponds to Section 9.5.l(b) in the currently approved Rhode Island SIP. This amendment restructures the definition and is consistent with the definition of ''Baseline concentration'' in 40 CFR 51.166(b)(13).

2. Amendment to the definition of ''Increment'' in Section 9.5.C.3., which corresponds to Section 9.5.1(d) in the currently approved Rhode Island SIP. This amendment adds Class II increment values for both annual and 24-hr maximum PM_{10} and $PM_{2.5}$. The State's new Class II increments are consistent with the increment values for these pollutants in 40 CFR 51.166(c).

3. Amendment to the definition of ''Major Source Baseline Date'' in Section 9.5.C.4., which corresponds to Section 9.5.l(e) in the currently approved Rhode Island SIP. This amendment adds a major source baseline date for PM_{10} and $PM_{2.5}$ consistent with 40 CFR 51.166(b)(14)(i) and adds language for establishing the baseline date consistent with 40 CFR 51.166(b)(14)(iii).

4. Amendment to the definition of ''Major Stationary Source'' in Section 9.5.C.6., which corresponds to Section 9.5.l(g) in the currently approved Rhode Island SIP. This amendment adds language stating that a source that is major for NO_X is also major for ozone, which is consistent with 40 CFR 51.166(b)(1)(ii).

5. Amendment to the definition of ''Minor Source Baseline Date'' in Section 9.5.C.5., which corresponds to Section 9.5.l(f) in the currently approved Rhode Island SIP. This amendment adds a specific minor source baseline date for $PM_{2.5}$ and is consistent with 40 CFR 51.166(b)(14)(ii)(c).

RI DEM's PSD regulations are structured in a way that uses actual specific dates based on submission of a first complete PSD application to set the minor source baseline date for a particular pollutant. The approach contained in EPA's regulations is somewhat different in the sense that instead of using actual specific dates, EPA articulates the concept of a first complete PSD application as the minor source baseline date after a specified trigger date and does not reference any one specific date. The minor source baseline date for $PM_{2.5}$ in RI DEM's regulations is explicitly stated as March 29, 2016, which corresponds to the date when the RI DEM received the first complete PSD permit application that was significant for $PM_{2.5}$. Additionally, there can only be one minor source baseline date statewide since Rhode Island's SIP defines the baseline area as the entire State.

6. Amendment to the definition of ''Regulated NSR Pollutant'' in Section 9.5.A.36., which corresponds to Section 9.1.36 in the currently approved Rhode Island SIP. This amendment adds the gaseous form of PM_{10} and $PM_{2.5}$ emissions, that condense into particulates at ambient temperatures, as direct emissions of PM_{10} and $PM_{2.5}$. This amendment is consistent with 40 CFR 51.166(b)(49)(i)(a).

7. Amendment to the definition ''Subject to Regulation'' in Section 9.5.A.41., which corresponds to Section 9.1.41 in the currently approved Rhode Island SIP. This amendment removes sources, referred to as ''step 2'' sources of greenhouse gases (GHG), from having to obtain a PSD permit solely due to its GHG emissions and is consistent with 40 CFR 51.166(b)(48)(iv).

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the EPA regulations. The EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.'' The United States Supreme Court invalidated the EPA's regulation of Step 2 sources in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S. Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. See *Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Subsequently, the EPA removed the vacated elements from its rules. See 80 FR 50199 (August 19, 2015). The EPA therefore has the authority to approve a state's request to remove Step 2 sources from the SIP. EPA finds that removing Step 2 sources from the SIP is also

consistent with Section 110(l) of the CAA, which states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA.

8. Elimination of the restriction on increment consumption in Section 9.9.2 which corresponds to Section 9.5.3(a) in the currently approved Rhode Island SIP. This amendment allows a new major stationary source or a major modification to a stationary source to consume all available increment. This amendment is consistent with 40 CFR 51.166(k)(1)(ii).

The removal of the restriction on increment consumption is also consistent with Section 110(l) of the CAA, which states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA. Prior to this amendment, the Rhode Island SIP limited the amount of increment that a new major stationary source or major modification could consume to 75% of the remaining 24-hr increment and 25% of the remaining annual increment. Although the State's amendment removes these limits on the amount of available increment that can be consumed, the amendment does not allow a source to consume more increment than is available. *See* Subchapter 05, Part 9, Section 9.9.1.A.2.a(2) of Rhode Island's Air Resources Regulations.

9. Amendment to the provisions in Section 9.9.2.A.5.e(3), which corresponds to Section 9.5.3(c)(5)c in the currently approved Rhode Island SIP. This amendment prohibits emissions from temporary sources of sulfur dioxide, nitrogen oxides, and particulate matter to be excluded from increment consumption if the temporary emissions would impact a Class I area. The State's amended regulation is consistent with 40 CFR 51.166(f)(4)(iii)(a).

10. Amendment to the table in Section 9.9.4.A., which corresponds to the table at Section 5.5 in the currently approved Rhode Island SIP. This amendment adds thresholds for annual and 24-hr $PM_{2.5}$ emissions that, if exceeded, requires a new major stationary source or a source making a major modification to comply with nonattainment new source review requirements. This amendment is consistent with and, in certain respects, more stringent than 40 CFR 51.165(b)(2).

III. Proposed Action

Based on our analysis, the EPA is proposing to approve the Rhode Island SIP revision, submitted by RI DEM to EPA on March 26, 2018 and clarified by a letter dated February 6, 2019. The EPA is also proposing to convert its April 20, 2016 conditional approval to a full approval for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 $PM_{2.5}$ NAAQS I–SIPs as it relates to the aspects of the PSD program pertaining to NO_X as a precursor for ozone and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking concerning emissions of $PM_{2.5}$.

The EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Rhode Island rules regarding definitions and permitting requirements discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 16, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–15604 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2013–0399; FRL–9991–17]

RIN 2070–AB27

Proposed Revocation of Significant New Use Rule for Fatty Acid Amide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the significant new use rule (SNUR) promulgated under the Toxic Substances Control Act (TSCA) for a chemical substance which was identified generically as fatty acid amide which was the subject of premanufacture notice (PMN) P–13–267. EPA issued a SNUR based on the PMN designating certain activities as significant new uses. EPA has received a significant new use notice (SNUN) and test data for the chemical substance and is proposing to revoke the SNUR based on the information in the submission.

DATES: Comments must be received on or before August 23, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0399, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8974; email address:*alwood.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, or use the chemical substance contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers or processors of the chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of the chemical, the subject of this action, would no longer be required to certify compliance with the SNUR requirements if the revocation becomes effective. In addition, if this proposed SNUR revocation becomes effective, persons who export or intend to export the chemical that is the subject of this action would no longer be subject to the TSCA section 12(b) (15 U.S.C. 2611(b) export notification requirements at 40 CFR part 707, that are currently triggered by the SNUR.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the agency taking?

In the **Federal Register** of August 7, 2013 (78 FR 48051) (FRL–9393–4), EPA promulgated a SNUR at § 721.10691 for the chemical substance identified generically as fatty acid amide (PMN P–13–267). The SNUR designated release to water resulting in concentrations greater than 1 part per billion as a significant new use. EPA has received a SNUN that included human health and environmental toxicity testing for the chemical substance and, based on its review of these data, EPA now proposes to revoke the SNUR pursuant to § 721.185. In this unit, EPA provides a brief description of the chemical substance, including the PMN and SNUN numbers, generic chemical name, the **Federal Register** publication date and reference, the docket number, the basis for revoking the SNUR under § 721.185, and the CFR citation of the SNUR.

PMN Number P–13–267 and SNUN S–15–9

Chemical name: Fatty acid amide (generic).

CAS number: Not available.

Federal Register *publication date and reference:* August 7, 2013 (78 FR 48051).

Basis for revocation of SNUR: EPA issued a SNUR for this substance that designated certain activities as significant new uses based on a finding that the substance may cause significant adverse environmental effects and met the concern criteria at § 721.170(b)(4)(ii). The SNUR required notification before any use of the substance resulting in surface water concentrations exceeding 1 part per billion (ppb). Subsequently, a manufacturer of the substance submitted a SNUN to allow surface water concentrations exceeding 1 ppb. Acute and chronic toxicity values measured for fish, aquatic invertebrates, and algae in the submitted data all demonstrated no effects at saturation in the aqueous environment. In addition, the chronic toxicity value measured for sediment-dwelling invertebrates is >788 milligrams/kilogram (mg/kg) dry weight (Lowest Observed Effect Concentration). Test data on the chemical substance were negative for the following human health hazards: Mutagenicity, irritation to the eyes and skin, and skin sensitization. A No-Observed Adverse Effect Level of 1,000 mg/kg-bodyweight (bw)/day was identified based on no treatment-related adverse effects at the highest dose tested in a 28-day oral repeated-dose toxicity study (OECD Test Guideline 407). Based on the results of the testing, EPA determined that the substance has inherently low toxicity. The studies are available in the public docket. As a result, EPA made a determination of not likely to present an unreasonable risk under TSCA section 5(a)(3)(C) for the SNUN. EPA concludes that the substance does not meet the criteria under § 721.170(b). Therefore, EPA proposes that the SNUR for these chemical substances be revoked pursuant to § 721.185(a)(4).

CFR citation: 40 CFR 721.10691.

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

Under § 721.185, EPA may at any time revoke a SNUR for a chemical substance which has been added to subpart E of § 721 if EPA makes one of the determinations set forth in § 721.185(a)(1) through (a)(6). Revocation may occur on EPA's initiative or in response to a written request. Under § 721.185(b)(3), if EPA concludes that a SNUR should be revoked, the Agency will propose the changes in the **Federal Register**, briefly describe the grounds for the action, and provide interested parties an opportunity to comment.

III. Statutory and Executive Order Reviews

This proposed rule would revoke or eliminate an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this proposed SNUR revocation would not have any adverse impacts, economic or otherwise.

The Office of Management and Budget (OMB) has exempted these types of regulatory actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This proposed rule does not contain any information collections subject to approval under the *Paperwork Reduction Act (PRA),* (44 U.S.C. 3501 *et seq.*). Since this proposed rule eliminates a reporting requirement, the Agency certifies pursuant to section 605(b) of the *Regulatory Flexibility Act (RFA)* (5 U.S.C. 601 *et seq.*), that this SNUR revocation would not have a significant economic impact on a substantial number of small entities.

For the same reasons, this action does not require any action under Title II of the *Unfunded Mandates Reform Act of 1995* (UMRA) (Pub. L. 104–4). This proposed rule has neither Federalism implications, because it would not have substantial direct effects on 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, as specified in Executive Order 13132 entitled *Federalism* (64 FR 43255, August 10, 1999), nor Tribal implications, because it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175 entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000).

This action is not subject to Executive Order 13045 entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children. This action is not subject to Executive Order 1311, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action. This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 11, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Remove § 721.10691.

§ 721.10691 [Removed]

[FR Doc. 2019–15605 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–XH105

South Atlantic Fishery Management Council; Public Hearings Pertaining to Regulatory Amendment 33 to the Snapper Grouper Fishery Management Plan for the South Atlantic Region

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

ACTION: Notice of proposed rulemaking; public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings pertaining to Regulatory Amendment 33

to the Snapper Grouper Fishery Management Plan for the South Atlantic Region. The amendment would revise management measures for red snapper.

DATES: The public hearings will be held via listening stations and webinar August 12, 2019 through August 15, 2019.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The public hearings will be conducted via webinar with assigned listening stations. The public hearings will begin at 6 p.m. Registration for the webinars is required. Registration information will be posted on the Council's website at *www.safmc.net* as it becomes available. Listening stations for each hearing will be available at the following locations:

August 12, 2019 Webinar

1. Jacksonville University, 2800 University Blvd. N, Jacksonville, FL 32211. (Meeting in Davis College of Business Conference Room 171);
2. Murrells Inlet Community Center, 4462 Murrells Inlet Road, Murrells Inlet, SC 29576.

August 13, 2019 Webinar

1. Willie Gallimore Recreation Center, City of St. Augustine, 399 Riberia Street, St. Augustine, FL 32084;
2. Haddrell's Point Fin to Feather, 887 Ben Sawyer Blvd., Mt. Pleasant, SC 29464;
3. Georgia Department of Natural Resources Coastal Resources Division, One Conservation Way, Suite 300, Brunswick, GA 31520.

August 14, 2019 Webinar

1. Barron Center, 105 South Riverside Drive, New Smyrna Beach, FL 32168;
2. NC Division of Marine Fisheries, Southern District Office, 127 Cardinal Drive, Extension, Wilmington, NC 28405.

August 15, 2019 Webinar

1. Kiwanis Island Park Recreation Center, Doyle Carlton Room, 951 Kiwanis Island Park Road, Merritt Island, FL 32952;
2. NC Division of Marine Fisheries, Central District Office, 5285 Highway 70 West, Morehead City, NC 28557.

Regulatory Amendment 33 to the Snapper Grouper Fishery Management Plan

The number of recreational fishing days for red snapper in federal waters in the South Atlantic is determined by NOAA Fisheries each year, based on estimated harvest from the previous year. If fishing is allowed, the opening dates of both the recreational fishery and commercial fishery currently begin in July. The Council is considering options for modifying the current parameters in place, including the season start dates, as well as days of the week when red snapper harvest is allowed to allow more flexibility for the season and optimize fishing opportunities for red snapper.

Regulatory Amendment 33 to the Snapper Grouper Fishery Management Plan would address these modifications and includes actions to remove the minimum number of days for allowing a red snapper season (currently 3 days or more), modify the start date of the recreational red snapper season, revise the days of the week recreational harvest would be allowed, and modify the start date of the red snapper commercial fishery.

During the public hearings, Council staff will present an overview of the amendment via webinar and answer clarifying questions relevant to the proposed actions. Area Council members will be present at each of the Listening Stations to help answer questions and facilitate discussion. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the public hearings.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 18, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–15597 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 84, No. 142
Wednesday, July 24, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 18, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by August 23, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Agricultural Marketing Service

Title: Regulations Governing Inspection Certification of Fresh and Processed Fruits, Vegetables and Other Products—7 CFR part 51 and 52.

OMB Control Number: 0581–0125.

Summary of Collection: The Agricultural Marketing Act of 1946 as amended, (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to inspect, certify and identify the class, quantity, quality and condition of agricultural produces when shipped or received in interstate commerce, under such rules and regulations as the Secretary may prescribe, etc. The Secretary has delegated this authority to the AMS Specialty Crops Inspection Division (SCI). The SCI Division provides nationwide audit and inspection services for fresh and processed fruits, vegetables, and other products to growers, shippers, importers, processors, sellers, buyers, and other financially interested parties on a ''user fee'' basis.

Need and Use of the Information: The SCI Division collects information using various forms. This information includes: The name and location of the person or company shipping and receiving the product(s), the name and location of the person or company requesting the inspection, the date and time the inspection is requested to be performed, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product. The information collected provides services for inspection, grading, certification purposes, and other services to facilitate trading of agricultural products, *e.g.,* providing import product inspections, export product inspections, contract and specification acceptance services, facility assessments, and certification of quantity and quality; verification and auditing; and developing standards for grades of products.

Description of Respondents: Business or other for profit.

Number of Respondents: 60,814.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 25,774.

Title: Seed Service Testing Program.

OMB Control Number: 0581–0140.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended by 7 U.S.C. 1621 authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. The purpose of the voluntary program is to promote efficient, orderly marketing of seeds and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for factors such as purity and germination at the request of the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS that test the seed and issues the certificates is the only Federal seed testing facility that can issue the Federal Seed Analysis Certificate.

Need and Use of the Information: Applicants generally are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. The only information collected is information needed to provide the service requested by the applicant. Applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment if present, along with a sample of seed in order for AMS to provide the service. A Seed Analysis Certificate-Sample Inspection LS–375 or ISTA Orange International Seed Lot Certificate is issued by AMS giving the test results. Only authorized AMS employees will use the information collected to track, test, and report test results to the applicant. If the information were not collected, AMS would not know which test to conduct or would not be able to relate the test results with a specific lot of seed.

Description of Respondents: Business or other for-profit.

Number of Respondents: 55.

Frequency of Responses: Reporting; On occasion:

Total Burden Hours: 333.

Title: Federal Seed Act Program..

OMB Control Number: 0581–0026.

Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.

Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine if the precautions taken by the shipper assure that the seed was accurately labeled and determine the corrective steps that can be taken by the shipper to prevent future violations. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 3,317.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 75,634.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–15669 Filed 7–23–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the National School Lunch Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This is a revision of a currently approved collection which FNS employs to determine public participation in the National School Lunch Program.

DATES: Written comments must be received on or before September 23, 2019.

ADDRESSES: Comments may be sent to: Tina Namian, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1206, Alexandria, VA 22302–1594. Comments may also be submitted via fax to the attention of Tina Namian at 703–305–6294 or via email to *cndinternet@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Tina Namian at 703–305–2590.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: 7 CFR part 210, National School Lunch Program.

Forms: FNS–10, FNS–13, FNS–640, FNS–777, and FNS–828.

OMB Control Number: 0584–0006.

Expiration Date: September 30, 2019.

Type of Request: Revision of a currently approved collection.

Abstract: The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP) to safeguard the health and well-being of the nation's children and provide free or reduced price school lunches to qualified students through subsidies to schools. The United States Department of Agriculture (USDA)/Food and Nutrition Service (FNS) provides States with general and special cash assistance and donations of foods to assist schools in serving nutritious lunches to children each school day. Participating schools must serve lunches that are nutritionally adequate and maintain menu and food production records to demonstrate compliance with the meal requirements.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the NSLA (42 U.S.C. 1751 *et seq.*). Pursuant to that provision, the Secretary has issued 7 CFR part 210, which sets forth policies and procedures for the administration and operation of the NSLP. The Program is administered at the State and school food authority (SFA) levels and operations include the submission of applications and agreements, submission of the number of meals served and payment of claims, submission of data from required monitoring reviews conducted by the State agency, and maintenance of records. State and local operators of the NSLP are required to meet Federal reporting and accountability requirements and are also required to maintain records that include school food service accounts of revenues and expenditures.

The reporting, recordkeeping, and public notification burden associated with this revision decreased from 10,030,000 to 9,808,439 hours. This change is due to the removal of public notification burden that occurred only once and decreases in the number of schools and SFAs participating in the Program. Other changes include the addition of 304,640 hours of recordkeeping burden originating from

the ''Administrative Reviews in the School Nutrition Programs'' Final Rule (RIN 0584–AE30) (published in the **Federal Register** on July 29, 2016), which have not been accounted for in the burden. This change accounts for the time needed for State agencies to conduct an administrative review and maintain the associated documentation. This renewal also includes the addition of 56 hours of reporting burden to account for the quarterly performance-based reimbursement report, which was mistakenly removed during the previous renewal.

FNS collects program data from the State agencies on Forms FNS–10 Report of School Operations, FNS–13 Annual Report of State Revenue Matching, FNS–640 Administrative Review Data Report Form, FNS–777 Financial Status Report, and FNS–828 School Food Authority Paid Lunch Price Report. These forms are approved under OMB Control # 0584–0594 Food Program Reporting System (FPRS), which expires September 30, 2019. The reporting burden associated with these reports is covered under #0584–0594 and is not associated with this information collection. However, the recordkeeping burden is still maintained in this collection.

This information collection is required to administer and operate this program in accordance with the NSLA. This is a revision of the currently approved information collection.

Affected Public: (1) State agencies; (2) school food authorities; and (3) schools.

Number of Respondents: 115,935 (56 State agencies, 19,019 school food authorities, and 96,860 schools.)

Number of Responses per Respondent (Reporting): 4.2543.

Total Annual Responses: 493,226.

Reporting time per Response: 0.6937.

Estimated Annual Reporting Burden: 342,130.

Number of Recordkeepers: 115,935 (56 State agencies, 19,019 school food authorities, and 96,860 schools.)

Number of Records per Record Keeper: 406.2685.

Estimated Total Number of Records: 47,100,736.

Recordkeeping time per Response: 0.1999.

Total Estimated Recordkeeping Burden: 9,414,007.

Number of Respondents (Public Notification): 19,075 (56 State agencies and 19,019 school food authorities).

Number of Responses per Respondent (Public Notification): 1.6612.

Total Annual Responses: 31,687.

Reporting time per Response: 1.6506.

Estimated Annual Public Notification Burden: 52,301.

Annual Reporting, Recordkeeping, and Public Notification Burden: 9,808,439.

Current OMB Inventory for Part 210: 10,030,000.

Difference (change in burden with this renewal): −221,561

Refer to the table below for estimated total annual burden for each type of respondent.

Affected public	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated average hours per response	Estimated total burden (hours)
Reporting					
State Agencies	56	119	6,664	7.6345	50,876
School Food Authorities	19,019	15	292,842	0.928428	271,882
Schools	96,860	2	193,720	0.1	19,372
Total Estimated Reporting Burden	115,935		493,226		342,130
Recordkeeping					
State Agencies	56	1,475	82,619	5.1556	425,949
School Food Authorities	19,019	21	399,399	4.3338	1,730,919
Schools	96,860	481	46,618,718	0.15567	7,257,139
Total Estimated Recordkeeping Burden	115,935		47,100,736		9,414,007
Public Notification					
State Agencies	56	113	6,328	.25	1,582
School Food Authorities	19,019	1.3334	25,359	2	50,719
Total Estimated Public Notification Burden	19,075		31,687		52,301
Total of Reporting, Recordkeeping, and Public Notification					
Reporting	115,935	4.2543	493,226	0.6936588	342,130
Recordkeeping	115,935	406.2685	47,100,736	0.19986964	9,414,007
Public Notification	19,075	1.6612	31,687	1.6506	52,301
Total			47,625,649		9,808,439

Dated: July 12, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–15668 Filed 7–23–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Role of Communities in Stewardship Contracting Projects

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Role of Communities in Stewardship Contracting Projects.

DATES: Comments must be received in writing on or before September 23, 2019 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, Range Management and Vegetation Ecology Staff, Mail Stop 1103, Forest Service, USDA, 201 14th Street SW, Washington DC 20024–1103.

Comments also may be submitted by email to: *InfoCollection0201@fs.fed.us.* Comments may also be submitted via the world wide web/internet at *http://www.regulations.gov.*

The public may inspect comments received at the Office of the Director, Forest Management Staff, Third Floor NE, Yates Federal Building, 201 14th Street SW, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–649–1725 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: David Wilson, Forest Service, Forest Management Staff, (202) 578–9916. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Role of Communities in Stewardship Contracting Projects.

OMB Number: 0596–0201.

Expiration Date of Approval: 10/31/2019.

Type of Request: Renewal of a Previously Approved Collection.

Abstract: The Forest Service and Bureau of Land Management are required to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting, per Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note). To meet the requirement, the Forest Service conducts surveys to gather the necessary information for use by both the Forest Service and Bureau of Land Management. The survey provides information regarding the:

(a) Nature of the local community involved in developing agreement or contract plans,

(b) Nature of roles played by the entities involved in developing agreement or contract plans,

(c) Benefits to the community and agency by being involved in planning and development of contract plans, and

(d) Usefulness of stewardship contracting in helping meet the needs of local communities.

The Pinchot Institute for Conservation and its sub-contractors collect the information through an annual telephone survey. The survey asks Federal employees, employees of for-profit and not-for-profit institutions, employees of State and local agencies, and individual citizens who have been involved in stewardship contracting projects about their role in the development of agreement or contract plans.

The information collected through the survey is analyzed by the Pinchot Institute for Conservation and its sub-contractors and used to help develop the Forest Service and reports to Congress as required by Section 323 of Public Law 108–7.

Without the information from this annual collection of data, the Forest Service will not be able to provide the required annual reports to Congress on the role of communities in development of agreement or contract plans under stewardship contracting.

Type of Respondents: Employees of for-profit and non-profit businesses and institutions, as well as individuals.

Estimated Annual Number of Respondents: 90.

Estimate of Burden per Response: 0.75 hours.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 68 Hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: July 2, 2019.

Frank R. Beum,

Acting Associate Deputy Chief, National Forest Systems.

[FR Doc. 2019–15707 Filed 7–23–19; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Dakota Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights

ACTION: Notice; cancellation of meeting

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the South Dakota Advisory Committee. The meeting scheduled for Monday, July 22, 2019 at 12:00 p.m. (MDT) is cancelled. The notice is in the **Federal Register** of Friday, July 5, 2019, in FR Doc. 2019–14341, on page 32120–32121.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, (303) 866–1040, *ebohor@usccr.gov.*

Dated: July 18, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–15653 Filed 7–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–82–2019]

Approval of Subzone Expansion: Mayfield Consumer Products, Mayfield, Kentucky

On May 8, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Paducah McCracken County Riverport Authority, grantee of FTZ 294, requesting an expansion of Subzone 294A subject to the existing activation limit of FTZ 294, on behalf of Mayfield Consumer Products, in Mayfield, Kentucky.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 21326, May 14, 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 400.36(f)), the application to expand Subzone 294A was approved on July 18, 2019, subject to the FTZ Act and the

Board's regulations, including Section 400.13, and further subject to FTZ 294's 2,000-acre activation limit.

Dated: July 18, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–15719 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–18–2019]

Production Activity Not Authorized; Foreign-Trade Zone (FTZ) 47—Boone County, Kentucky; BWF America, Inc. (Textile/Felt Filter Bags and other Filter Products for Industrial Use), Hebron, Kentucky

On March 21, 2019, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, submitted a notification of proposed production activity to the FTZ Board on behalf of BWF America, Inc., within FTZ 47, in Hebron, Kentucky.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 12194–12195, April 1, 2019). On July 19, 2019, the applicant was notified of the FTZ Board's decision that further review of the activity is warranted. The production activity described in the notification was not authorized. If the applicant wishes to seek authorization for this activity, it will need to submit an application for production authority, pursuant to Section 400.23.

Dated: July 19, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–15720 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel racks and parts thereof (steel racks) from the People's Republic of China (China).

DATES: Applicable July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, Eli Lovely, or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–2923, (202) 482–1593, or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition for Fair Rack Imports (the petitioner). In addition to the Government of China (GOC), the mandatory respondents in this investigation are Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd. (Kingmore), Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng), Nanjing Huade Storage Equipment Manufacture Co., Ltd. (Huade), Tangshan Apollo Energy Equipment Company, Ltd. (Apollo), and Xiamen Aifei Metal Manufacturing Co., Ltd. (Aifeimetal). Apollo, Huade, and Kingmore did not respond to our requests for information.

On December 3, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of this investigation.[1] On April 22, 2019, Commerce published an *Amended Preliminary Determination* to revise the scope of this investigation to conform with the modified scope published in the preliminary determination of the companion antidumping duty (AD) investigation.[2]

Additional background on this case, including a summary of events that occurred since Commerce published the *Preliminary Determination* and a discussion of comments from interested parties, is provided in the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is January 1, 2017 through December 31, 2017.

Scope Comments

During the course of this investigation and the concurrent AD investigation of steel racks from China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to comment on scope issues in case and rebuttal briefs.[4] We received comments from interested parties on the Preliminary Scope Memorandum, which we address in our Issues and Decision Memorandum.[5] For this final determination, we have made no changes to the scope of this investigation, as published in the *Amended Preliminary Determination*.[6]

Scope of the Investigation

The products covered by this investigation are steel racks and parts thereof. For a complete description of the scope of this investigation, *see* Appendix I.

Use of Adverse Facts Available

Commerce relied on ''facts otherwise available,'' including adverse facts available (AFA), for several findings in the *Preliminary Determination.* We are continuing to apply AFA for the final determination. For a full discussion of our application of AFA, *see* the *Preliminary Determination* and the Issues and Decision Memorandum.[7]

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[1] *See Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 62297 (December 3, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See Steel Racks from the People's Republic of China: Amended Preliminary Countervailing Duty Determination,* 84 FR 16640 (April 22, 2019) (*Amended Preliminary Determination*).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Racks from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Steel Racks from the People's Republic of China: Preliminary Scope Decision,'' dated February 25, 2019 (Preliminary Scope Memorandum).

[5] *See* Issues and Decision Memorandum, at Comment 7.

[6] *See Amended Preliminary Determination,* 84 FR at 16640–41.

[7] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum, at ''Use of Facts Otherwise Available and Adverse Inferences''; *see also* Issues and Decision

Analysis of Comments Received

In the Issues and Decision Memorandum, we address all issues raised in parties' case and rebuttal briefs, including those issues related to scope. A list of the issues that parties raised, and to which we responded, is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Following the *Preliminary Determination,* the petitioner and other interested parties agreed to modify the scope of this investigation. As a result of this modification, Aifeimetal did not have shipments of subject merchandise to the United States during the POI. Accordingly, Aifeimetal will not receive a subsidy rate in this final determination. We note that, because the total AFA rate was based, in part, on Aifeimetal's questionnaire response, we have made adjustments to the total AFA rate.[8]

With respect to Dongsheng, Commerce has corrected its calculation of benefits received under the hot-rolled steel for less than adequate remuneration program. Apart from this correction, we have not modified our methodology for calculating a subsidy rate for Dongsheng.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the weighted-average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on AFA under section 776 of the Act.

In the final determination of this investigation, Commerce assigned rates for Apollo, Huade, and Kingmore in accordance with section 776 of the Act, and Aifeimetal did not receive a subsidy rate because it did not have shipments of subject merchandise during the POI. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Dongsheng. Consequently, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for Dongsheng is also assigned as the rate for ''All-Other'' producers and exporters.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Dongsheng, and established subsidy rates for Apollo, Huade, Kingmore, and the 13 companies that failed to respond to Commerce's quantity and value questionnaire by applying AFA.

Commerce determines the total estimated net countervailable subsidy rates to be the following:

Company	Subsidy rate (percent)
Designa Inc.	102.23
Dongguan Baike Electronic Co., Ltd	102.23
Ezidone Display Corp. Ltd	102.23
Fenghua Huige Metal Products Co., Ltd	102.23
Formost Plastic Metal Works (Jiaxing) Co., Ltd	102.23
Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd	102.23
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	1.50
Nanjing Huade Storage Equipment Manufacture Co., Ltd	102.23
Ningbo Bocheng Home Products Co., Ltd	102.23
Ningbo Joys Imp. & Exp. Co., Ltd	102.23
Ningbo Li Zhan Import & Export Co	102.23
Qingdao Haineng Hardware Products Co., Ltd	102.23
Qingdao Huatian Hand Truck Co., Ltd	102.23
Qingdao Zeal-Line Stainless Steel Products Co., Ltd	102.23
Seven Seas Furniture Industrial (Xiamen) Co., Ltd	102.23
Shijiazhuang Wells Trading & Mfg. Co., Ltd.	102.23
Tangshan Apollo Energy Equipment Company	102.23
All-Others	1.50

Disclosure

We intend to disclose to interested parties under Administrative Protective Order (APO), the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from China that were entered or withdrawn from warehouse, for consumption, on or after December 3, 2018, *i.e.,* the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 3, 2019, but to continue the suspension of liquidation of all entries from December 3, 2018 through April 2, 2019.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and will

Memorandum, at ''Use of Facts Otherwise Available and Adverse Inferences'' and Comment 4.

[8] *Compare* Preliminary Decision Memorandum at 47–52, *with* Issues and Decision Memorandum at 22–24.

require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited as a result of the suspension of the suspension of liquidation will be refunded.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because Commerce's final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel racks from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to the parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 17, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*e.g.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

Subject steel racks and parts thereof are made of steel, including, but not limited to, cold and/or hot-formed steel, regardless of the type of steel used to produce the components and may, or may not, include locking tabs, slots, or bolted, clamped, or welded connections. Subject steel racks have the following physical characteristics:

(1) Each steel vertical and horizontal load bearing member (*e.g.,* arms, beams, posts, and columns) is composed of steel that is at least 0.044 inches thick;

(2) Each steel vertical and horizontal load bearing member (*e.g.,* arms, beams, posts, and columns) is composed of steel that has a yield strength equal to or greater than 36,000 pounds per square inch;

(3) The width of each steel vertical load bearing member (*e.g.,* posts and columns) exceeds two inches; and

(4) The overall depth of each steel roll-formed horizontal load bearing member (*e.g.,* beams) exceeds two inches.

In the case of steel horizontal load bearing members other than roll-formed (*e.g.,* structural beams, Z-beams, or cantilever arms), only the criteria in subparagraphs (1) and (2) apply to these horizontal load bearing members. The depth limitation in subparagraph (4) does not apply to steel horizontal load bearing members that are not roll-formed.

Steel rack components can be assembled into structures of various dimensions and configurations by welding, bolting, clipping, or with the use of devices such as clips, end plates, and beam connectors, including, but not limited to the following configurations: (1) Racks with upright frames perpendicular to the aisles that are independently adjustable, with positive-locking beams parallel to the aisle spanning the upright frames with braces; and (2) cantilever racks with vertical components parallel to the aisle and cantilever beams or arms connected to the vertical components perpendicular to the aisle. Steel racks may be referred to as pallet racks, storage racks, stacker racks, retail racks, pick modules, selective racks, or cantilever racks and may incorporate moving components and be referred to as pallet-flow racks, carton-flow racks, push-back racks, movable-shelf racks, drive-in racks, and drive-through racks. While steel racks may be made to ANSI MH16.l or ANSI MH16.3 standards, all steel racks and parts thereof meeting the description set out herein are covered by the scope of this investigation, whether or not produced according to a particular standard.

The scope includes all steel racks and parts thereof meeting the description above, regardless of

(1) other dimensions, weight, or load rating;

(2) vertical components or frame type (including structural, roll-form, or other);

(3) horizontal support or beam/brace type (including but not limited to structural, roll-form, slotted, unslotted, Z-beam, C-beam, L-beam, step beam, and cantilever beam);

(4) number of supports;

(5) number of levels;

(6) surface coating, if any (including but not limited to paint, epoxy, powder coating, zinc, or other metallic coatings);

(7) rack shape (including but not limited to rectangular, square, corner, and cantilever);

(8) the method by which the vertical and horizontal supports connect (including but not limited to locking tabs or slots, bolting, clamping, and welding); and

(9) whether or not the steel rack has moving components (including but not limited to rails, wheels, rollers, tracks, channels, carts, and conveyors).

Subject merchandise includes merchandise matching the above description that has been finished or packaged in a third country. Finishing includes, but is not limited to, coating, painting, or assembly, including attaching the merchandise to another product, or any other finishing or assembly operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof. Packaging includes packaging the merchandise with or without another product or any other packaging operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof.

Steel racks and parts thereof are included in the scope of this investigation whether or not imported attached to, or included with, other parts or accessories such as wire decking, nuts, and bolts. If steel racks and parts thereof are imported attached to, or included with, such non-subject merchandise, only the steel racks and parts thereof are included in the scope.

The scope of this investigation does not cover: (1) Decks, *i.e.,* shelving that sits on or fits into the horizontal supports to provide the horizontal storage surface of the steel racks; (2) wire shelving units, *i.e.,* units made from wire that incorporate both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create a finished unit; (3) pins, nuts, bolts, washers, and clips used as connecting devices; and (4) non-steel components.

Specifically excluded from the scope of this investigation are any products covered by Commerce's existing antidumping and countervailing duty orders on boltless steel shelving units prepackaged for sale from the

People's Republic of China. *See Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Antidumping Duty Order,* 80 FR 63,741 (October 21, 2017); and *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 63,745 (October 21, 2017).

Also excluded from the scope of this investigation are bulk-packed parts or components of boltless steel shelving units that were specifically excluded from the scope of the Boltless Steel Shelving Orders because such bulk-packed parts or components do not contain the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) packaged together for assembly into a completed boltless steel shelving unit.

Such excluded components of boltless steel shelving are defined as:

(1) Boltless horizontal supports (beams, braces) that have each of the following characteristics: (a) A length of 95 inches or less, (b) made from steel that has a thickness of 0.068 inches or less, and (c) a weight capacity that does not exceed 2500 lbs per pair of beams for beams that are 78'' or shorter, a weight capacity that does not exceed 2200 lbs per pair of beams for beams that are over 78'' long but not longer than 90'', and/or a weight capacity that does not exceed 1800 lbs per pair of beams for beams that are longer than 90'';

(2) shelf supports that mate with the aforementioned horizontal supports; and

(3) boltless vertical supports (upright welded frames and posts) that have each of the following characteristics: (a) A length of 95 inches or less, (b) with no face that exceeds 2.90 inches wide, and (c) made from steel that has a thickness of 0.065 inches or less.

Excluded from the scope of this investigation are: (1) Wall-mounted shelving and racks, defined as shelving and racks that suspend all of the load from the wall, and do not stand on, or transfer load to, the floor; (2) ceiling-mounted shelving and racks, defined as shelving and racks that suspend all of the load from the ceiling and do not stand on, or transfer load to, the floor; and (3) wall/ceiling mounted shelving and racks, defined as shelving and racks that suspend the load from the ceiling and the wall and do not stand on, or transfer load to, the floor. The addition of a wall or ceiling bracket or other device to attach otherwise subject merchandise to a wall or ceiling does not meet the terms of this exclusion.

Also excluded from the scope of this investigation is scaffolding that complies with ANSI/ASSE A10.8—2011—Scaffolding Safety Requirements, CAN/CSA S269.2–M87 (Reaffirmed 2003)—Access Scaffolding for Construction Purposes, and/or Occupational Safety and Health Administration regulations at 29 CFR part 1926 subpart L—Scaffolds.

Also excluded from the scope of this investigation are tubular racks such as garment racks and drying racks, *i.e.,* racks in which the load bearing vertical and horizontal steel members consist solely of: (1) Round tubes that are no more than two inches in diameter; (2) round rods that are no more than two inches in diameter; (3) other tubular shapes that have both an overall height of no more than two inches and an overall width of no more than two inches; and/or (4) wire.

Also excluded from the scope of this investigation are portable tier racks. Portable tier racks must meet each of the following criteria to qualify for this exclusion:

(1) They are freestanding, portable assemblies with a fully welded base and four freely inserted and easily removable corner posts;

(2) They are assembled without the use of bolts, braces, anchors, brackets, clips, attachments, or connectors;

(3) One assembly may be stacked on top of another without applying any additional load to the product being stored on each assembly, but individual portable tier racks are not securely attached to one another to provide interaction or interdependence; and

(4) The assemblies have no mechanism (*e.g.,* a welded foot plate with bolt holes) for anchoring the assembly to the ground.

Also excluded from the scope of this investigation are accessories that are independently bolted to the floor and not attached to the rack system itself, *i.e.,* column protectors, corner guards, bollards, and end row and end of aisle protectors.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7326.90.8688, 9403.20.0080, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Use of Facts Otherwise Available and Adverse Inferences
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Analysis of Comments
Comment 1: Commerce's Treatment of Aifeimetal in this Investigation
Comment 2: Whether Commerce's Benchmarks Properly Take into Account Prevailing Market Conditions
Comment 3: Whether Commerce Used the Correct Tariff Rate in Constructing the Cold-Rolled and Hot-Rolled Steel Benchmarks
Comment 4: Whether to Countervail Subsidies for Which There Was No Formal Initiation of an Investigation
Comment 5: Whether to Revise Dongsheng's Benefit Calculation under the Electricity for Less than Adequate Remuneration (LTAR) Program
Comment 6: Whether to Include Dongsheng's Purchases of Structural Steel in the Calculation of a Benefit under the Hot-Rolled Steel for LTAR Program
Comment 7: Commerce's Treatment of the Petitioner's International Shipping for LTAR Allegation
Comment 8: The Preliminary Scope Determination
IX. Recommendation

[FR Doc. 2019–15717 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain steel racks and parts thereof (steel racks) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Maliha Khan or Ariela Garvett, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0895 or (202) 482–3609, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition for Fair Rack Imports (the petitioner). The mandatory respondent in this investigation is Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng). On March 4, 2019, Commerce published its *Preliminary Determination* for this investigation and invited interested parties to comment.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2] The Issues and Decision

[1] *See Steel Racks and Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 84 FR 7326 (March 4, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Steel Racks and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation (POI) is October 1, 2017 through March 31, 2018.

Scope of the Investigation

The products covered by this investigation are steel racks from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at Appendix I. We have made no changes to the scope of this investigation since the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and factors of production data reported by the sole participating mandatory respondent, Nanjing Dongsheng Shelf Manufacturing Co., Ltd.'s (Dongsheng), for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Dongsheng.

Analysis of Comments Received

In response to our invitation to comment on the *Preliminary Determination,* interested parties submitted case and rebuttal briefs to Commerce, as well as scope case and rebuttal briefs. All issues raised in the case and rebuttal briefs and the scope case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received and verification, we made certain changes to the *Preliminary Determination* For a discussion of these changes, *see* the Issues and Decision Memorandum.

Separate Rates

No parties commented on our decision in the *Preliminary Determination* to grant separate rate status to 32 companies, including Dongsheng, and to deny a separate rate to seven companies. However, subsequent to the *Preliminary Determination,* we determined that one company to which we preliminarily granted a separate rate, Xiamen Aifeimetal Manufacturing Co., Ltd., did not sell subject merchandise to the United States during the POI. Thus, we have not granted Aifeimetal a separate rate in this final determination. The exporters granted separate rate status in this final determination are listed in the table in the ''Final Determination'' section of this notice. We continue to assign the estimated weighted-average dumping margin calculated for Dongsheng to the exporters not individually examined that are entitled to a separate rate. The companies [3] denied a separate rate will be treated as part of the China-wide entity whose estimated weighted-average dumping margin, for the reasons explained, and as corroborated, in the *Preliminary Determination,* is based on total adverse facts available pursuant to sections 776(a) and (b) of the Act.

Combination Rates

As explained in the *Initiation Notice* and implemented in the *Preliminary Determination,* we have continued to calculate producer/exporter combination rates for the respondents that are eligible for a separate rate.[4] Policy Bulletin 05.1 describes this practice.[5]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	Nanjing Dongsheng Shelf Manufacturing Co., Ltd	18.06
Ateel Display Industries (Xiamen) Co., Ltd	Ateel Display Industries (Xiamen) Co., Ltd	18.06
CTC Universal (Zhangzhou) Industrial Co., Ltd	CTC Universal (Zhangzhou) Industrial Co., Ltd	18.06
David Metal Craft Manufactory Ltd	David Metal Craft Manufactory Ltd	18.06
Guangdong Wireking Housewares and Hardware Co., Ltd	Guangdong Wireking Housewares and Hardware Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Hebei Wuxin Garden Products Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Huanghua Xinxing Furniture Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Huanghua Xingyu Hardware Products Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Huangua Qingxin Hardware Products Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Huangua Haixin Hardware Products Co., Ltd	18.06
Hebei Minmetals Co., Ltd	Huanghua Hualing Hardware Products Co., Ltd	18.06
i-Lift Equipment Ltd	Yuanda Storage Equipment Ltd	18.06
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	18.06
Johnson (Suzhou) Metal Products Co., Ltd	Johnson (Suzhou) Metal Products Co., Ltd	18.06
Master Trust (Xiamen) Import and Export Co., Ltd	Zhangzhou Hongcheng Hardware & Plastic Industry Co., Ltd.	18.06
Nanjing Ironstone Storage Equipment Co., Ltd	Jiangsu Baigeng Logistics Equipments Co., Ltd	18.06
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.	Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.	18.06

[3] Those companies are: (1) Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd.; (2) Nanjing Huade Storage Equipment Manufacturing Co., Ltd.; (3) Nanjing Inform Storage Equipment (Group) Co., Ltd.; (4) Redman USA, Inc.; (5) Tangshan Apollo Energy Equipment Company, Ltd.; (6) Xiamen PDF Co., Ltd.; (7) Zhangzhou URB Fabricating Co., Ltd.; and (8) Xiamen Aifeimetal Manufacturing Co., Ltd.

[4] *See Steel Racks from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 33199 (July 17, 2018) (*Initiation Notice*); *see also Preliminary Determination,* 84 FR at 7327.

[5] *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,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.	Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd.	18.06
Ningbo Beilun Songyi Warehouse Equipment Manufacturing Co., Ltd.	Ningbo Beilun Songyi Warehouse Equipment Manufacturing Co., Ltd.	18.06
Ningbo Xinguang Rack Co., Ltd	Ningbo Xinguang Rack Co., Ltd	18.06
Qingdao Rockstone Logistics Appliance Co., Ltd	Qingdao Rockstone Logistics Appliance Co., Ltd	18.06
Redman Corporation	Redman Corporation	18.06
Redman Import & Export Limited	Redman Corporation	18.06
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co. Ltd.	Changzhou Tianyue Storage Equipment Co., Ltd	18.06
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co. Ltd.	Ningbo Beilun Songyi Warehouse Equipment Manufacturing Co., Ltd.	18.06
Tianjin Master Logistics Equipment Co., Ltd	Tianjin Master Logistics Equipment Co., Ltd	18.06
Waken Display System Co., Ltd	CTC Universal (Zhangzhou) Industrial Co., Ltd	18.06
Xiamen Baihuide Manufacturing Co., Ltd	Xiamen Baihuide Manufacturing Co., Ltd	18.06
Xiamen Ever Glory Fixtures Co., Ltd	Fujian First Industry and Trade Co., Ltd	18.06
Xiamen Ever Glory Fixtures Co., Ltd	Fujian Ever Glory Fixtures Co., LTD	18.06
Xiamen Ever Glory Fixtures Co., Ltd	Xiamen Ever Glory Fixtures Co., Ltd	18.06
Xiamen Golden Trust Industry & Trade Co., Ltd	Xiamen Golden Trust Industry & Trade Co., Ltd	18.06
Xiamen Kingfull Imp and Exp Co., Ltd. (d.b.a) Xiamen Kingfull Displays Co., Ltd.	Xiamen Huiyi Beauty Furniture Co., Ltd	18.06
Xiamen Kingfull Imp and Exp Co., Ltd. (d.b.a) Xiamen Kingfull Displays Co., Ltd.	Xiamen LianHong Industry and Trade Co., Ltd	18.06
Xiamen LianHong Industry and Trade Co., Ltd	Xiamen LianHong Industry and Trade Co., Ltd	18.06
Xiamen Luckyroc Industry Co., Ltd	Xiamen Luckyroc Storage Equipment Manufacture Co., Ltd	18.06
Xiamen Meitoushan Metal Product Co., Ltd	Xiamen Meitoushan Metal Product Co., Ltd	18.06
Xiamen Power Metal Display Co., Ltd	Xiamen Power Metal Display Co., Ltd	18.06
Xiamen XinHuiYuan Industrial & Trade Co., Ltd	Xiamen XinHuiYuan Industrial & Trade Co., Ltd	18.06
Xiamen Yiree Display Fixtures Co., Ltd	Xiamen Yiree Display Fixtures Co., Ltd	18.06
Zhangjiagang Better Display Co., Ltd	Zhangjiagang Better Display Co., Ltd	18.06
China-wide entity		144.50

Disclosure

We intend to disclose to interested parties under Administrative Protective Order (APO), the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of steel racks from China, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 25, 2019, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Further, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese exporters/producers not listed in the above table, the cash deposit rate is equal to the estimated weighted-average dumping margin listed in the table for the China-wide entity; and (3) for all non-Chinese exporters not listed in the table above, the cash deposit rate is equal to the cash deposit rate applicable to the Chinese exporter/producer combination (or the China-wide entity) that supplied that non-Chinese exporter.

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 countervailing duty (CVD) proceeding when CVD provisional measures are in effect. However, we have not made an affirmative determination for a domestic subsidy pass-through adjustment in this LTFV investigation, nor has Commerce found export subsidies in the companion CVD investigation. Therefore, we have made no offsets to the estimated weighted-average dumping margin for purposes of calculating the appropriate cash deposit rate.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of subject steel racks, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposited for antidumping duties will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse,

for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Orders

This notice serves as a reminder to the parties subject to APO of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: July 17, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*e.g.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

Subject steel racks and parts thereof are made of steel, including, but not limited to, cold and/or hot-formed steel, regardless of the type of steel used to produce the components and may, or may not, include locking tabs, slots, or bolted, clamped, or welded connections. Subject steel racks have the following physical characteristics:

(1) Each steel vertical and horizontal load bearing member (*e.g.,* arms, beams, posts, and columns) is composed of steel that is at least 0.044 inches thick;

(2) Each steel vertical and horizontal load bearing member (*e.g.,* arms, beams, posts, and columns) is composed of steel that has a yield strength equal to or greater than 36,000 pounds per square inch;

(3) The width of each steel vertical load bearing member (*e.g.,* posts and columns) exceeds two inches; and

(4) The overall depth of each steel roll-formed horizontal load bearing member (*e.g.,* beams) exceeds two inches.

In the case of steel horizontal load bearing members other than roll-formed (*e.g.,* structural beams, Z-beams, or cantilever arms), only the criteria in subparagraphs (1) and (2) apply to these horizontal load bearing members. The depth limitation in subparagraph (4) does not apply to steel horizontal load bearing members that are not roll-formed.

Steel rack components can be assembled into structures of various dimensions and configurations by welding, bolting, clipping, or with the use of devices such as clips, end plates, and beam connectors, including, but not limited to the following configurations: (1) Racks with upright frames perpendicular to the aisles that are independently adjustable, with positive-locking beams parallel to the aisle spanning the upright frames with braces; and (2) cantilever racks with vertical components parallel to the aisle and cantilever beams or arms connected to the vertical components perpendicular to the aisle. Steel racks may be referred to as pallet racks, storage racks, stacker racks, retail racks, pick modules, selective racks, or cantilever racks and may incorporate moving components and be referred to as pallet-flow racks, carton-flow racks, push-back racks, movable-shelf racks, drive-in racks, and drive-through racks. While steel racks may be made to ANSI MH16.l or ANSI MH16.3 standards, all steel racks and parts thereof meeting the description set out herein are covered by the scope of this investigation, whether or not produced according to a particular standard.

The scope includes all steel racks and parts thereof meeting the description above, regardless of

(1) other dimensions, weight, or load rating;

(2) vertical components or frame type (including structural, roll-form, or other);

(3) horizontal support or beam/brace type (including but not limited to structural, roll-form, slotted, unslotted, Z-beam, C-beam, L-beam, step beam, and cantilever beam);

(4) number of supports;

(5) number of levels;

(6) surface coating, if any (including but not limited to paint, epoxy, powder coating, zinc, or other metallic coatings);

(7) rack shape (including but not limited to rectangular, square, corner, and cantilever);

(8) the method by which the vertical and horizontal supports connect (including but not limited to locking tabs or slots, bolting, clamping, and welding); and

(9) whether or not the steel rack has moving components (including but not limited to rails, wheels, rollers, tracks, channels, carts, and conveyors).

Subject merchandise includes merchandise matching the above description that has been finished or packaged in a third country. Finishing includes, but is not limited to, coating, painting, or assembly, including attaching the merchandise to another product, or any other finishing or assembly operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof. Packaging includes packaging the merchandise with or without another product or any other packaging operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof.

Steel racks and parts thereof are included in the scope of this investigation whether or not imported attached to, or included with, other parts or accessories such as wire decking, nuts, and bolts. If steel racks and parts thereof are imported attached to, or included with, such non-subject merchandise, only the steel racks and parts thereof are included in the scope.

The scope of this investigation does not cover: (1) Decks, *i.e.,* shelving that sits on or fits into the horizontal supports to provide the horizontal storage surface of the steel racks; (2) wire shelving units, *i.e.,* units made from wire that incorporate both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create a finished unit; (3) pins, nuts, bolts, washers, and clips used as connecting devices; and (4) non-steel components.

Specifically excluded from the scope of this investigation are any products covered by Commerce's existing antidumping and countervailing duty orders on boltless steel shelving units prepackaged for sale from the People's Republic of China. *See Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Antidumping Duty Order,* 80 FR 63,741 (October 21, 2017); and *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 63,745 (October 21, 2017).

Also excluded from the scope of this investigation are bulk-packed parts or components of boltless steel shelving units that were specifically excluded from the scope of the Boltless Steel Shelving Orders because such bulk-packed parts or components do not contain the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) packaged together for assembly into a completed boltless steel shelving unit.

Such excluded components of boltless steel shelving are defined as:

(1) Boltless horizontal supports (beams, braces) that have each of the following characteristics: (a) A length of 95 inches or less, (b) made from steel that has a thickness of 0.068 inches or less, and (c) a weight capacity that does not exceed 2500 lbs per pair of beams for beams that are 78″ or shorter, a weight capacity that does not exceed 2200 lbs per pair of beams for beams that are over 78″ long but not longer than 90″, and/or a weight capacity that does not exceed 1800 lbs per pair of beams for beams that are longer than 90″;

(2) shelf supports that mate with the aforementioned horizontal supports; and

(3) boltless vertical supports (upright welded frames and posts) that have each of the following characteristics: (a) A length of 95 inches or less, (b) with no face that exceeds 2.90 inches wide, and (c) made from steel that has a thickness of 0.065 inches or less.

Excluded from the scope of this investigation are: (1) Wall-mounted shelving and racks, defined as shelving and racks that

suspend all of the load from the wall, and do not stand on, or transfer load to, the floor; (2) ceiling-mounted shelving and racks, defined as shelving and racks that suspend all of the load from the ceiling and do not stand on, or transfer load to, the floor; and (3) wall/ceiling mounted shelving and racks, defined as shelving and racks that suspend the load from the ceiling and the wall and do not stand on, or transfer load to, the floor. The addition of a wall or ceiling bracket or other device to attach otherwise subject merchandise to a wall or ceiling does not meet the terms of this exclusion.

Also excluded from the scope of this investigation is scaffolding that complies with ANSI/ASSE A10.8—2011—Scaffolding Safety Requirements, CAN/CSA S269.2–M87 (Reaffirmed 2003)—Access Scaffolding for Construction Purposes, and/or Occupational Safety and Health Administration regulations at 29 CFR part 1926 subpart L—Scaffolds.

Also excluded from the scope of this investigation are tubular racks such as garment racks and drying racks, *i.e.,* racks in which the load bearing vertical and horizontal steel members consist solely of: (1) Round tubes that are no more than two inches in diameter; (2) round rods that are no more than two inches in diameter; (3) other tubular shapes that have both an overall height of no more than two inches and an overall width of no more than two inches; and/or (4) wire.

Also excluded from the scope of this investigation are portable tier racks. Portable tier racks must meet each of the following criteria to qualify for this exclusion:

(1) They are freestanding, portable assemblies with a fully welded base and four freely inserted and easily removable corner posts;

(2) They are assembled without the use of bolts, braces, anchors, brackets, clips, attachments, or connectors;

(3) One assembly may be stacked on top of another without applying any additional load to the product being stored on each assembly, but individual portable tier racks are not securely attached to one another to provide interaction or interdependence; and

(4) The assemblies have no mechanism (*e.g.,* a welded foot plate with bolt holes) for anchoring the assembly to the ground.

Also excluded from the scope of this investigation are accessories that are independently bolted to the floor and not attached to the rack system itself, *i.e.,* column protectors, corner guards, bollards, and end row and end of aisle protectors.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7326.90.8688, 9403.20.0080, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Changes from the Preliminary Determination
VI. Analysis of Comments
  Comment 1: Whether Commerce Should Rely on Romania or Brazil as the Surrogate Country
  Comment 2: Whether the Compa S.A. Sibiu (Compa) or Metisa Metalurgica Timboense S/A. (Metisa) Financial Statements are a Better Source of Financial Ratios
  Comment 3: The Surrogate Value for Dongsheng's P-tube Input
  Comment 4: Whether Import Clearance Charges Should be Added to the Surrogate Values
  Comment 5: Whether Commerce Should Grant Dongsheng a Double Remedy Offset
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  Comment 7: Whether Aifeimetal Should be Excluded from this Investigation
  Comment 8: The Preliminary Scope Determination
VII. Recommendation

[FR Doc. 2019–15718 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Grupo Simec made sales of steel concrete reinforcing bar (rebar) from Mexico below normal value during the period of review (POR) November 1, 2016 through October 31, 2017, but Deacero S.A.P.I. de C.V. (Deacero) did not.

DATES: Applicable July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2018, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results.* For events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] On May 14, 2019, we extended the deadline for these final results until July 19, 2019.[4]

Scope of the Order

Imports covered by the order are shipments of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The merchandise subject to review is currently classifiable under items 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other Harmonized Tariff Schedule of the United States (HTSUS) numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this

[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 63622 (December 11, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated May 14, 2019.

[5] *See* Issues and Decision Memorandum for a complete description of the Scope of the Order.

administrative review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received from parties, we have made changes to the margin calculations of Grupo Simec and Deacero. For Grupo Simec, we included the downstream sales from affiliates that did not pass the arm's-length test, and we corrected an inadvertent programming error.[6] For Deacero, instead of applying its highest home market sales price to unaffiliated customers as partial AFA for one of its affiliate's home market downstream sales prices, as neutral facts available, we have disregarded home market sales to the affiliate in calculating Deacero's margin.[7] As a result of these changes, we determine that Deacero did not make sales of subject merchandise below normal value during the POR.

Final Results of the Review

As a result of this review, Commerce calculated a weighted-average dumping margin that is above *de minimis* for Grupo Simec and a zero margin for Deacero for the POR. Therefore, consistent with its practice and the investigation methodology set forth in section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), Commerce assigned the weighted-average dumping margin calculated for Grupo Simec to the seven non-selected companies in these final results, as referenced below.

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V	0.00 (*de minimis*).
Grupo Simec (Simec International 6 S.A. de C.V., Orge S.A. de C.V., Aceros Especiales Simec Tlaxcala, S.A. de C.V., Fundiciones de Acero Estructurales, S.A. de C.V., Perfiles Comerciales Sigosa, S.A. de C.V., Operadora de Perfiles Sigosa, S.A. de C.V.).[8]	3.65.
Ternium Mexico, S.A. de C.V	3.65.
ArcelorMittal Lazaro Cardenas S.A. de C.V	3.65.
Cia Siderurgica De California, S.A. de C.V	3.65.
AceroMex S.A	3.65.
ArcelorMittal Celaya	3.65.
ArcelorMittal Cordoba S.A. de C.V	3.65.
Siderurgica Tultitlan S.A. de C.V	3.65.
Talleres y Aceros, S.A. de C.V	3.65.
Grupo Villacero S.A. de C.V	3.65.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with section 751(a) of the Act and 19 CFR 351.224(b).

Assessment Rates

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[9] For any individually examined respondent whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the totaled entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice,[10] for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

[6] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico (2016–2017): Sales and Cost of Production Calculation Memorandum for the Final Results of Grupo Simec,'' dated concurrently with these final results.

[7] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico (2016–2017): Sales and Cost of Production Calculation Memorandum for the Final Results of Deacero S.A.P.I.,'' dated concurrently with these final results.

[8] Commerce previously collapsed Simec International 6 S.A. de C.V. and Orge S.A. de C.V. with Grupo Simec. *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 27233 (June 14, 2017). In this administrative review, Commerce has collapsed Aceros Especiales Simec Tlaxcala, S.A. de C.V., Fundiciones de Acero Estructurales, S.A. de C.V., Perfiles Comerciales Sigosa, S.A. de C.V., and Operadora de Perfiles Sigosa, S.A. de C.V. Industrias CH is affiliated with Grupo Simec, but Commerce is not collapsing the company into the single entity because it is not involved in the production or sale of subject merchandise. *See* Grupo Simec Affiliation and Collapsing Memorandum, dated December 3, 2018; *see also* Memorandum, ''Administrative Review of Antidumping Duty Order on Steel Concrete Reinforcing Bar from Mexico: Business Proprietary Analysis Memorandum Pertaining to the Collapsing Decision for Grupo Simec in the Final Results,'' dated concurrently with these final results.

[9] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[10] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(I), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the all-others rate established in the LTFV investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notice to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 16, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Made Since the Preliminary Results
V. Discussion of the Issues
General Issue
Comment 1: Whether ArcelorMittal Celaya Should be Included in the Liquidation Instructions
Deacero Issues
Comment 2: Whether Commerce Should Continue to Apply Partial AFA to Deacero for Not Reporting Downstream Resales of Rebar Made by Its Home Market Affiliate
Comment 3: Whether Commerce Properly Accounted for Deacero's Non-Prime Sales
Comment 4: Whether Commerce Mistakenly Performed the Arm's-Length Test on Deacero Sales
Grupo Simec Issues
Comment 5: Whether Commerce Should Continue Collapsing Sigosa with AEST and FUNACE
Comment 6: Whether Commerce Should Correct an Error in Grupo Simec's Margin Calculation Program
VI. Recommendation

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BILLING CODE 3510–DS–P

[11] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of the 23rd Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang) made sales of fresh garlic from the People's Republic of China (China) at less than normal value during the period of review (POR) November 1, 2016 through October 31, 2017. Commerce finds that Qingdao Sea-line International Trading Co., Ltd. (Sea-line) withheld requested information, significantly impeded the review, and did not cooperate to the best of its ability. Accordingly, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we are relying on adverse facts available.

These determinations and the final dumping margins are discussed below in the ''Final Results'' section of this notice.

DATES: Applicable July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6251 or 202–482–4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the preliminary results of this administrative review of the antidumping duty order on fresh garlic from China on December 10, 2018.[1] We preliminarily found that the mandatory respondents, Zhengyang and Sea-line, sold subject merchandise to the United States at less than normal value. Furthermore, we found that two companies certified that they made no shipments during the POR and that six companies, in addition to the mandatory respondents, qualified for separate rate status.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 63479 (December 10, 2018) (*Preliminary Results*).

December 22, 2018 through the resumption of operations on January 29, 2019.[2] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results was tolled to May 20, 2019.

Between March 8 and March 11, 2019, Zhengyang, Sea-line, and the petitioners[3] submitted their respective case briefs.[4] On March 14, 2019, in response to requests from the petitioners[5] and Sea-line,[6] we extended the deadline for interested parties to submit rebuttal briefs by five days.[7] On March 20, 2019, Sea-line and the petitioners submitted rebuttal briefs.[8]

On May 10, 2019, Commerce extended the deadlines for the final results of this administrative review from 120 days to 180 days after the publication of the *Preliminary Results.* The new deadline is now July 18, 2019.[9]

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).[10]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum.[11] The issues are identified in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the *Preliminary Results*

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we have applied facts available with an adverse inference to Sea-line. As such, and as described below, we have revised the margin assigned to the separate rate respondents.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that the QTF-Entity[12] and Jining Shengtai Fruits & Vegetables Co., Ltd. each had no shipments during the POR.[13] As we have not received any information to contradict our preliminary findings, we determine that these entities did not have any shipments of subject merchandise during the POR.

China-Wide Entity

As discussed in the *Preliminary Results,* the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[14] Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* $4.71 per-kilogram (kg)) is not subject to change. Aside from the no-shipment companies discussed above, Commerce considers all other companies for which a review was requested, and which did not qualify for a separate rate, to be part of the China-wide entity. A list of the companies determined to be part of the China-wide entity is provided in Appendix III to this notice.

Separate Rates

In the *Preliminary Results,* in accordance with section 777A(c)(2)(B)

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[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 Partia1 Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C.; The Garlic Company; and Valley Garlic.

[4] *See* Zhengyang's Letter, ''Fresh Garlic from the People's Republic of China—Case Brief,'' dated March 8, 2019; *see also* Sea-line's Letter, ''Fresh Garlic from the PRC: Case Brief of Qingdao Sea-line International Trading Co., Ltd.,'' dated March 8, 2019; Petitioners' Letter, ''Fresh Garlic from the People's Republic of China: Petitioners' Case Brief,'' dated March 11, 2019.

[5] *See* Petitioners' Letter, ''23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Request for Extension of deadline for Submission of Rebuttal Case Briefs,'' dated March 12, 2019.

[6] *See* Sea-line's Letter, ''Fresh Garlic from the PRC: Extension Request for Submission of Rebuttal Brief on Behalf of Qingdao Sea-Line International Trading Co., Ltd.,'' dated March 14, 2019.

[7] *See* Memorandum, ''23rd Administrative Review of Fresh Garlic from the People's Republic of China: Extension of Rebuttal Briefing Schedule,'' dated March 14, 2019.

[8] *See* Sea-line's Letter, ''Fresh Garlic from the PRC: Rebuttal Brief of Qingdao Sea-line International Trading Co., Ltd.,'' dated May 20, 2019; *see also* Petitioners' Letter, ''Fresh Garlic from the People's Republic of China: Petitioners' Rebuttal Brief,'' dated March 20, 2019.

[9] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—23rd Administrative Review: Extension of Deadline for the Final Results of Review,'' dated May 10, 2019.

[10] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994).

[11] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at ''Discussion of the Issues.''

[12] The QTF-Entity includes Qingdao Lianghe International Trade Co., Ltd. (Lianghe); Qingdao Xintianfeng Foods Co., Ltd. (QXF); Qingdao Tiantaixing Foods Co., Ltd. (QTF); Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting. *See* Memorandum, ''23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Status of the QTF-Entity,'' dated October 22, 2018, at Attachment.

[13] *See Preliminary Results,* 83 FR at 63480–82.

[14] *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).

of the Act, Commerce employed a limited examination methodology, as we determined that it would not be practicable to examine individually all companies for which a review request was made.[15] There were six exporters of subject merchandise from China that demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These six exporters are listed in Appendix II.

Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs Commerce to base an all-others rate on the rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In these final results of review, we calculated a weighted-average dumping margin for Zhengyang, but based Sea-line's margin on facts available. As Zhengyang's margin is the only margin that is not either *de minimis* or based entirely on adverse facts available, we have assigned Zhengyang's margin to the separate rate respondents.

Final Results of Review

Commerce finds that the following weighted-average dumping margins exist for the period November 1, 2016 through October 31, 2017:

Exporter	Weighted-average dumping margin (dollars per-kg)
Shandong Jinxiang Zhengyang Import & Export Co., Ltd	2.87
Qingdao Sea-line International Trading Co., Ltd	4.71
Chengwu County Yuanxiang Industry & Commerce Co., Ltd	2.87
Jining Alpha Food Co., Ltd	2.87
Qingdao Maycarrier Import & Export Co., Ltd	2.87
Shandong Chenhe International Trading Co., Ltd	2.87
Shandong Happy Foods Co., Ltd	2.87
Weifang Hongqiao International Logistics Co., Ltd	2.87

Assessment Rates

Pursuant to section 751(a)(2)(A) and (C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Pursuant to Commerce's assessment practice in non-market economy (NME) cases, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[16]

Cash Deposit Requirements

Commerce intends to instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average margin by which normal value exceeds U.S. price. The following cash deposit requirements will be effective upon publication of these final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 4.71 dollars per-kg); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred, and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials, or conversion to judicial

[15] *See* Memorandum, ''Selection of Respondents for Individual Examination,'' dated February 28, 2018.

[16] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: July 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Final Determination of No Shipments
V. Use of Facts Available and Adverse Facts Available (AFA)
VI. Discussion of the Issues:
  Comment 1: Whether Sea-line Provided Reliable Sales Information to Calculate a Dumping Margin
  Comment 2: Whether Romania is the Appropriate Surrogate Country
  Comment 3: Whether Commerce Double-Counted Chemicals in Sea-line's Calculation
VII. Recommendation

Appendix II

List of Companies Receiving a Separate Rate

1. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
2. Jining Alpha Food Co., Ltd.
3. Qingdao Maycarrier Import & Export Co., Ltd.
4. Shandong Chenhe International Trading Co., Ltd.
5. Shandong Happy Foods Co., Ltd.
6. Weifang Hongqiao International Logistics Co., Ltd.

Appendix III

List of Companies Not Receiving Separate Rate Status

1. Bestway Logistics Inc.
2. Chengwu Yuanxiang Industry and Commerce Co., Ltd.
3. China Union Agri. (Qingdao) Co., Ltd.
4. Dongying Richmond International
5. Jiangyoung Gunagafa Vegetable Professional Corperation
6. Jinan Farmlady Trading Co., Ltd.
7. Jining City Billion Garlic Products Co., Ltd.
8. Jining New Silk Road Food Co., Ltd.
9. Jining Rich Farmer International
10. Jining Yifa Garlic Produce Co., Ltd.
11. Jining Yongjia Trade Co., Ltd.
12. Jinxiang County Jinji Trade Co., Ltd.
13. Jinxiang Hongyu Freezing & Storing Co., Ltd.
14. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
15. Juxian Huateng Organic Ginger Co., Ltd.
16. Laiwu Ever Green Food Co., Ltd.
17. Lanling Xinxinyuan Food Co., Ltd.
18. Pinacle Sourcing & Marketing, Ltd.
19. Qingdao Gabsan Trading Co., Ltd.
20. Qingdao Jiashan Trading Co., Ltd.
21. Qingdao Justop Industries and Trading Co., Ltd.
22. Qingdao Ritai Food Co., Ltd.
23. Shandong Galaxy International
24. Shandong Helu International Trade Co., Ltd.
25. Shandong Lejianda Food Co., Ltd.
26. Victoria Foods Co., Ltd.
27. Weifang Huashun Import & Export Co., Ltd.
28. Weifang Wangyuan Food Co., Ltd.

[FR Doc. 2019–15745 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Amended Final Results of the First Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the countervailing duty (CVD) order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) to correct a ministerial error. The period of review (POR) is August 12, 2016 through December 31, 2016.

DATES: Applicable July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Hannah Falvey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4889.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on June 19, 2019, Commerce published its final results of the administrative review of the CVD order of hot-rolled steel from Korea.[1] On June 24, 2019, POSCO alleged a calculation error in these *Final Results* regarding POSCO's policy loans from the Korea Resources Corporation (KORES).[2] We did not receive any other ministerial error comments or rebuttal comments.

Scope of the Order

The merchandise covered by the order is certain hot-rolled steel flat products from Korea. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum accompanying the *Final Results*.[3]

Ministerial Errors

Section 751(h) of the Act and 19 CFR 351.224(f) define a ''ministerial error'' as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. As discussed in the Amended Final Issues and Decision Memorandum, Commerce finds that the error alleged by POSCO constitutes a ministerial error within the meaning of 19 CFR 351.224(f).[4] Specifically, Commerce made an error in the calculation of the benefit to POSCO from POSCO's KORES loans.[5]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* to correct the ministerial error. Specifically, we are amending the net subsidy rate for POSCO.[6] The revised net subsidy rate is provided below.

Amended Final Results

Company	Subsidy rate (percent *valorem*)[7]
POSCO	0.54

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of the Countervailing Duty Administrative Review, 2016,* 84 FR 28461 (June 19, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* POSCO's Letter, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 8/12/2016–12/31/2016 Administrative Review, Case No. C–580–884: POSCO's Ministerial Error Allegation,'' dated June 24, 2019.

[3] *See Final Results* and accompanying IDM.

[4] *See* Memorandum, ''Allegation of Ministerial Errors in the Final Results of the First Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and herby adopted by, this notice (Amended Final Issues and Decision Memorandum).

[5] *See* Memorandum, ''Countervailing Duty Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results Calculations for POSCO,'' dated June 11, 2019.

[6] *Id.* Because we relied on POSCO's subsidy rates to calculate the rate for non-selected companies under review, we are revising the calculation for non-selected companies under review in these amended final results. After this revision, the rate for non-selected companies is unchanged from the *Final Results. See* Memorandum, ''Countervailing Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from the Republic of Korea; Amended Final Results Rate Calculation for the Non-Selected Companies,'' dated concurrently with the amended final results.

Company	Subsidy rate (percent *ad valorem*) [7]
Hyundai Steel Co., Ltd	0.58
DCE Inc	0.56
Dong Chuel America Inc	0.56
Dongbu Steel Co., Ltd	0.56
Dongkuk Industries Co., Ltd	0.56
Hyewon Sni Corporation (H.S.I.)	0.56
Soon Hong Trading Co., Ltd	0.56
Sung-A Steel Co., Ltd	0.56

Assessment Rates

Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, from August 12, 2016 through December 31, 2016, at the *ad valorem* rates listed above.

Cash Deposit Rate

Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 19, 2019, the date of publication of the *Final Results.* For all non-reviewed firms, we will instruct CBP to collect cash deposits at the most-recent company specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Disclosure

We intend to disclose the calculations performed for these amended final results to interested parties within five business days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

[7] The rate for non-selected companies under review remains unchanged from the *Final Results.*

Notification to Interested Parties

We are issuing and publishing these amended final results in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: July 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–15744 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV002

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council will hold its 166th meeting in August to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held on August 20, 2019, from 9 a.m. to 5 p.m., and August 21, 2019, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at The Buccaneer Hotel, 5007 Estate Shoys, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

August 20, 2019, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 165th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- Fishery Ecosystem Plan

—Plan Team Update

DAP Reports (July 30–31, 2019 meetings)

—Puerto Rico

—St. Thomas/St. John

—St. Croix

- SSC Report (August 13–15, 2019 meeting)
- WECAFC Next Steps
- Caribbean Fishery Management Council Five-Year Strategic Plan: Proposed Approach and Timeline—Michelle Duval

—Public Comment Period—5-minute presentations

August 20, 2019, 5:15 p.m.–6 p.m.

- Administrative Issues
- Closed Session

August 21, 2019, 8:30 a.m.–11 a.m.

- Discussion of Proposed CFMC 5-year Strategic Plan—Michelle Duval

August 21, 2019, 11 a.m.–12 p.m.

- Outreach and Education Report—Alida Ortiz
- The Emergence of Stony Coral Tissue Loss Disease in St. Thomas and Possible Impacts to Fisheries—Marilyn Brandt

August 21, 2019, 12 noon–1:30 p.m.

- Lunch

August 21, 2019, 1:30 p.m.–5 p.m.

- Life History of Parrotfish Species and Queen Triggerfish Throughout the US Caribbean– Virginia Shervette
- St. Thomas/St. John

—Fish Trap Compatibility

—Spiny Lobster Fishery Management

St. Croix

—Fish Trap Compatibility

—Spiny Lobster Fishery Management

- Recreational Fisheries Management USVI Update—Nicole Angeli
- Enforcement Issues:

—Puerto Rico-DNER

—USVI—DPNR

—U.S. Coast Guard

—NMFS/NOAA

- Meetings Attended by Council Members and Staff

Other Business

—Lobster Project

—Public Comment Period—5-minute presentations

- Next Meeting

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 20, 2019 at 9 a.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated. In addition, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

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

Dated: July 19, 2019.

Rey Israel Marquez,

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

[FR Doc. 2019–15741 Filed 7–23–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0107, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the renewal of collection of certain information by the Commission's Office of Customer Education and Outreach (''OCEO''). Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed or renewal of a collection of information and to allow 60 days for public comment. The Commission is soliciting comments for the renewal of its generic information collection that will help the CFTC satisfy responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), found in Section 748 of the Dodd-Frank Act. The generic information collection will provide the OCEO a means to gather qualitative consumer and stakeholder feedback in an efficient, timely manner to facilitate service delivery.

DATES: Comments must be submitted on or before September 23, 2019.

ADDRESSES: You may submit comments, identified by ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,'' and Collection Number 3038–0107, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Dan Rutherford, Director, Office of Customer Education and Outreach, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, (202) 418–6623; FAX: (202) 418–5541; email: *drutherford@cftc.gov* and refer to this **Federal Register** notice.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Generic Clearance for Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: In accordance with section 748 of the Dodd-Frank Act, the OCEO anticipates undertaking a variety of service delivery focused activities over the next few years that include consumer outreach and information-sharing with stakeholders which are responsive to stakeholders' needs and sensitive to changes in the market. The proposed information collection activity will use similar methods for information collection or otherwise share common elements, and provide a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner. By qualitative feedback we mean information that provides useful information on perceptions and opinions. The solicitation of information on delivery of consumer services will address such areas as appropriate messages, effective message delivery methods, effective event outreach tactics and characteristics, new outreach program ideas and content, and current consumer beliefs, psychographics and social norms that will assist the agency in developing outreach and communications campaigns. Since these systems will use similar methods for information collection or otherwise share common elements, the OCEO is proposing a generic clearance for this process, which will allow the OCEO to implement these systems and meet the obligations of the PRA without the delays of the normal clearance process. Collection methods may include focus groups and surveys as well as other relevant collection methods that meet the conditions appropriate for a generic clearance as outlined below. The OCEO will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondent, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Commission (if released, the Commission must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study. Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

With respect to the collection of information, the Commission invites comments on:

- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burdens of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Type of Review: Generic Clearance Request.

Affected Public/Entities: Individuals and Households, Businesses and Organization, State, Local or Tribal governments.

Respondent's Obligation: Voluntary.

Estimated number of Respondents/ Affected Entities: 1,440.

Estimated average number of responses: 10 per year.

Estimated total average annual burden on respondents: 14,400 responses.

Frequency of collection: Once per request.

Average time per response: 2 hours.

Estimated total annual burden hours requested: 28,800 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

[1] 17 CFR 145.9.

Dated: July 19, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–15688 Filed 7–23–19; 8:45 am]

BILLING CODE 6351–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

[Docket No. CEQ–2019–0002]

RIN 0331–ZA03

Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Draft guidance; extension of comment period.

SUMMARY: On June 26, 2019, the Council on Environmental Quality (CEQ) published draft guidance on how National Environmental Policy Act (NEPA) analysis and documentation should address greenhouse gas (GHG) emissions. The CEQ is extending the comment period on the draft guidance, which was scheduled to close on July 26, 2019, for 31 days until August 26, 2019. The CEQ is making this change in response to public requests for an extension of the comment period.

DATES: Comments should be submitted on or before August 26, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number CEQ–2019–0002 through the Federal eRulemaking portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* CEQ 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 (*e.g.,* audio, video) 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.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ–2019–0002.

The draft guidance is also available on the CEQ websites at *https://www.whitehouse.gov/ceq/initiatives/* and *www.nepa.gov.*

FOR FURTHER INFORMATION CONTACT: Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395–5750.

SUPPLEMENTARY INFORMATION: On June 26, 2019, CEQ published ''Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions'' in the **Federal Register** (84 FR 30097). The original deadline to submit comments was July 26, 2019. This action extends the comment period for 31 days to ensure the public has sufficient time to review and comment on the draft guidance. Written comments should be submitted on or before August 26, 2019.

(Authority: 42 U.S.C. 4332, 4342, 4344 and 40 CFR parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508).

Mary B. Neumayr,

Chairman.

[FR Doc. 2019–15697 Filed 7–23–19; 8:45 am]

BILLING CODE 3225–F9–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–0B]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–0B with attached Policy Justification; Sensitivity of Technology; and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17–0B

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of the United Arab Emirates (UAE)

(ii) Sec. 36(b)(1), AECA Transmittal No.: 16–15 Date: 8 December 2016
Military Department: Army

(iii) *Description:* On December 8, 2016, Congress was notified by Congressional certification transmittal number 16–15 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of twenty-eight (28) AH–64E Remanufactured Apache Attack Helicopters; nine (9) new AH–64E Apache Attack Helicopters; seventy-six (76) T700–GE–701D Engines (56 remanufactured, 18 new, 2 spares); thirty-nine (39) AN/ASQ–170 Modernized Target Acquisition and Designation Sight/AN/AAR–11 Modernized Pilot Night Vision Sensors

(28 remanufactured, 9 new, 2 spares); thirty-two (32) remanufactured AN/APR–48B Modernized Radar Frequency Interferometers; forty-six (46) AAR–57 Common Missile Warning Systems (31 remanufactured, 9 new, 6 spares); eighty-eight (88) Embedded Global Positioning Systems with Inertial Navigation (72 new, 16 spares); forty-four (44) Manned-Unmanned Teaming-International (MUMTi) systems (28 remanufactured, 9 new, 7 spares); and fifteen (15) new MUMTi System Upper Receivers, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost was $3.5 billion. Major Defense Equipment (MDE) constituted $1.68 billion of this total.

This transmittal reports:

1. the addition of thirty (30) Radar Electronic Units (REU) as MDE, which were included in the total value of the original transmittal, but were not properly identified as MDE; and

2. the inclusion of additional quantities of the following items: one (1) new AH–64E Apache Attack Helicopter, six (6) T700–GE–701D engines (2 installed, 4 spares), one (1) new AN/ASQ–170 Modernized Target Acquisition and Designation Sight/AN/AAR–11 Modernized Pilot Night Vision Sensor, one (1) new AAR–57 Common Missile Warning System, sixty-two (62) Embedded Global Positioning Systems with Inertial Navigation (EGIs) (60 remanufactured, 2 new), and one (1) new Manned-Unmanned Teaming-International (MUMTi) system. The total MDE value of these items is $101,518,591. The addition will not add to the total notified value of MDE, which will remain $1.68 billion. The total notified case value will remain $3.5 billion.

(iv) *Significance:* This notification is being provided to report the inclusion of MDE and non-MDE items that were not included in the original notification. The UAE lost a helicopter during recent operations and has requested to replace this loss.

(v) *Justification:* The Secretary of State has determined and certified that an emergency exists that requires the immediate sale to the United Arab Emirates of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended. This equipment will support the capabilities of UAE's Apache fleet and enhance interoperability with the United States.

(vi) *Sensitivity of Technology:*

The AH–64E Apache Attack Helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the sale:

a. The Radar Electronic Unit (REU) is a component upgrade to the AN/APG–78 Fire Control Radar (FCR). The REU replaces two legacy Line Replaceable Units (Programmable Signal Processor and Low Power Radio Frequency), achieving a weight reduction of approximately 85 pounds, with improved reliability, increased processing power, growth for new modes/capabilities and replacement of obsolete components. Critical system information is stored in the FCR/REU in the form of mission executable code, target detection, classification algorithms and coded threat parametric. This information is provided in a form that cannot be extracted by the foreign user via anti-tamper provisions built into the system.

b. The AN/APG–78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive AN/APR–48B Modernized Radar Frequency Interferometer (M–RFI) mounted on top of the helicopter mast. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters, helicopters, and fixed wing aircraft in normal flight. If desired, the radar data can be used to refer targets to the regular electro-optical Modernized Target Acquisition and Designation Sight (MTADS). This information is provided in a form that cannot be extracted by the foreign user. The content of these items is classified SECRET. User Data Module (UDM) on the RFI processor, contains the Radio Frequency threat library. The UDM, which is a hardware assemblage, is classified CONFIDENTIAL when programmed with threat parameters, threat priorities and/or techniques derived from U.S. intelligence information.

c. The AN/ASQ–170 Modernized Target Acquisition and Designation Sight/AN/AAQ–11 Pilot Night Vision Sensor (MTADS/PNVS) provides day, night, and limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), EI2 television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is UNCLASSIFIED. Technical manuals for authorized maintenance levels are UNCLASSIFIED. Reverse engineering is not a major concern.

d. The AAR–57 Common Missile Warning System (CMWS) detects energy emitted by threat missiles in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified CONFIDENTIAL; releasable technical manuals for operation and maintenance are classified SECRET.

e. The Embedded Global Positioning System/Inertial Navigation System plus Multi Mode Receiver (EGI+MMR) The aircraft has two EGIs which use internal accelerometers, rate gyro measurements, and external sensor measurements to estimate the aircraft state, provides aircraft flight and position data to aircraft systems. The EGI is a velocity-aided, strap down, ring laser gyro based inertial unit. The EGI unit houses a GPS receiver. The receiver is capable of operating in either non-encrypted or encrypted. When keyed, the GPS receiver will automatically use anti-spoof/jam capabilities when they are in use. The EGI will retain the key through power on/off/on cycles. Because of safeguards built into the EGI, it is not considered classified when keyed. Integrated within the EGI is an Inertial Measurement Unit (IMU) for processing functions. Each EGI also houses a Multi-Mode Receiver (MMR). The MMR is incorporated to provide for reception of ground based NAVAID signals for instrument aided flight. Provides IMC I IFR integration and certification of improved Embedded Global Positioning System and Inertial (EGI) unit, with attached MMR, with specific cockpit instrumentation allows Apaches to operate within the worldwide IFR route structure. Also includes integration of the Common Army Aviation Map

(CAAM), Area Navigation (RNAV), Digital Aeronautical Flight Information File (DAFIF) and Global Air Traffic Management (GATM) compliance.

f. Manned-Unmanned Teaming-International (MUMT–I) provides Manned-Unmanned Teaming with Unmanned Aerial Systems (UASs), other Apaches and other interoperable aircraft and land platforms. Provides ability to display real-time UAS sensor information to aircraft and transmit MTADS video. Capability to receive video and metadata from Interoperability Profile compliant (IOP) as well as legacy systems. It is a data link for the AH–64E that provides a fully integrated multiband, interoperable capability that allows pilots to receive off-board sensor video streaming from different platforms in non-Tactical Common Data Link (TCDL) bands. The MUMT I data link can retransmit UAS or Apache Modernized Target Acquisition Designation Sight full-motion sensor video and metadata to another MUMT–I-equipped Apache. It can also transmit to ground forces equipped with the One Station Remote Video Terminal. It provides Apache aircrews with increased situational awareness and net-centric interoperability while significantly reducing sensor-to-shooter timelines. This combination results in increased survivability of Apache aircrews and ground forces by decreasing their exposure to hostile fire.

(vii) *Date Report Delivered to Congress:* May 24, 2019

BILLING CODE 5001–06–P

UNCLASSIFIED

DATE DSCA RECEIVED
MAY 2 4 2019

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

UNCLASSIFIED

Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

[FR Doc. 2019–15753 Filed 7–23–19; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–01]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–01 with attached Policy Justification, and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–F

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Kingdom of Saudi Arabia

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$ 0 billion
Other	$1.8 billion
TOTAL	$1.8 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE: Follow-on logistics support and services for the Royal Saudi Air Force aircraft, engines, and weapons; publications and technical documentation; support equipment; spare and repair parts; repair and return; calibration support and test equipment; personnel equipment; U.S. Government and contractor technical and logistics support, and other related elements of program support. Equipment and spares will be procured for support of, but not limited to, F-5, F-15, KA-350, C-130, KC-130, E-3, RE-3, and KE-3 aircraft. The total estimated program cost is $1.8 billion.

(iv) *Military Department*: Air Force

(v) *Prior Related Cases, if any*: SR-D-QAY, SR-D-QDE, SR-D-QBO, SR-D-QBD, SR-D-QBI, SR-D-QDF, SR-D-QAH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: None

(viii) *Date Report Delivered to Congress*: May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Follow-on Logistics Support and Services

Saudi Arabia has requested to buy follow-on logistics support and services for the Royal Saudi Air Force aircraft, engines, and weapons; publications and technical documentation; support equipment; spare and repair parts; repair and return; calibration support and test equipment; personnel equipment; U.S. Government and contractor technical and logistics support, and other related elements of program support. Equipment and spares will be procured for support of, but not limited to, F-5, F-15, KA-350, C-130, KC-130, E-3, RE-3, and KE-3 aircraft. The total estimated program cost will be $1.8 billion.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Kingdom of Saudi Arabia of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will support U.S. foreign policy and national security objectives by helping to improve the security of a friendly country that continues to be an important force for political stability and economic growth in the Middle East. Saudi Arabia will have no difficulty absorbing this support and services into its armed forces.

The proposed sale will sustain Saudi Arabia's operations and maintenance activity, improve sustainability and ensure capability for near and long term air operations across the fleet.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There will be various contractors associated with the equipment involved with this case, and there is no prime contractor. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a small number of additional U.S. Government or contractor representatives to Saudi Arabia for maintenance, training, and sustainment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

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Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

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- 3 -

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

UNCLASSIFIED

[FR Doc. 2019–15751 Filed 7–23–19; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–70]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–70 with attached Policy Justification; Sensitivity of Technology; and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17–70

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 92 million
Other	$ 10 million
TOTAL	$102 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Three hundred thirty-one (331) Javelin Guided Missiles with Containers

Non-MDE:

Also included are System Integration & Checkout (SICO) service; Field Service Representative; U.S. Government and contractor technical, engineering and logistics support services' tools and test equipment; support equipment; publications and technical documentation; spare and repair parts; and other related elements of logistics and program support.

(iv) *Military Department:* Army (AE–B–ZAO, Amendment 3)

(v) *Prior Related Cases, if any:* AE–B–ZUB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

UAE—JAVELIN Guided Missiles and Associated Materiel and Services

The Government of the United Arab Emirates (UAE) has requested to buy three hundred thirty-one (331) Javelin Guided Missiles with container. Also included are System Integration & Checkout (SICO) service; Field Service Representative; U.S. Government and contractor technical, engineering and logistics support services' tools and test equipment; support equipment; publications and technical documentation; spare and repair parts; and other related elements of logistics and program support. The estimated total case value is $102 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the United Arab Emirates of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of an important partner that has been, and continues to be, a force for political stability and economic progress in the Middle East. This sale is consistent with U.S. initiatives to provide key partners in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The proposed program will enhance the UAE's capability to meet current and future enemy threats. The UAE will use the capability as a deterrent to regional threats and to strengthen its homeland defense. The UAE previously procured Javelin missiles and will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be is Raytheon, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed program will not require additional Contractor or U.S. Government personnel in country for an extended period of time.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–70

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. They system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The CLU's thermal sight is a second generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the CLU after mating and prior to launch.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

5. The Javelin Missile System hardware and the documentation are UNCLASSIFIED. The missile software which resides in the CLU is considered SENSITIVE. The sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. The overall hardware is also considered sensitive in that the infrared wavelengths could be useful in attempted countermeasure development.

6. If a technologically advanced adversary were to obtain knowledge of specific hardware, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for sensitive technology being released as the U.S. Government. This proposed sustainment program is necessary to the furtherance of the U.S.

foreign policy and national security objectives outlined in the policy justification.

8. All defense articles and services listed in this transmittal are authorized for release and export to the Government of United Arab Emirates.

DATE DSCA RECEIVED
MAY 24 2019

UNCLASSIFIED

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

UNCLASSIFIED

For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

[FR Doc. 2019–15750 Filed 7–23–19; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–39]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–39 with attached Policy Justification; Sensitivity of Technology; and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17-39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: United Arab Emirates

(ii) *Total Estimated Value*:

Major Defense Equipment *	$35 million
Other	$45 million
TOTAL	$80 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twenty (20) RQ-21A Blackjack Unmanned Air Vehicles (UAVs)

Non-MDE:

This request also includes the following Non-MDE: Forty (40) Global Positioning Systems (GPS) with Selective Availability Anti-Spoofing Module (SAASM) Type II (MPE-S), air vehicle support equipment to include eight (8) Ground Control Stations (GCS), four (4) launchers, and four (4) retrievers, spare and repair parts, publications, training and technical support services.

(iv) *Military Department*: Navy (AE-P-SAW)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—RQ-21A Blackjack Unmanned Air Vehicles

The Government of the UAE has requested to buy twenty (20) RQ-21A Blackjack Unmanned Air Vehicles (UAVs). Also included are forty (40) Global Positioning Systems (GPS) with Selective Availability Anti-Spoofing Module (SAASM) Type II (MPE-S); air vehicle support equipment including eight (8) Ground Control Stations (GCS), four (4) launchers, and four (4) retrievers; spare and repair parts; publications; training; and technical support services. The estimated total case value is $80 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the United Arab Emirates of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will contribute to the foreign and national security of the United States by improving the security of an important ally in the Middle East. This sale is consistent with U.S. national security objectives of assisting the UAE in developing and maintaining a strong and ready self-defense capability and enhancing interoperability with U.S. forces. The UAE will have no difficulty absorbing these UAVs into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Insitu, Bingen, WA, a wholly owned subsidiary of the Boeing Company. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews plus training and maintenance support in country, on a temporary basis, for a period of twenty-four (24) months. It will also require one (1) contractor representative to reside in country for a period of two (2) years to support this program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17-39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The following components and technical documentation for the program are classified as listed below:

a. The RQ-21 unmanned aircraft system (UAS) is a runway-independent, modular unmanned aircraft system that is designed for a variety of missions. The RQ-21 UAS has four subsystems: RQ-21A air vehicle (AV), launcher, retriever, and ground control stations (GCS).

1) The RQ-21A AV is a fixed-wing, single engine AV remotely controlled by an operator via the GCS.

2) The launcher is a pneumatically-controlled launch device that accelerates the RQ-21A AV to flying speed.

3) The retriever is a hydraulically-controlled telescoping crane that captures the RQ-21A AV at the end of the flight.

4) The GCS is a workstation that is used to plan missions, control and monitor the RQ-21A AV, and manage the data received from the air vehicle.

b. The RQ-21 UAS is capable of transport via ground, air, or ship. The RQ-21 UAS performs a wide variety of reconnaissance, intelligence, and special missions. Operationally or tactically vital data may be obtained cost-effectively by exploiting the UAS mission systems and payload options. The RQ-21A AV is designed to perform air reconnaissance (AR) based missions. It is equipped to carry a forward turret to support the primary mission of reconnaissance and an assortment of specialized, mission specific, payloads within the center payload bay. The Electro Optical/Infrared (EO/IR) Imager Counter Countermeasures sensor ball is the Alticam 11 EOIR4, which provides exceptional day/night capability in a small, lightweight, low power solution, or the EOIR5 which adds a laser designator capability. It uses mid-wave infrared (MWIR) electro-optical image, a gyro-stabilized gimbal system, has multiple operating modes, is compatible with the Alticam video processing board (AVS), and has a laser pointer and rangefinder. It is designed for small unmanned aerial vehicles (UAVs), and is also used on piloted airplanes, blimps, ground vehicles, and unmanned surface vehicles.

c. The imagery and electronic reconnaissance functions of the RQ-21A AV support intelligence functions and operational warfighting missions. Intelligence-based support functions range from intelligence, surveillance, and reconnaissance (ISR) to intelligence preparation of the battlefield (IPB) including imagery associated sub-tasks. Operational functions are enhanced by a laser rangefinder and infrared marking system. The turret, with laser system, facilitates target acquisition and terminal guidance operations in support of a wide breadth of aviation support to MAGTF operations mission. These include but are not limited to point, area, and route reconnaissance; convoy escort; call for indirect fires; battle damage assessment; and tactical recovery of aircraft and personnel. The aircraft also passively supports radio communications relay and the vessel traffic function of automatic identification.

d. The GCS includes an operator work station (OWS), a ground data terminal for C2 communication and video downlink, and a GPS electronics module (GEM) integration kit for navigation. The GCS is composed of a

standard component package. If installed on a ship, the GCS will be composed of the same components as the land based system, but the number and arrangement of each of the components will vary depending on the specific class of ship on which the GCS is installed. The RQ-21 GCS is comprised of the following components:

1) Two operator work stations. The OWS consist of four modules: electronics power module (EPM), network computer module (NCM), user interface module (UIM), and the data storage module (DSM). The EPM provides the power source for the GCS. The EPM is the bottom module in the OWS. The UIM is not installed in the GCS for ship-based operations.

2) Ground data terminal. The GDT includes the antenna interface module (AIM), directional antenna, and omni antennas (for ship-board operations only). The AIM models are different between land and ship-based configurations.

3) GEM integration kit. The GEM integration kit includes the GEM itself and the ground GPS antenna.

4) Moving platform module (MPM) integration kit (ship-based only).

5) Selective availability and anti-spoofing module (SAASM) GPS antenna.

6) Systems check laptop.

7) GCS cables.

e. The launcher provides the initial RQ-21A AV speed required for air vehicle flight over a wide range of wind and density altitude conditions, and enables expeditionary employment of the UAS in locations without suitable runways. The launcher is designed for transport by air, ship, or towed by light vehicles into rugged terrain. The launcher is made up of the launcher core and systems and the accessory components. The launcher core is attached lengthwise on the launcher trailer deck at two interface towers. The trailer is used to transport the launcher components and serves as a platform for the launcher core and systems.

f. The retriever system is comprised of the recovery system and trailer. The recovery system is a hydraulically-controlled telescoping crane mast that uses a vertical capture rope to catch the RQ-21A AV. The vertical capture rope features a bungee and rope energy dissipation system. The retriever is mounted to a modified MIL-STD trailer chassis. The trailer frame and hitch assembly connects the retriever to a towing vehicle. The trailer has one axle and four outriggers that are installed for use.

g. While no part of the RQ-21A UAS is itself classified, the following performance data and technical characteristics are classified as annotated:

RQ-21 UNMANNED AIRCRAFT SYSTEM (UAS)

GPS P/Y Code navigation equipment	SECRET when keyed.
UAS Susceptibility to Jamming	SECRET.
UAS TEMPEST Characteristics	SECRET.
UAS Vulnerabilities	SECRET.
UAS Survivability	SECRET.
UAS Radar Cross Section	Up to SECRET.
UAS Infrared Signature	SECRET.
UAS Electromagnetic Interference (EMI) Vulnerability	SECRET.
UAS Threat Data	SECRET.
Communications Relay Tactical Employment	CONFIDENTIAL.
Electro Optical/Infrared (EO/IR) Imager Counter Countermeasures	SECRET.
EO/IR Imager Operational Characteristics Up to	SECRET.
Automatic Information System Vulnerabilities	SECRET.

2. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale of the RQ-21 UAS and associated equipment is necessary to the furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification.

4. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the United Arab Emirates.

BILLING CODE 5001–06–P

DATE DSCA RECEIVED
MAY 24 2019

UNCLASSIFIED

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
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- Advising and support of Ministry of Defense reform
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For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

UNCLASSIFIED

For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA, THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

[FR Doc. 2019–15748 Filed 7–23–19; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–18]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–18 with attached Policy Justification, and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19–18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$100 million
TOTAL	$100 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Follow-on blanket order U.S. Marine Corps training, training support, and other training related services in support of the United Arab Emirates Presidential Guard Command.

(iv) *Military Department:* Navy (AE–P–TAM)

(v) *Prior Related Cases, if any:* AE–P–TAM

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* May 24, 2019

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—Follow-On Blanket Order Training

The Government of the United Arab Emirates (UAE) has requested follow-on blanket order U.S. Marine Corps training, training support, and other training related services in support of the UAE Presidential Guard Command. The total value for this sale is $100 million.

The Secretary of State has determined and provided a detailed justification that an emergency exists that requires the immediate sale to the United Arab Emirates of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important partner in the region.

The proposed sale will provide the continuation of U.S. Marine Corps training of the UAE's Presidential Guard for counterterrorism, counter-piracy, critical infrastructure protection, and national defense. This training also provides engagement opportunities through military exercises, training, and common equipment. UAE will have no difficulty absorbing this training.

The proposed sale of training will not alter the basic military balance in the region.

There will be no principal contractor associated with this proposed sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed amendment to a current sale will allow for the continued permanent assignment of thirty-four (34) U.S. Marine Corps active duty personnel to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

BILLING CODE 5001–06–P

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DATE DSCA RECEIVED
MAY 2 4 2019

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

UNCLASSIFIED

Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

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- 3 -

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

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[FR Doc. 2019–15724 Filed 7–23–19; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–73]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–73 with attached Policy Justification; Sensitivity of Technology; and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17–73

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$850 million
Other	$ 50 million
TOTAL	$900 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twenty thousand four (20,004) Advanced Precision Kill Weapon Systems (APKWS) II All-Up-Rounds

Non-MDE:

Also included is weapon support and test equipment, spares, technical publications, personnel training, other training equipment, transportation, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (AE–P–ABL)

(v) *Prior Related Cases, if any:* AE–P–ABH (P&A) and AE–P–ABI (P&A)

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—Advanced Precision Kill Weapon System (APKWS)

The Government of the United Arab Emirates has requested a possible sale of twenty thousand four (20,004) Advanced Precision Kill Weapon Systems (APKWS) II All-Up-Rounds. Also included is weapon support and test equipment, spares, technical publications, personnel training, other training equipment, transportation, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated total case value is $900 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the United Arab Emirates of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of an important partner in the region. This sale is consistent with U.S. initiatives to provide key partners in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The APKWS will provide the UAE with flexibility in the use of proportional, precision fires when operating in remote and mountainous regions as well as populated areas. The APKWS will complement the Hellfire II missile as a secondary precision munition with lower collateral damage potential. These aspects make the APKWS, employed in conjunction with UAE's multiple types of helicopters and Hellfire II missiles, an appropriate munition for the UAE's counterterrorism operations. UAE will have no difficulty absorbing the APKWS into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be BAE Systems, Nashua, NH. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require up to 20 U.S. Government and up to 30 contractor representatives to travel to UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–73

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The APKWS II All-Up-Round (AUR) is an air-to-ground weapon that consists of an APKWS II Guidance Section (GS), legacy 2.75-inch MK66 Mod 4 rocket motor and legacy MK152, MK282 and MK435/436 warhead/fuze. The APKWS II GS is installed between the rocket motor and warhead and provides a Semi-Active Laser (SAL) precision capability to legacy unguided 2.75-inch rockets. The APKWS II is procured as an independent component to be mated to the appropriate 2.75-inch warhead/fuze. The GS is manually set with the appropriate laser code during loading and is launched from any platform configured with a LAU–68F/A, or similar launcher(s). After launch, the GS activates and the seeker detects laser energy reflected from a target designated with a remote or autonomous laser. The control system then guides the rocket to the target. The only interface required with the host platform is a 28V direct current (DC) firing pulse.

2. APKWS II increases stowed kills by providing precise engagements at standoff ranges with sufficient accuracy for a high single-shot probability of hit against soft and lightly armored targets, thereby minimizing collateral damage. The APKWS II is capable of day and night operation and performance in many adverse environments.

3. The APKWS II requires no depot maintenance. Activities to prepare the APKWS II for use include setting the laser code switches, turning on the Electronic Thermal Battery Initiator, and loading the AUR into the launcher. Wing Slot Seals (WSS) may be replaced, if necessary, at an I-level maintenance facility.

4. All training for APKWS II is unclassified. The training required is:

a. Pilot training to effectively employ the APKWS II,

b. Ordnance Handler training for safe handling and preparation of the APKWS II and AUR; and

c. Maintenance training for replacement of WSS.

5. If a technologically advanced adversary were to obtain knowledge of specific hardware, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for sensitive technology being released as the U.S. Government. This proposed sustainment program is necessary to the furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification.

7. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the United Arab Emirates.

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DATE DSCA RECEIVED
MAY 2 4 2019

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

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Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

[FR Doc. 2019–15746 Filed 7–23–19; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–21]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–21 with attached Policy Justification, and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
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6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 18–21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	$800 million
TOTAL	$800 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for*

Purchase:

Major Defense Equipment (MDE): None

Non-MDE:

Follow-on support and services for Royal Saudi Air Force aircraft, engines, and weapons; publications and technical documentation; support equipment; spare and repair parts; repair and return; calibration support and test equipment; personnel equipment; U.S. Government and contractor technical and logistics support, and other related elements of program support. Equipment and spares will be procured for support of, but not limited to, F–5, RG–5, F–15, C–130, KC–130, E–3, RE–3, and KE–3 aircraft.

(iv) *Military Department:* Air Force (QAH)

(v) *Prior Related Cases, if any:* FMS Case QAY—$100,000,000—05 June 2010 and QAY

Amendment 7—$739,508,525—30 October 2016.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: None

(viii) *Date Report Delivered to Congress:* May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Follow-on Support and Services for the Royal Saudi Air Force Aircraft

Saudi Arabia has requested to purchase follow-on support and services for Royal Saudi Air Force aircraft, engines, and weapons; publications and technical documentation; support equipment; spare and repair parts; repair and return; calibration support and test equipment; personnel equipment; U.S. Government and contractor technical and logistics support, and other related elements of program support. Equipment and spares will be procured for support of, but not limited to, F–5, RG–5, F–15, C–130, KC–130, E–3, RE–3, and KE- 3 aircraft. The total estimated program cost will be $800 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Kingdom of Saudi Arabia of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will support U.S. foreign policy and national security objectives by helping to improve the security of a friendly country, which has been, and continues to be, an important force for political stability and economic growth in the Middle East. This potential sale is a continuation of current support. Saudi Arabia will have no difficulty absorbing this support and services into its armed forces.

Implementation of this sale will sustain Saudi Arabia's flight and maintenance activity. It will improve sustainability and continue support for the fleet.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There will be various contractors associated with the equipment involved with this case, and there is no prime contractor. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a small number of additional U.S. Government or contractor representatives to Saudi Arabia for maintenance, training, and sustainment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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MAY 2 4 2019

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

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Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

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- 3 -

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

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[FR Doc. 2019–15755 Filed 7–23–19; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–31]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164

dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–31 with attached Policy Justification, and State Department Emergency Determination and Justification.

Dated: July 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAY 2 4 2019

Dear Madam Speaker:

On May 23, 2019, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Kingdom of Saudi Arabia and the United Arab Emirates through the Foreign Military Sales process, including any further amendments specific to costs, quantity, or requirements, occurring within the duration of circumstances giving rise to these emergency sales, in order to deter further the malign influence of the Government of Iran throughout the Middle East region.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the Congressional review requirements under Section 36(b)(1) and 36 (b)(5)(C) of the Arms Export Control Act, as amended, for the attached list of Transmittals of proposed Letters of Offer and Acceptance to the United Arab Emirates and the Kingdom of Saudi Arabia for defense articles and services pursuant to the notification requirements of Section 36(b)(1) and Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended. The determination and detailed justification are a part of each Transmittal. After this letter is delivered to your office, we plan to issue a news release to notify the public of the proposed sales.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Secretary of State Determination and Justification Transmittal
2. Transmittal 17-0B for the United Arab Emirates
3. Transmittal 17-39 for the United Arab Emirates
4. Transmittal 17-70 for the United Arab Emirates
5. Transmittal 17-73 for the United Arab Emirates
6. Transmittal 18-21 for the Kingdom of Saudi Arabia
7. Transmittal 18-31 for the Kingdom of Saudi Arabia
8. Transmittal 19-18 for the United Arab Emirates
9. Transmittal 19-01 for the Kingdom of Saudi Arabia
10. Regional Balance Determinations (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 18–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$136 million
TOTAL	$136 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE:

Continued spare and repair parts, U.S. Government and Contractor engineering, technical, and logistics support services, and other related elements of program support for the TASS (Tactical Air Surveillance System) aircraft program. Additionally, the sale will support the rehabilitation of the integrated lab located in the United States used for testing and troubleshooting.

(iv) *Military Department:* Air Force (SR–D–QDJ)

(v) *Prior Related Cases, if any:* SR–D–QAS, SR–D–QCH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* May 24, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Sustainment Support for Tactical Air Surveillance System (TASS)

Saudi Arabia has requested to purchase spare and repair parts, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of program support for their TASS (Tactical Air Surveillance System) aircraft program. Additionally, the sale will support rehabilitation of the integrated lab located in the United States used for testing and troubleshooting. The total estimated program cost will be $136 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Kingdom of Saudi Arabia of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a key regional ally which is an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Saudi Arabia's surveillance capability to counter current and future regional threats and strengthen its homeland defense. This is a continuation of a previous sustainment case and Saudi Arabia will have no difficulty absorbing addition support in country.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be L3 Technologies, Greenville, Texas. There are no known offsets proposed with this sale.

Implementation of this proposed sale will require the assignment of up to 25 additional L3 contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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MAY 24 2019

DETERMINATION UNDER THE ARMS EXPORT CONTROL ACT

SUBJECT: Emergency Arms Sales to Saudi Arabia, the United Arab Emirates, and Jordan

Pursuant to sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby state that an emergency exists which requires the immediate sale of the following foreign military sales and direct commercial sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For the Kingdom of Saudi Arabia:

- F-15 Support
- Paveway Precision Guided Munitions (sale and co-production)
- Aircraft Maintenance Support
- Aurora Bomb Fuzing System
- 120mm M933A1 Mortar Bombs
- F110 Engines for F-15s
- F/A-18 Panel Manufacture in Saudi Arabia for other end-users
- Advising and support of Ministry of Defense reform
- Continuation of follow-on logistics support and services for Royal Saudi Air Force, including Tactical Air Surveillance System support

For the United Arab Emirates:

- AH-64 Equipment
- APKWS Laser-guided Rockets
- Javelin Anti-Tank Missiles
- Paveway Precision Guided Munitions and Maverick missile support
- RQ-21 Blackjack UAS
- M107A1 .50 caliber Rifles
- FMU-152A/B Programmable Bomb Fuse
- Patriot Guidance Enhanced Missile – Tactical Ballistic Missile
- U.S. Marine Corps training of UAE Presidential Guard
- F-16 engine parts
- Amendment to previously Congressionally notified case for ScanEagle and Integrator Unmanned Aerial Systems

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For Jordan:

- Transfer of Paveway II Precision Guided Munitions from the United Arab Emirates.

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS AND AUTHORIZATIONS TO THE KINGDOM OF SAUDI ARABIA,
THE UNITED ARAB EMIRATES, AND THE HASHEMITE KINGDOM OF JORDAN TO DETER IRANIAN MALIGN INFLUENCE

(U) Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad. Iran's actions have led directly to the deaths of over six hundred U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security. In Yemen, Iran helps fuel a conflict creating the world's greatest humanitarian crisis. Iran directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates by Iranian-designed explosives-laden drones and ballistic missiles fired by the Houthis, also known as Ansar Allah, who receive financial, technical, and materiel support from Iran.

(U) Current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region. As the Administration publicly noted and briefed to Congress in greater detail in the appropriate setting, a number of troubling and escalatory indications and warnings from the Iranian regime have prompted an increased U.S. force posture in the region. The Iran-backed Houthis publicly threatened to increase operations targeting vital military targets in the United Arab Emirates, Saudi Arabia, and Saudi-Led Coalition positions in Yemen. The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.

(U) As President Trump noted in National Security Memorandum 11 of May 8, 2018, "the actions and policies of the Government of Iran, including its proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

(U) Iran's actions pose a critical threat to regional stability and the national security of the United States, which has been long acknowledged. Since 1984, Iran remains designated by the United States as a State Sponsor of Terrorism pursuant to section 6(j) of the Export Administration Act, section 40 of the Arms Export

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Control Act, and section 620A of the Foreign Assistance Act. In addition, the recent designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act notes the Government of Iran, through the IRGC-Quds Force, provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran is also identified as constituting an unusual and extraordinary threat to the national security, foreign policy and economy of the United States under Executive Orders dating back to the Carter and Clinton Administrations.

(U) In 2014, the Houthis, an Iran-supported force increasingly contributing to the Iranian regime's efforts to destabilize the Arabian Peninsula, attempted to overthrow the internationally recognized government of Yemen. The Houthis have greatly increased regional instability, threatened the global economy, destroyed infrastructure, and terrorized the Yemeni people.

(U) The Houthis have attacked civilian areas within Saudi Arabia and the UAE with ballistic missile and unmanned aerial vehicle attacks in addition to cross-border raids; these have resulted in the deaths of over five hundred Saudi civilians, and the Kingdom of Saudi Arabia was fortunate in 2017 to have intercepted a ballistic missile aimed at Mecca which could have led to in a regional conflagration.

(U) The Houthi threat to stability extends beyond the security of their immediate neighbors. Over 10% of global shipping passes through the Bab-el-Mandeb straits separating Yemen from Africa, including an estimated 4.8 million barrels of oil per day, or about 5% of the global oil trade. Since 2016, the Houthis have repeatedly targeted international shipping transiting these straits to or from the Suez Canal. Houthi-controlled media recently announced the Houthis' intent to target Saudi ARAMCO infrastructure. Utilizing anti-ship cruise missiles, small boat attacks, and remote-controlled explosive vessels, the Houthis continue to strike not only commercial oil tankers, but also struck a cargo ship carrying grain to a Yemeni port. The Houthis conducted maritime attacks on the USS Mason and the USS Ponce, demonstrating the direct nature of the Houthi threat to U.S. personnel, assets, and our national security.

(U) Within Yemen, the Houthis severely limited the ability of the international community to provide humanitarian assistance to the population under their control. International humanitarian organizations report the "Houthi

forces' widespread use of landmines along Yemen's western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities." Despite the humanitarian catastrophe, the Houthis continue to escalate the conflict in Yemen, most recently disregarding their own commitments under the UN-sponsored ceasefire deal regarding the port city of Hudaydah.

(U) The United States strongly backs peace efforts brokered by UN Special Envoy Martin Griffiths. Griffiths' painstaking endeavor to have parties reach agreements in peace talks in Sweden in 2018 would lay a solid track for a political process to end the conflict.

(U) For the reasons cited above, an emergency exists requiring immediate provision of certain defense systems to Saudi Arabia, the United Arab Emirates, and Jordan in the national security interest of the United States. Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1), 36(c)(2), and 36(d)(2) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirements of those provisions.

[FR Doc. 2019–15752 Filed 7–23–19; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order

	Docket Nos.
Bluestone Solar, LLC Chicago Holdeo LLC CMR Solar, LLC Frontenac Holdeo LLC Montevideo Solar LLC Sartell Solar LLC Underhill Solar, LLC	EL19–85–000

	Docket Nos.
Bluestone Solar, LLC	QF19–1315–001
Chicago Holdeo LLC	QF19–1299–001
CMR Solar, LLC	QF19–1302–001
Frontenac Holdeo LLC	QF19–1300–001
Montevideo Solar LLC	QF19–1311–001
Sartell Solar LLC	QF19–1314–001

	Docket Nos.
Underhill Solar, LLC	QF19–1301–001

Take notice that on July 17, 2019, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),[1] Bluestone Solar, LLC, Chicago Holdeo LLC, CMR Solar LLC, Frontenac Holdeo LLC, Montevideo Solar LLC, Sartell Solar LLC, and Underhill Solar, LLC (collectively, Petitioners) filed a petition for declaratory order (petition) requesting that the Commission grant partial waiver of the Qualifying Facility (QF) filing requirements set forth in Section 292.203(a)(3) of the Commission's regulations [2] for the time periods beginning when they commenced operating their respective generation facilities and ending with their filing of self-certification of QF status on June 24, 2019 and June 26, 2019, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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: 5:00 p.m. Eastern time on August 16, 2019.

Dated: July 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–15683 Filed 7–23–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.207 (2018).

[2] 18 CFR 292.203(a)(3) (2018).

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: CP19–490–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Joint Abbreviated Application for a Certificate of Public Convenience and Necessity, Abandonment Authorization and Related Authorizations of Gulf South Pipeline Company, LP, et al.
Filed Date: 7/16/19.
Accession Number: 20190716–5115.
Comments Due: 5 p.m. ET 8/6/19.

Docket Number: PR19–68–000.
Applicants: Minnesota Energy Resources Corporation.
Description: Tariff filing per 284.123(b),(e)+(g): MERC Rate Update to be effective 7/1/2019.
Filed Date: 7/16/19.
Accession Number: 201907165086.
Comments Due: 5 p.m. ET 8/6/19.
284.123(g) Protests Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP18–556–003.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Compliance filing Rate Case Settlement—2019 Implementation to be effective 9/1/2019.
Filed Date: 7/17/19.
Accession Number: 20190717–5017.
Comments Due: 5 p.m. ET 7/29/19.

Docket Numbers: RP19–1090–001.
Applicants: American Midstream (AlaTenn), LLC.
Description: Request for Extension of Time to Implement NAESB 3.1 Standards Per Order No. 587–Y of American Midstream (AlaTenn), LLC under RP19–1090.
Filed Date: 7/17/19.
Accession Number: 20190717–5062.
Comments Due: 5 p.m. ET 7/23/19.

Docket Numbers: RP19–1091–002.
Applicants: American Midstream (Midla), LLC.
Description: Request for Extension of Time to Implement NAESB 3.1 Standards Per Order No. 587–Y of American Midstream (Midla), LLC under RP19–1091.
Filed Date: 7/17/19.
Accession Number: 20190717–5064.
Comments Due: 5 p.m. ET 7/23/19.

Docket Numbers: RP19–1092–001.
Applicants: Destin Pipeline Company, L.L.C.
Description: Request for Extension of Time to Implement NAESB 3.1 Standards Per Order No. 587–Y of Destin Pipeline Company, L.L.C. under RP19–1092.
Filed Date: 7/17/19.
Accession Number: 20190717–5065.
Comments Due: 5 p.m. ET 7/23/19.

Docket Numbers: RP19–1093–001.
Applicants: High Point Gas Transmission, LLC.
Description: Request for Extension of Time to Implement NAESB 3.1 Standards Per Order No. 587–Y of High Point Gas Transmission, LLC under RP19–1093.
Filed Date: 7/17/19.
Accession Number: 20190717–5066.
Comments Due: 5 p.m. ET 7/23/19.

Docket Numbers: RP19–1094–001.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Request for Extension of Time to Implement NAESB 3.1 Standards Per Order No. 587–Y of Trans-Union Interstate Pipeline, L.P. under RP19–1094.
Filed Date: 7/17/19.
Accession Number: 20190717–5068.
Comments Due: 5 p.m. ET 7/23/19.

Docket Numbers: RP19–1387–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Create Enhanced Parking Service (Rate Schedule EPS) to be effective 8/19/2019.
Filed Date: 7/17/19.
Accession Number: 20190717–5006.
Comments Due: 5 p.m. ET 7/29/19.

Docket Numbers: RP19–1388–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—BP Energy 910687 eff 11–1–19 to be effective 11/1/2019.

Filed Date: 7/17/19.
Accession Number: 20190717–5070.
Comments Due: 5 p.m. ET 7/29/19.
Docket Numbers: RP19–1389–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Pooling Area GT&C Tariff Changes to be effective 10/1/2019.
Filed Date: 7/17/19.
Accession Number: 20190717–5076.
Comments Due: 5 p.m. ET 7/29/19.

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 date(s). 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: July 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–15687 Filed 7–23–19; 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 corporate filings:

Docket Numbers: EC19–99–000.
Applicants: Empire Generating Co, LLC.
Description: Response to June 21, 2019 Deficiency Letter of Empire Generating Co, LLC.
Filed Date: 7/17/19.
Accession Number: 20190717–5136.
Comments Due: 5 p.m. ET 9/3/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–823–006; ER13–33–005; ER10–2481–004; ER13–2106–008.
Applicants: Castleton Commodities Merchant Trading L.P., Collegiate Clean Energy, LLC, Ingenco Wholesale Power, L.L.C., NedPower Mount Storm, LLC.
Description: Notice of Non-Material Change in Status of Castleton Commodities Merchant Trading, L.P., et al.
Filed Date: 7/17/19.
Accession Number: 20190717–5134.
Comments Due: 5 p.m. ET 8/7/19.
Docket Numbers: ER13–1966–004.
Applicants: GenOn Wholesale Generation, LP.
Description: Report Filing: GenOn Wholesale Generation, LP Refund Report ? Informational Filing to be effective N/A.
Filed Date: 7/18/19.
Accession Number: 20190718–5048.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2412–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Filing of Amended Service Agreement to be effective 9/16/2019.
Filed Date: 7/17/19.
Accession Number: 20190717–5108.
Comments Due: 5 p.m. ET 8/7/19.
Docket Numbers: ER19–2413–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2424R1 OG&E and Westar Energy Interconnection Agreement to be effective 9/16/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5000.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2414–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–07–18_SA 3158 Termination of ATC-Plymouth Project Commitment Agmt to be effective 7/19/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5046.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2415–000.
Applicants: Liberty Utilities (Granite State Electric) Corp.
Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update July 2019 to be effective 7/1/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5052.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2416–000.
Applicants: Southwestern Public Service Company.
Description: Tariff Cancellation: Sharyland Utilities, L.P.—FERC Electric Rate 3rd Revised No. 118—NOC to be effective 4/16/2016.
Filed Date: 7/18/19.
Accession Number: 20190718–5059.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2417–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the OATT re: Must-Offer Exception Process to be effective 9/23/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5090.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2418–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of UAMPS Constrct Agmt-St. George Circuit Energization to be effective 8/27/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5091.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2419–000.
Applicants: ISO New England Inc., New England Power Company.
Description: § 205(d) Rate Filing: ISO–NE & NEP—1st Revised LGIA–ISONE/NEP–17–01 under Schedule 22 of the OATT to be effective 6/18/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5092.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2420–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of PacifiCorp Energy Construction Agmt—SVEC Paisley Gen to be effective 9/17/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5105.
Comments Due: 5 p.m. ET 8/8/19.
Docket Numbers: ER19–2421–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Filing re Nested Capacity Zone Changes to be effective 10/1/2019.
Filed Date: 7/18/19.
Accession Number: 20190718–5119.
Comments Due: 5 p.m. ET 8/8/19.

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: July 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–15686 Filed 7–23–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9995–54]

Access to Confidential Business Information by SRA International Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor SRA International Inc. (SRA) of Chantilly, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than July 31, 2019.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under EPA contract number GSQ0017AJ0037, solicitation number GSC–QFOB–17–33061, contractor SRA of 15036 Conference Drive, Chantilly, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by simplifying the operation and management of infrastructure services by obtaining support from a single contractor. The services consist of data center management, application hosting, application deployment, maintenance, geospatial services support, network security, cyber security, cloud computing, Continuity of Operations (COOP) support, Enterprise Identity and Access Management (EIAM) and Active Directory (AD). Combining the support, standardization and communication of the Office of Information Technology Operations' (OITO) infrastructure services will add significant value to the government.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GSQ0017AJ0037, solicitation number GSC–QFOB–17–33061, SRA will require access to CBI submitted to EPA under all sections of TSCA. EPA has determined that SRA will need access to TSCA CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. SRA's personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide SRA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and RTP, NC, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until March 28, 2022. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SRA's personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–15681 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9995–55]

Access to Confidential Business Information by Battelle Memorial Institute and Its Identified Subcontractor, Integrated Laboratory Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractors, Battelle Memorial Institute (BMI) of Columbus, OH and Integrated Laboratory Systems, Inc. (ILS) of Morrisville, NC, to access information which has been submitted to EPA under sections 4, 5, 6, 8(a), 11 and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than July 31, 2019.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Recie Reese, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8276; email address: *reese.recie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific

entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004 is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under EPA contract number EP–W–16–017, contractors BMI of 505 King Avenue, Columbus, OH and ILS of 601 Keystone Drive, Morrisville, NC will assist the Office of Pollution Prevention and Toxics (OPPT) by providing statistical, mathematical, field data collection, and technical analysis support and planning for OPPT programs.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–16–017, BMI and ILS will require access to CBI submitted to EPA under section(s) 4, 5, 6, 8(a), 11 and 21 of TSCA to perform successfully the duties specified under the contract. BMI and ILS personnel will be given access to information submitted to EPA under section(s) 4, 5, 6, 8(a), 11 and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8(a), 11 and 21 of TSCA that EPA will provide BMI and ILS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and BMI's site located in Columbus, OH, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until June 12, 2021. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

BMI and ILS personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–15680 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9996–16]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 23, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, 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:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain pesticide products and amend product registrations to terminate certain uses registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients\
352–761	352	Dupont DPX–QFU31 (MP) Herbicide	Dicamba, sodium salt & Rimsulfuron.
6836–177	6836	Lonza Formulation P–39	Pine oil & Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 14%C12).
8660–161	8660	0.2% Barricade Crabgrass Control with Fertilizer	Prodiamine.
8660–162	8660	0.3% Barricade Crabgrass Control with Fertilizer	Prodiamine.
8660–163	8660	0.4% Barricade Crabgrass Control with Fertilizer	Prodiamine.
8660–164	8660	Sta-Green Crabgrass Preventer	Prodiamine.
8660–200	8660	Koos Crabgrass Preventer with 0.223 Barricade Preemergence Herbicide.	Prodiamine.
8660–216	8660	Par EX Slow Release Fertilizer with .345 Barricade Herbicide	Prodiamine.
8660–249	8660	Par EX Fertilizer Plus Crabgrass Preventer with 0.475% Barricade Preem.	Prodiamine.
9779–297	9779	Prometryne 4L Herbicide	Prometryn.
12455–107	12455	Tomcat Ant Killer	Indoxacarb.
12455–118	12455	Tomcat Ant Gel	Indoxacarb.
45728–29	45728	SDDC	Sodium dimethyldithiocarbamate.
59820–4	59820	Acarosan Moist Powder	Benylate.
64898–5	64898	Razorooter	Dichlobenil.
87290–44	87290	Willowood Azoxystrobin 2.08SC	Azoxystrobin.
87290–56	87290	Willowood Azoxyprop Xtra	Propiconazole & Azoxystrobin.
87290–60	87290	Willowood Tebustrobin SC	Tebuconazole & Azoxystrobin.
87290–63	87290	Willowood Pyrac 2SC	Pyraclostrobin.
87290–64	87290	Willowood Pyrac 2EC	Pyraclostrobin.
89966–2	89966	Azoxystrobin Technical	Azoxystrobin.
93051–1	93051	RightLine Pyrac 2 MEC	Pyraclostrobin.
93051–2	93051	RightLine Pyraprop MEC	Pyraclostrobin & Propiconazole.
93051–3	93051	RightLine CHILL LC	Pyraclostrobin.
93088–1	93088	Pyraclostrobin Technical	Pyraclostrobin.
AL–120005	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
DE–170001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
IA–170003	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
ID–130006	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
LA–120006	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MA–160001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MI–130001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MN–120003	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MO–120004	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MO–160005	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
MS–120009	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
NC–130002	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
ND–130002	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
NJ–130002	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
NY–170005	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
PA–130001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
SD–130003	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
SD–150006	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
SD–170003	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
TX–130001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
UT–180006	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
VT–120001	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
WI–130004	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.
WY–140003	69969	Avipel Liquid Corn Seed Treatment	Anthraquinone.

TABLE 1A—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
1021–2753	1021	VBC Dinotefuran Technical	Dinotefuran.

The registrant of the registration in Table 1A, requests the cancellation to be effective on May 1, 2019.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
100–1453	100	Stadium Fungicide	Difenoconazole; Fludioxonil & Azoxystrobin.	Ornamental uses and associated label language.
42182–1	42182	Microban Additive B	Triclosan	Treatment of apparel, blankets, cloths, curtains, fabrics, linens and similar textiles.
42182–7	42182	Microban Additive B MUP	Triclosan	Disallow formulation into products used to make/treat agricultural plastic films/mulches; products used to treat HVAC (heating/air conditioning) coils & products used to treat textiles.
89046–11	89046	Bioprotec Caterpillar Insecticide Concentrate.	Bacillus thuringiensis subspecies kurstaki, strain EVB–113–19.	Forestry use.
89046–12	89046	Bioprotec Plus	Bacillus thuringiensis subspecies kurstaki, strain EVB–113–19.	Forestry use.
89046–14	89046	Bioprotek	Bacillus thuringiensis subspecies kurstaki, strain EVB–113–19.	Forestry use.
90736–2	90736	Tebuconazole Tech	Tebuconazole	Residential use.
91232–3	91232	FD Tebuconazole 3.6F	Tebuconazole	Residential use.
92760–4	92760	Ultra-Fresh NM	Triclosan	Apparel use.
92760–6	92760	Ultra-Fresh NM–100	Triclosan	Apparel use.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1, 1A & 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1, Table 1A and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
352	E. I. Du Pont De Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
1021	Mclaughlin Gormley King Company, D/B/A MGK, 8810 Tenth Ave. North, Minneapolis, MN 55427–4319.
6836	Lonza Inc., Agent Name: Exponent, Inc., 1150 Conn. Ave. NW, Suite 1100, Washington, DC 20036.
8660	United Industries Corp., D/B/A Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
12455	Bell Laboratories, Inc., 3699 Kinsman Blvd., Madison, WI 53704.
42182	Microban Products Company, Agent Name: Scientific & Regulatory Consultants, Inc., 201 W Van Buren Street, Columbia City, IN 46725.
45728	Taminco US, LLC, A Subsidiary of Eastman Chemical Company, 200 S Wilcox Dr., Kingsport, TN 37660–5147.
59820	Allergopharma Joachim, Hermann-Korner-Str. 52, 21465 Reinbek, Germany.
64898	Sewer Sciences, Inc., 1020 Hiawatha Boulevard West, Syracuse, NY 13204–1131.
69969	Arkion Life Sciences, LLC, Agent Name: Landis International, Inc., 3815 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126.
87290	Willowood, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707–0640.
89046	AEF Global, Inc., Agent Name: SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192.
89966	Greenfields Marketing, Ltd., Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
90736	Jiangsu Fengdeng Crop Science Co., Ltd., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th St. Ct. NW, Gig Harbor, WA 98332.
91232	Fengdeng USA, Inc., 123 Cornell Road, Bala Cynwyd, PA 19004.
92760	Thomson Research Associates, Inc., Agent Name: Scientific & Regulatory Consultants, Inc., 201 West Van Buren Street, Columbia City, IN 46725.
93051	RightLine, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
93088	Willowood USA, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation,

EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1, Table 1A and Table 2 of Unit II.

A. For Product: 1021–2753 Listed in Table 1A of Unit II

The registrant has requested to the agency via letter, the effective date of the voluntary cancellation of product 1021–2753 to be, May 01, 2019; therefore, the registrant will be permitted to sell and distribute existing stocks for 1 year, which will be until May 01, 2020.

For all other voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**.

Thereafter, registrants will be prohibited from selling or distributing the products identified in Tables 1 and 1A, of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 10, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–15682 Filed 7–23–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1104 and OMB 3060–1121]

Information Collections Requirement Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 23, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1104.

Title: Section 73.682(d), DTV Transmission and Program System and Information Protocol (''PSIP'') Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and Responses: 1,812 respondents and 1,812 responses.

Estimated Hours per Response: 0.50 hours.

Frequency of Response: Third party disclosure requirement; weekly reporting requirement.

Total Annual Burden: 47,112 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 309 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 73.682(d) of the Commission's rules incorporates by reference the Advanced Television Systems Committee, Inc. (''ATSC'') Program System and Information Protocol (''PSIP'') standard ''A/65C.'' PSIP data is transmitted along with a TV broadcast station's digital signal and provides viewers (via their DTV receivers) with information about the station and what is being broadcast, such as program information. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers (or viewers) of digital television (''DTV'').

ATSC PSIP standard A/65C requires broadcasters to provide detailed programming information when transmitting their broadcast signal. This standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. This standard requires broadcasters to populate the Event Information Tables (''EITs'') (or program guide) with accurate information about each event (or program) and to update the EIT if more accurate information becomes available. The previous ATSC PSIP standard A/65–B did not require broadcasters to provide such detailed programming information but only general information.

OMB Control No.: 3060–1121.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit Institutions.

Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,960 hours.

Total Annual Cost: $1,078,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On August 14, 2013, the Commission adopted the Third Report and Order and Second Order on Reconsideration in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115. In the Third Report and Order in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the Third Report and Order the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The Third Report and Order also designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

Information Collection Requirements Contained in this Collection: 47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such

showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002–1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: Proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as ''expedited,'' and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

47 CFR 73.1675(c)(1) states that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

47 CFR 73.1690(c) requires FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–15701 Filed 7–23–19; 8:45 am]

BILLING CODE 6712–01–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 August 16, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Fidelity Financial Bancorporation, Wichita, Kansas;* to become a bank holding company upon the conversion of its subsidiary Fidelity Bank, Wichita, Kansas, to a commercial bank.

Board of Governors of the Federal Reserve System, July 18, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–15646 Filed 7–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 84 FR 34177–34184, dated July 17, 2019) is amended to reflect the reorganization of the National Center on Birth Defects and Developmental Disabilities, Deputy Director for Non-Infectious Diseases, Centers for Disease Control and Prevention. This reorganization will align budget lines and similar programmatic areas under the same divisions and branches.

I. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Developmental Disabilities Branch (CUBBD).

II. Under Part C, Section C–B, Organization and Functions, make the following changes:

- Update the functional state for the Office of the Director (CUB1).
- Update the functional statements for the Resource Management Office (CUB12).
- Retitle the Division of Congenital and Developmental Disorders (CUBB) to the Division of Birth Defects and Infant Disorders (CUBB) and update its functional statement.
- Update the functional statement for the Office of the Director (CUBB1).
- Retitle the Birth Defects Branch (CUBBB) to the Birth Defects Monitoring and Research Branch (CUBBB) and update its functional statement.
- Retitle the Prevention Research and Translation Branch (CUBBC) to the Infant Outcomes Monitoring, Research and Prevention Branch (CUBBC) and update its functional statement.
- Update the functional statement for the Division of Human Development and Disability (CUBC).
- Update the functional statement for the Child Development and Disability Branch (CUBCB).
- Retitle the Disability and Health Branch (CUBCC) to the Disability and Health Promotion Branch.

III. Under Part C, Section C–B, Organization and Functions, insert the following:

- Office of the Director (CUB1). (1) Directs, manages, and coordinates the activities of the NCBDDD; (2) develops goals and objectives; provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (3) coordinates NCBDDD program activities with other CDC components, federal agencies, state and local health agencies, business and industry, voluntary organizations, and community-based organizations; (4) coordinates technical assistance to states, other nations and international organizations; (5) coordinates with medical, scientific, and other professional organizations interested in birth defects prevention, pediatric genetics, developmental disabilities prevention, and disabilities and health, and prevention of complications of hereditary blood disorders; (6) advises the CDC Director on policy matters concerning NCBDDD activities; (7) oversees and coordinates the translation of scientific findings for health care providers, public health professionals, and the public on these conditions; (8) ensures NCBDDD produces the highest quality, most relevant and useful science possible; (9) oversees scientific clearance of NCBDDD documents and digital materials and coordinates cross-clearance of materials; (10) provides information and guidance to the staff regarding scientific issues and provides scientific leadership for the center; (11) provides ongoing communication leadership and support to NCBDDD's Office of the Director and divisions in furthering the Centers' mission; leads strategic planning for communications and branding of NCBDDD programs and projects; (12) leads and oversees news media strategy and evaluation; (13) facilitates clearance and cross-clearance of NCBDDD print and digital materials, ensuring adherence to CDC and Department of Health and Human Services (DHHS) information and publication policies; (14) reviews, prepares and coordinates policy and briefing documents; (15) conducts monitoring and analysis of policy issues potentially affecting NCBDDD and its constituents; and (16) provides information for the development of the NCBDDD's annual budget submission.
- Resource Management Office (CUB12). (1) Plans, coordinates, and provides administrative and management advice and guidance for NCBDDD; (2) provides and coordinates center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (3) prepares annual budget plans and budget justifications; (4) develops annual budget plans and budget justifications; (5) monitors NCBDDD spend plans to ensure ceiling levels are at or below specified levels; (6) coordinates NCBDDD requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (7) develops and implements administrative policies, procedures, and operations, as appropriate, for NCBDDD, and prepares special reports and studies, as required, in the administrative management areas; and (8) maintains liaison with related staff offices and other officials of CDC on behalf of NCBDDD.
- Division of Birth Defects and Infant Disorders (CUBB). The Division of Birth Defects and Infant Disorders works to identify causes of birth defects and infant disorders through surveillance and public health research, and

conducts prevention research and programs to improve health across the lifespan. This division: (1) Conducts epidemiological research to determine the causes and prevention of birth defects and developmental disabilities; (2) maintains and expands support for state-based surveillance; (3) evaluates the effectiveness of efforts to prevent birth defects and developmental disabilities; (4) conducts and disseminates findings of epidemiologic research, investigations, demonstrations, and programs directed toward the prevention of selected adverse reproductive outcomes that are environmentally related; (5) provides assistance to state and local health departments on community exposures to terotogenic, mutagenic, embryotoxic, other environmental agents, and genetic influences adversely interfering with normal growth and development; (6) conducts research and epidemiologic studies to develop intervention programs to reduce alcohol and other substance exposed pregnancies and monitors infant outcomes to identify and better understand the needs and develop interventions to improve the trajectory for substance exposed infants; (7) works closely with international organizations and entities in developing strategies and programs for reducing the number of birth defects and developmental disabilities; (8) develops and evaluates prevention strategies and provides training, technical consultation, and assistance to States and localities in developing their capacity for planning, establishing, and maintaining surveillance and prevention programs; (9) plans, develops, establishes, and maintains systems of surveillance including registries for monitoring, evaluating and disseminating information; (11) assists in increasing the capacity of states, localities, international organizations, and non-governmental organizations to prevent and control birth defects and developmental disabilities through training, technology transfer, grants, cooperative agreements, contracts, and other means; (12) provides information and education to the public; (13) provides services, consultation, technical assistance, and information to States, localities, other Federal agencies, international organizations, and other public and private organizations; (14) provides training in the epidemiology to professionals throughout the U.S. and abroad; and (15) collaborates and coordinates activities with other CIOs and HHS agencies.

• Office of the Director (CUBB1). (1) Manages, directs, and coordinates the research agenda and activities of the division; (2) provides leadership and guidance on strategic planning, policy, program and project priority planning and setting, program management, and operations; (3) establishes division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) plans, allocates, and monitors resources; (6) provides management, administrative, and support services, and coordinates with appropriate NCBDDD offices on program and administrative matters; (7) provides liaison with other CDC organizations, other governmental agencies, international organizations, and other outside groups; (8) provides support for internal scientific advisory groups; (9) provides scientific leadership and guidance to the division to assure highest scientific quality and professional standards; and (10) researches, identifies and executes prevention messaging and interventions to reduce adverse birth outcomes.

• Birth Defects Monitoring and Research Branch (CUBBB). (1) Designs and conducts epidemiologic and genetic research to identify causes and risk factors of birth defects; (2) conducts and evaluates interventions to improve infant and child health by preventing or reducing the adverse consequences of birth defects; (3) designs and conducts surveillance of selected birth defects to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (4) disseminates findings of studies to the scientific and public health communities, and to the general public; (5) provides technical assistance to state and local agencies on surveillance of birth defects, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (6) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of birth defects through surveillance, epidemiologic research, and applies research of preventive interventions; (7) coordinates activities with other CDC functional units, HHS, other federal agencies, and appropriate private organizations regarding research and prevention programs for birth defects; (8) works with international organizations in developing strategies for the prevention of birth defects; and (9) disseminates findings of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals, conference presentations, and other appropriate means.

• Infant Outcomes Monitoring, Research and Prevention Branch (CUBBC). (1) Designs and conducts surveillance of preventable birth defects due to substance exposure during pregnancy, and emerging threats to mothers and babies; (2) identifies and monitors major preconception, prenatal and perinatal risks, and protective factors for fetal alcohol spectrum disorders (FASD) and other prenatal alcohol and substance-attributable conditions and other threats to mothers and their babies; (3) identifies rates, trends, and patterns of occurrence; (4) modifies the impact of prenatal exposures leading to adverse physical and developmental impairments in infants, children, and adults including integrating successful prevention programs into social and medical environments, and evaluating innovative, effective, and strategic health promotion programs; (5) develops, implements, evaluates, and disseminates education and communication interventions that lead to the prevention of birth defects and developmental disabilities; (6) disseminates findings of epidemiologic studies to the scientific and public health communities, and to the general public; (7) conducts prevention effectiveness research to evaluate interventions strategies for the prevention of birth defects and developmental disabilities; (8) provides technical assistance to state and local agencies on surveillance, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (9) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of birth defects and developmental disabilities through surveillance, epidemiologic research, and applies research of preventive interventions; (10) coordinates activities with other CDC functional units, HHS, other federal agencies and appropriate private organizations regarding research and prevention programs for birth defects and developmental disabilities; (11) works with international organizations in developing strategies for the prevention of birth defects and developmental disabilities; and (12) disseminates finding of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals,

conference presentations, and other appropriate means.

• Division of Human Development and Disability (CUBC). The Division of Human Development and Disability works to help children and adults living with Autism, Attention Deficit Hyperactivity Disorder (ADHD), Tourette Syndrome (TS) and other developmental disabilities live to the fullest through better understanding developmental disabilities from early detection into adulthood. The division improves the health for children and adults with disabilities, in particular, people with mobility limitations, intellectual disability and hearing loss by informing disability health policy and practice, and dissemination of disability health inclusion resources. This division: (1) Designs and conducts surveillance of developmental disabilities to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (2) conducts epidemiologic studies of developmental disabilities to identify causes and risk factors for these conditions; (3) disseminates findings of epidemiologic studies to the scientific and public health communities and to the general public; (4) conducts applied research on public health aspects of normal and abnormal child development (*e.g.,* early childhood, behavior problems in children); (5) conducts research on interventions to prevent adverse child developmental outcomes; (6) develops and disseminates information on public health aspects of normal and abnormal child development; (9) conducts, analyzes, and disseminates surveillance data to identify the distribution of disabilities in state populations; health conditions that occur with greater frequency among people with disabilities; and risk and protective behaviors compared to people without disabilities; (10) assists states and localities in developing their capacity for serving individuals with developmental and other disabilities (*e.g.,* developing prevention strategies, providing training and technical consultation) to prevent secondary conditions; (11) collaborates with universities, federal, national, and state organizations to identify and address knowledge and research gaps in developmental health and disability; (12) collaborates with universities and other organizations to investigate environmental, social, and technological supports to promote inclusion; (13) develops programs that seek to identify health risks, protective factors and measure the effectiveness of health promotion activities for prevention of conditions related to disability; and (14) oversees and manages grants, cooperative agreements, contracts, and other funding instruments related to division programs.

• Child Development and Disability Branch (CUBCB). (1) Promotes optimal child development and early identification of children with developmental delays through assessing, developing, implementing, disseminating and supporting evidence-based practices, tools, and resources; (2) helps children and adults with autism, ADHD, TS and other developmental disabilities live to the fullest by understanding preventable risk factors, opportunities for early intervention, and the effects of these disorders throughout the lifespan; (3) designs and conducts surveillance of developmental disabilities to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (4) conducts epidemiologic studies of developmental disabilities to identify causes and risk factors for these conditions; (5) disseminates findings of epidemiologic studies to the scientific and public health communities and to the general public; (6) conducts prevention effectiveness research to evaluate interventions strategies for the prevention of developmental disabilities; (7) conducts epidemiologic studies to identify and describe specific conditions and long-term outcomes of developmental disabilities; (8) provides technical assistance to state and local agencies on surveillance of developmental disabilities, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (9) provides scientific leadership and technical assistance in the development, application, improvement and evaluation of public health activities, systems, and interventions supporting optimal child development, including those with or at risk for disabilities; (10) coordinates and collaborates on recommendations for policy development at the federal and state levels and with the private sector to promote social participation and optimal child development, including those with or at risk for disabilities; (11) conducts research to expand the knowledge base related to optimal early development and health of children with or at risk of disabilities, and investigates costs and effectiveness of intervention programs and systems; (12) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of developmental disabilities through surveillance, epidemiologic research, and applies research of preventive interventions; (13) coordinates activities with other CDC functional units, HHS, other federal agencies and appropriate private organizations regarding research and prevention programs for developmental disabilities; (14) collaborates with international organizations in developing strategies for the prevention of developmental disabilities; (15) disseminates findings of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals, conference presentations, and other appropriate means; and (16) provides training in the epidemiology of developmental disabilities to professionals throughout the United States and abroad.

• Disability and Health Promotion Branch (CUBCC). (1) Assists states and localities with the development, monitoring and evaluation of early hearing detection and intervention (EHDI) tracking and surveillance systems; (2) conducts research on etiology of hearing loss and associated disabilities, cost and effectiveness and long-term benefits of early identification and intervention (3) supports state-based disability and health promotion programs, national, and state organizations that promote and inform disability policy and practice, including assessing, developing, implementing, and disseminating disability inclusion models, tools, and resources; (4) collaborates with and provides technical assistance, consultation, and training to local, state, federal, and international agencies, universities and governmental and non-governmental organizations on disability and health related issues; (5) collaborates with local, state, federal, and international agencies, and appropriate governmental and non-governmental organizations to develop, review, and implement policies that advance the health of people with disabilities across the lifespan; (6) provides scientific leadership in the development, application, extension, and improvement of health surveillance and tracking systems related to disability and health; (7) conducts and supports both qualitative and quantitative research to expand the knowledge base related to disability and health across the lifespan; (8) disseminates information from surveillance and health services research, epidemiological research, health promotion and disease

prevention strategies, and policies related to disability and health; (9) establishes collaborative partnerships with public and private organizations of national and international stature to promote the health of people with disabilities; (10) collaborates with funded non-governmental agencies to disseminate best practices, identify areas of need, facilitate development and distribution of educational materials, and provide informational resources to states and affected populations and their caregivers; and (11) provides leadership in health promotion and disease prevention across the lifespan for individuals with disabilities.

IV. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Alex M. Azar II,

Secretary.

[FR Doc. 2019–15691 Filed 7–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Assets For Independence (AFI) Performance Progress Report (PPR) (OMB #0970–0483)

AGENCY: Office of Community Services; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF) is requesting approval of a three-year extension of the Assets for Independence (AFI) Performance Progress Report (PPR) Long Form and AFI PPR Short Form (OMB #0970–0483, expiration 8/31/2019). There are no changes requested to the forms.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Assets for Independence (AFI) Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, Public Law 105–285, [42 U.S.C. 604]) requires that organizations operating AFI projects submit semi-annual progress reports.

OCS will continue collecting key information about projects funded through the AFI program. The AFI PPR will continue to collect data on project activities and attributes, where OCS will use the data to critically review the overall design and effectiveness of the program. OCS will use the data collected in the AFI PPR to prepare the annual AFI Report to Congress, to evaluate and monitor the performance of the AFI Program overall and of individual projects, and to inform and support technical assistance efforts. The AFI PPR will continue to fulfill AFI Act reporting requirements and program purposes.

AFI program grantees are required to submit Standard Form Performance Progress Reports (SF–PPR) semiannually: One time per year using an abbreviated short form and one time using a long form. Both data collection instruments are available for review online at:

https://www.acf.hhs.gov/ocs/resource/afi-ppr-long-form,

https://www.acf.hhs.gov/ocs/resource/afi-ppr-short-form.

Note: This request does not affect financial reporting requirements for AFI grantees. The SF–425 will still be required semiannually throughout the grant project period with a final report due 90 days after the grant project period ends.

Respondents: Assets for Independence (AFI) program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
AFI PPR Short Form	145	1	0.5	72.5
AFI PPR Long Form	145	1	3.8	551

Estimated Total Annual Burden Hours: 623.5.

Authority: Pub. L. 105–285, [42 U.S.C. 604].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–15731 Filed 7–23–19; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement for the Senior Medicare Patrol National Resource Center

ACTION: Notice.

The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Northeast Iowa Area Agency on Aging, Inc. (NEI3A) for the Senior Medicare Patrol National Resource Center (SMPRC). The purpose of the SMPRC is to provide professional expertise, training, and technical

support to maximize the effectiveness of the 54 Senior Medicare Patrol (SMP) projects in Medicare fraud prevention outreach and education. The administrative supplement for FY 2019 will be for $554,532, bringing the total award for FY 2019 to $1,194,532. With this supplemental funding, NEI3A will develop a targeted marketing and outreach campaign. This includes development of an SMP national video, which will seek to increase awareness of health care fraud and educate the public on when to contact their SMP to report health care fraud, errors, or abuse. An advertisement campaign will be developed to utilize on a national scale and reach Top 20 Markets including Good Morning America and early evening prime time news broadcasts. In addition, NEI3A will explore the possibility of updating one of their previously developed projects, the Personal Health Care Journal, including the possibility of providing a technologically up-to-date SMP application (app). This app would provide beneficiaries with helpful health care tips, important health care contact information, and a place to log their health care appointments for later comparison with Medicare Summary Notices (MSNs) and Explanations of Benefits (EOBs). This tool would be useful in preventing, detecting, and if needed, reporting any health care fraud, errors, or abuse. Lastly, NEI3A will utilize supplemental funding to expand existing contracts with SMP Subject Matter Experts.

Program Name: Senior Medicare Patrol National Resource Center (SMPRC).

Recipient: Northeast Iowa Area Agency on Aging, Inc. (NEI3A).

Period of Performance: The award will be issued for the current project period of September 1, 2019 through August 31, 2020.

Total Award Amount: $1,194,532 in FY 2019.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191.

Basis for Award: NEI3A is currently funded to carry out the SMPRC Project for the period of September 1, 2017 through August 31, 2020. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time consuming and disruptive to the SMPRC project and the beneficiaries being served for ACL to establish a new grantee at this time when critical services are presently being provided in an efficient manner.

NEI3A is uniquely placed to complete work under the SMPRC grant. Since 2003, NEI3A has effectively operated the SMPRC. NEI3A has a proven track record for providing assistance through successful working relationships with SMP grantees, is centrally located in a geographic location that boasts low costs, and also houses the State Health Insurance Assistance Program National Technical Assistance Center (SHIP TA Center). By housing both Centers, NEI3A is able to successfully leverage existing activities to lower overall cost and therefore expand capability of serving their target audience.

NEI3A accomplishes its mission by developing and sharing tools, resources, best practices, and strategies for reducing health care fraud, waste, and abuse via its online library, electronic and print publications, webinars, and training and technical assistance.

NEI3A is successfully meeting all programmatic goals under the current SMPRC 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: July 18, 2019.

Mary Lazare,

Principal Deputy Administrator, Administration for Community Living.

[FR Doc. 2019–15694 Filed 7–23–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3406]

Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2020

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2020 annual fee rate for importers approved to participate in the Voluntary Qualified Importer Program (VQIP) that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). This fee is effective August 1, 2019, and will remain in effect through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302 of FSMA, Voluntary Qualified Importer Program, amended the FD&C Act to create a new provision, section 806, under the same name. Section 806 of the FD&C Act (21 U.S.C. 384b) directs FDA to establish a program to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program, and a process, consistent with section 808 of the FD&C Act (21 U.S.C. 384d), for the issuance of a facility certification to accompany a food offered for importation by importers participating in the VQIP.

Section 743 of the FD&C Act (21 U.S.C. 379j–31) authorizes FDA to assess and collect fees from each importer participating in VQIP to cover FDA's costs of administering the program. Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. The fee rates must be published in a **Federal Register** notice not later than 60 days before the start of each fiscal year (section 743(b)(1) of the FD&C Act). After FDA approves a VQIP application, the user fee must be paid before October 1, the start of the VQIP fiscal year, to begin receiving benefits for that VQIP fiscal year.

The FSMA FY 2020 VQIP user fee rate announced in this notice is effective on August 1, 2019, and will remain in effect through December 31, 2019. The FY 2020 VQIP user fee will support benefits from October 1, 2019, through September 30, 2020.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2020

Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2020

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: Payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2020 cost. The FY 2020 FDA-wide average cost for payroll (salaries and benefits) is $160,885; non-payroll—including equipment, supplies, information technology, general and administrative overhead—is $92,828; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $24,888 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2020 average fully supported cost to $278,602 per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP user fees for FY 2020 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2020 average fully supported cost of $278,602 per FTE by the average number of supported direct FDA work hours in FY 2018—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2018

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	−80
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
26.5 days of general administration	−184
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2020 ($278,602) by the total number of supported direct work hours available for assignment in FY 2018 (1,160) results in an average fully supported cost of $240 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2020.

B. Adjusting FY 2018 Travel Costs for Inflation To Estimate FY 2020 Travel Costs

To adjust the hourly rate for FY 2020, FDA must estimate the cost of inflation in each year for FY 2019 and FY 2020. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2019 inflation rate to be 1.7708 percent; this rate was published in the FY 2019 PDUFA user fee rates notice in the **Federal Register** (83 FR 37504, August 1, 2018). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.7708 percent for FY 2019 and 2.3964 percent for FY 2020, and FDA intends to use this inflation rate to make inflation adjustments for FY 2020 for several of its user fee programs; the derivation of this rate is published in the **Federal Register** in the FY 2020 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2019 and 2020, therefore, is 1.042096 (or 4.2096 percent) (1 plus 1.7708 percent times 1 plus 2.3964 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $240 already takes into account inflation as the calculation above is based on FY 2020 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2020 prior to including domestic or foreign travel costs as applicable for the activity. For the purpose of estimating the fee, we are using the travel cost rate for both domestic and foreign travel because we anticipate that a portion of onsite assessments made by FDA under this program will require foreign travel in addition to domestic travel.

In FY 2018 FDA's Office of Regulatory Affairs (ORA) spent a total of $6,027,291 for domestic regulatory inspection travel costs and General Services Administration Vehicle cost related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 9,976 CFSAN and CVM domestic inspections, which averages a total of $604 per inspection by 35.44 hours per inspection results in a total and an additional cost of $17 (rounded to the nearest dollar) per hour spent for domestic inspection travel cost in FY 2018. To adjust for the $17 per hour inflationary increases in FY 2019 and FY 2020, FDA must multiply it by the same inflation factor mentioned previously in this document (1.042096 or 4.2096 percent), which results in an estimated cost of $18 (rounded to the nearest dollar) per paid hour in addition to $240 for a total of $258 per paid hour ($240 plus $18) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2020 when domestic travel is required.

In FY 2018, the ORA spent a total of $3,229,335 on 455 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $7,097 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $7,097 per trip by 120 hours per trip results in a total and an additional cost of $59 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2018. To adjust $59 for inflationary increases in FY 2019 and FY 2020, FDA must multiply it by the same compounded inflation factor mentioned previously in this document (1.042096 or 4.2096 percent), which results in an estimated cost of $61 (rounded to the nearest dollar) per paid hour in addition to $240 for a total of $301 per paid hour ($240 plus $61) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2020 when foreign travel is required for the VQIP.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2020

Fee category	Fee rates for FY 2020
Hourly rate without travel	$240
Hourly rate if domestic travel is required	258
Hourly rate if foreign travel is required	301

III. Fees for Importers Approved To Participate in the Voluntary Qualified Importer Program Under Section 743 of the FD&C Act

FDA assesses fees for VQIP annually. Table 3 provides an overview of the fees for FY 2020.

TABLE 3—FSMA VQIP USER FEE SCHEDULE FOR FY 2020

Fee category	Fee rates for FY 2020
VQIP User Fee	$16,681

Section 743 of the FD&C Act requires that each importer participating in VQIP pay a fee to cover FDA's costs of administering the program. This fee represents the estimated average cost of the work FDA performs in reviewing and evaluating a VQIP importer. At this time, FDA is not offering an adjusted fee for small businesses. As required by section 743(b)(2)(B)(iii) of the FD&C Act, FDA previously published a set of guidelines in consideration of the burden of the VQIP fee on small businesses and provided for a period of public comment on the guidelines (80 FR 32136, June 5, 2015). While we did receive some comments in response, they did not address the questions posed, *i.e.,* how a small business fee reduction should be structured, what percentage of fee reduction would be appropriate, or what alternative structures FDA might consider in order to indirectly reduce fees for small businesses by charging different fee amounts to different VQIP participants. We plan on monitoring costs and collecting data to determine if, in future fiscal years, we will provide for a small business fee reduction. Consistent with section 743(b)(2)(B)(iii), we will adjust the fee schedule for small businesses only through notice and comment rulemaking.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 39 person-hours to review a VQIP application (including communication provided through the VQIP Importer's Help Desk), 16 person-hours for an onsite performance evaluation of a domestic VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment), and 34 person-hours for an onsite performance evaluation of a foreign VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment). Additional costs include maintenance costs of information technology of administering benefits of the program. These costs are estimated to be $2,209 per VQIP importer.

FDA employees are likely to review applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $240/hour, to calculate the portion of the user fee attributable to those activities: $240/hour × (39 hours) = $9,360.

FDA employees will conduct a VQIP inspection to verify the eligibility criteria and full implementation of the food safety and food defense systems established in the Quality Assurance Program. A VQIP importer may be located inside or outside of the United States. We have used an estimate that up to 20 percent of VQIP importers may be located outside of the United States.

FDA employees are likely to prepare for and report on the performance evaluation of a domestic VQIP importer at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $240/hour, to calculate the portion of the user fee attributable to those activities: $240/hour × (8 hours) = $1,920. For the portion of the fee covering onsite evaluation of a domestic VQIP importer, we use the fully supported FTE hourly rate for work requiring domestic travel, $258/hour, to calculate the portion of the user fee attributable to those activities: $258/hour × 8 hours (*i.e.,* one fully supported FTE × (1 day onsite × 8 hours)) = $2,064. Therefore, the total cost of conducting the domestic performance evaluation of a VQIP importer is determined to be $2,064 + $1,920 = $3,984.

Coordination of the onsite performance evaluation of a foreign VQIP importer is estimated to take place at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $240/hour, to calculate the portion of the user fee attributable to those activities: $240/hour × (10 hours) = $2,400. For the portion of the fee covering onsite evaluation of a foreign VQIP importer, we use the fully supported FTE hourly rate for work requiring foreign travel, $301/hour, to calculate the portion of the user fee attributable to those activities: $301/hour × 24 hours (*i.e.,* one fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,224. Therefore, the total cost of conducting the foreign performance evaluation of a VQIP importer is determined to be $2,400 + $7,224 = $9,624.

Therefore, the estimated average cost of the work FDA performs in total for approving an application for a VQIP importer based on these figures would be $2,209 + $9,360 + ($3,984 × 0.8) + ($9,624 × 0.2) = $16,681.

IV. How must the fee be paid?

An invoice will be sent to VQIP importers approved to participate in the program. Payment must be made prior to October 1, 2019, in order to be eligible for VQIP participation for the benefit year beginning October 1, 2019. FDA will not refund the VQIP user fee for any reason.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: Wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* or the *Pay.gov* payment option, which is available to you after you submit a cover sheet. (*Note:* Only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment and a copy of the invoice to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (*Note:* In no case should the payment for the fee be submitted to FDA with the invoice.)

V. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in Section J of ''FDA's Voluntary Qualified Importer Program; Guidance for Industry'' document (available at *https://www.fda.gov/media/92196/download*). If the user fee is not paid before October 1, a VQIP importer will not be eligible to participate in VQIP. For the first year a VQIP application is approved, if the user fee is not paid before October 1, 2019, you are not eligible to participate in VQIP. If you subsequently pay the user fee, FDA will begin your benefits after we receive the full payment. The user fee may not be paid after December 31, 2019. For a subsequent year, if you do not pay the user fee before October 1, FDA will send a Notice of Intent to Revoke your participation in VQIP. If you do not pay the user fee within 30 days of the date of the Notice of Intent to Revoke, we will revoke your participation in VQIP.

Dated: July 19, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–15742 Filed 7–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Health Center Patient Survey, OMB No. 0915–0368—Reinstatement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 23, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Health Center Patient Survey, OMB No. 0915–0368—Reinstatement

Abstract: The Health Center Program, administered by HRSA, is authorized under section 330 of the Public Health Service Act, most recently amended by section 50901(b) of the Bipartisan Budget Act of 2018, Public Law 115–123. Health centers are community-based and patient-directed organizations that deliver affordable, accessible, quality, and cost-effective primary health care services to patients regardless of their ability to pay. Nearly 1,400 health centers operate approximately 12,000 service delivery sites that provide primary health care to more than 27 million people in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. In the past, HRSA has conducted the Health Center Patient Survey (HCPS), which surveys patients of HRSA-supported health centers. The HCPS collects information about sociodemographic characteristics, health conditions, health behaviors, access to and utilization of health care services, and satisfaction with health care received at HRSA-supported health centers. The reinstatement of the HCPS will utilize the same modules from the 2014 HCPS (OMB #0915–0368). Overarching improvements to the survey instrument will streamline the questionnaire to minimize burden and standardize questions with other national surveys to enable comparative analyses with a particular focus on HHS and HRSA priority areas (*e.g.,* mental health and substance use). Survey results come from in-person, one-on-one interviews with patients who are selected as nationally representative of the Health Center Program patient population.

Need and Proposed Use of the Information: The HCPS is unique because it focuses on comprehensive, nationally representative, individual level data from the perspective of health center patients. By investigating how well HRSA-supported health centers meet health care needs of the medically underserved and how patients perceive their quality of care, the HCPS serves as an empirically based resource to inform HRSA policy, funding, and planning decisions.

Likely Respondents: Patients at HRSA-supported health centers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. Compared to the previous HCPS, the estimated burden hours for an individual respondent remain the same in this reinstatement. However, the total annual burden hours and number of survey respondents is anticipated to increase in order to reflect the growing number of patients served by the Health Center Program. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

NATIONAL STUDY					
Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee Recruitment	220	1	220	2.00	440.00
Site Recruitment and Training	700	1	700	3.15	2,205.00
Patient Screening	13,120	1	13,120	.17	2,230.40
Patient Survey	9,058	1	9,058	1.25	11,322.50
Total National Study	23,098		23,098		16,197.90

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–15699 Filed 7–23–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Feasibility and Planning Studies for SPOREs to Investigate Cancer Health Disparities (P20).

Date: September 25, 2019.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W618, National Cancer Institute, NIH, Rockville, MD 20850, 240–276–6611, *mukesh.kumar3@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 19, 2019.

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15733 Filed 7–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; JUN2019 Cycle 31 NExT SEP Committee Meeting.

Date: August 8, 2019.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 35A, Room 35, Bethesda, MD 20892.

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, MD 20850, (240) 276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 19, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15734 Filed 7–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK F99/K00.

Date: August 7, 2019.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *Kozelp@niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 19, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15736 Filed 7–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Mechanism for Time-Sensitive Drug Abuse Research (R21 Clinical Trial Optional).

Date: July 29, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.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: National Institute on Drug Abuse Special Emphasis Panel; Providing Research Education Experiences to Enhance Diversity in the Next Generation of Substance Abuse and Addiction Scientists (R25—Clinical Trials Not Allowed).

Date: August 6–8, 2019.

Time: 6:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Susan O McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 19, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15735 Filed 7–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0042]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Obligor Change of Address

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until September 23, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0042 in the body of the letter, the agency name and Docket ID ICEB–2019–0007. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2019–0007;

(2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Carl Albritton (202–732–5918), *carl.a.albritton@ice.dhs.gov,* ERO Bond Management Unit, U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–333; ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other nonprofit. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address and will facilitate communication with the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Dated: July 19, 2019.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2019–15702 Filed 7–23–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19GG00995TR00]

Call for Nominations for the National Earthquake Prediction Evaluation Council

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The Department of the Interior is seeking nominations to serve on the National Earthquake Prediction Evaluation Council (NEPEC). The NEPEC provides advice and recommendations to the Director of the U.S. Geological Survey (USGS) on earthquake predictions and related scientific research.

DATES: Nominations to participate on the NEPEC must be received by August 26, 2019.

ADDRESSES: Send nominations electronically to *NEPEC_FACA_Resumes@usgs.gov* or by mail to Linda Huey, U.S. Geological Survey, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Mail Stop 905, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Blanpied, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192; 703–648–6696; *mblanpied@usgs.gov*

SUPPLEMENTARY INFORMATION: The NEPEC conducts its operations in accordance with the provisions of the Federal Advisory Committee Act. The NEPEC provides recommendations and advice to the Director of the USGS (Director), and functions solely as an advisory body.

The NEPEC includes up to 12 members, who are qualified in the seismic sciences and other appropriate fields involved in national earthquake research activities. NEPEC members will be experts in the scientific disciplines that bear on earthquake prediction or other relevant disciplines involved in forecasting natural hazards or public response to such forecasts. NEPEC members are appointed for 3-year terms. Nominations received through this call may be used to fill future vacancies on the NEPEC. Nominations will be reviewed by the USGS and additional information may be requested from nominees. Final selection and appointment of NEPEC members will be made by the Director.

The NEPEC meets approximately 1 time per year. The NEPEC may be required to meet on short notice to address an urgent situation regarding an earthquake prediction or other earthquake emergency. NEPEC members will serve without compensation, but travel and per diem costs will be provided by the USGS. The USGS will also provide necessary support services to the NEPEC. NEPEC meetings are open to the public.

Nominations may come from individuals, employers, associations, professional organizations, or other geospatial organizations. Nominations should include a resume or curriculum vitae providing an adequate description of the nominee's qualifications sufficient for the USGS to make an informed decision regarding meeting the membership requirements of the NEPEC and permit the nominated person to be contacted. Nominations may optionally include supporting letters from employers, associations, professional organizations, and/or other organizations.

Additional information about the NEPEC and the nomination process is posted on the NEPEC web page at *https://www.nehrp.gov/committees/index.htm.*

Authority: 5 U.S.C. Appendix 2.

Trent Richardson,

Deputy Associate Director, Natural Hazards Mission Area.

[FR Doc. 2019–15726 Filed 7–23–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held on Wednesday, September 4, 2019, from 8:30 a.m. to 5:00 p.m., and on Thursday, September 5, 2019, from 8:30 a.m. to 4:00 p.m. (Eastern Standard Time).

ADDRESSES: The meeting will be held at the National Conservation Training Center, 698 Conservation Way, Shepherdstown, West Virginia. Send your comments to Group Federal Officer by email to *jsayer@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), U.S. Geological Survey (USGS), 909 First Avenue, Suite 800, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to the management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of the Geospatial Data Act of 2018 and Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics:

—FGDC Update
—Geospatial Data Act Implementation
—Cultural and Historical Geospatial Resources
—Geospatial Infrastructure
—Landsat Advisory Group
—Public Comments

Meeting Accessibility/Special Accommodations: The meeting is open to the public from 8:30 a.m. to 5:00 p.m. on September 4 and from 8:30 a.m. to 4:00 p.m. on September 5. Members of the public wishing to attend the meeting should contact Mr. John Mahoney by email at *jmahoney@usgs.gov* to register no later than five (5) business days prior to the meeting. Seating may be limited due to room capacity. Individuals requiring special accommodations to access the public meeting should contact Mr. John Mahoney at the email stated above or by telephone at (206) 220–4621 at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the committee members, written notice must be provided to Mr. John Mahoney, Federal Geographic Data Committee (FGDC), U.S. Geological Survey, 909 First Avenue, Suite 800, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621, at least five (5) business days prior to the meeting. Any written comments received will be provided to the committee members prior to the meeting.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Authority: 5 U.S.C. Appendix 2.

Kenneth M. Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2019–15641 Filed 7–23–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX19EE000101100]

Call for Nominations to the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The Department of the Interior (DOI) is seeking nominations to serve on the National Geospatial Advisory Committee (NGAC). The NGAC is a Federal Advisory Committee authorized through the Geospatial Data Act of 2018 (GDA), which operates in accordance with the Federal Advisory Committee Act (FACA). The Committee provides advice and recommendations to the Secretary of the Interior through the Federal Geographic Data Committee related to management of Federal geospatial programs, development of the National Spatial Data Infrastructure, and the implementation of the GDA. The Committee reviews and comments on geospatial policy and management issues and provides a forum for views of non-Federal stakeholders in the geospatial community.

DATES: Nominations to participate on this Committee must be received by August 27, 2019.

ADDRESSES: Send nominations electronically to *ngacnominations@fgdc.gov,* or by mail to John Mahoney, U.S. Geological Survey, U.S. Department of the Interior, 909 First Avenue, Suite 800, Seattle, WA 98104. Nominations may come from employers, associations, professional organizations, or other geospatial organizations.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable DOI to make an informed decision regarding meeting the membership requirements of the Committee and permit DOI to contact a potential member. Nominees are strongly encouraged to include supporting letters from employers, associations, professional organizations, and/or other organizations that indicate support by a meaningful constituency for the nominee.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (USGS) (206–220–4621). Additional information about the NGAC and the nomination process is posted on the NGAC web page at *www.fgdc.gov/ngac.*

SUPPLEMENTARY INFORMATION: The Committee conducts its operations in accordance with the provisions of the GDA and the FACA. It reports to the Secretary of the Interior through the Federal Geographic Data Committee (FGDC) and functions solely as an advisory body. The Committee provides recommendations and advice to DOI and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The NGAC includes up to 30 members, selected to generally achieve a balanced representation of the viewpoints of the various stakeholders involved in national geospatial activities. The NGAC members are appointed for staggered terms, and nominations received through this call for nominations may be used to fill vacancies on the Committee that will become available in 2019 and 2020. The nominations will be reviewed by the FGDC and additional information may be requested from nominees.

The final selection and appointment of Committee members will be made by the Secretary of the Interior. The individuals who are Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government

Employees, rather than being appointed to represent a particular interest.

The Committee meets approximately 3–4 times per year. The Committee members will serve without compensation but travel and per diem costs will be provided by USGS. The USGS will also provide necessary support services to the Committee. The Committee meetings are open to the public. Notice of Committee meetings are published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

Authority: 5 U.S.C. Appendix 2.

Signed: ___

Kenneth M. Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2019–15640 Filed 7–23–19; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19GG00995TR00]

Call for Nominations for the Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The Department of the Interior is seeking nominations to serve on the Scientific Earthquake Studies Advisory Committee (SESAC). The SESAC advises the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

DATES: Nominations to participate on the SESAC must be received by August 26, 2019.

ADDRESSES: Send nominations electronically to *SESAC_FACA_Resumes@usgs.gov* or by mail to Linda Huey, U.S. Geological Survey, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Mail Stop 905, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Blanpied, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192; 703–648–6696; *mblanpied@usgs.gov*

SUPPLEMENTARY INFORMATION: The SESAC conducts its operations in accordance with the provisions of the Federal Advisory Committee Act. The SESAC provides recommendations and advice to the Director of the USGS (Director), and functions solely as an advisory body. The SESAC reviews the current activities of the USGS Earthquake Hazards Program and discusses future priorities.

The SESAC includes up to 10 members, who are qualified in the seismic sciences and other appropriate fields involved in national earthquake research activities. Selection of individuals for the SESAC shall be based solely on established records of distinguished service, and the Director shall ensure that a reasonable cross-section of views and expertise is represented. In selecting individuals to serve on the SESAC, the Director shall seek and give due consideration to recommendations from the National Academy of Sciences, professional societies, and other appropriate organizations. SESAC members are appointed for staggered terms to ensure continuity. Nominations received through this call may be used to fill future vacancies on the SESAC. Nominations will be reviewed by the USGS and additional information may be requested from nominees. Final selection and appointment of SESAC members will be made by the Director.

The SESAC meets approximately 1–2 times per year. SESAC members will serve without compensation, but travel and per diem costs will be provided by the USGS. The USGS will also provide necessary support services to the SESAC. SESAC meetings are open to the public.

Nominations may come from individuals, employers, associations, professional organizations, or other geospatial organizations. Nominations should include a resume or curriculum vitae providing an adequate description of the nominee's qualifications sufficient for the USGS to make an informed decision regarding meeting the membership requirements of the SESAC and permit the nominated person to be contacted. Nominations may optionally include supporting letters from employers, associations, professional organizations, and/or other organizations.

Additional information about the SESAC and the nomination process is posted on the SESAC webpage at *https://earthquake.usgs.gov/aboutus/sesac/.*

Authority: 5 U.S.C. Appendix 2.

Trent Richardson,

Deputy Associate Director, Natural Hazards Mission Area.

[FR Doc. 2019–15725 Filed 7–23–19; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1091]

Certain Color Intraoral Scanners and Related Hardware and Software; Notice of a Commission Determination To Review In-Part the Final Initial Determination; Request for Briefing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (''ID'') in-part and requests briefing from the parties.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on December 20, 2017, based on a complaint filed on behalf of Align Technology, Inc. of San Jose, California (''Align''). 82 FR (Dec. 20, 2017). The complaint alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain color intraoral scanners and related hardware and software by reason of infringement of certain claims of U.S. Patent Nos. 8,363,228 (''the '228 patent''); 8,451,456 (''the '456 patent''); 8,675,207 (''the '207 patent''); 9,101,433 (''the '433 patent''); 948,931; and 6,685,470. *See id.* The complaint named 3Shape A/S and 3Shape Inc. as the respondents. On March 15, 2018, the ALJ granted Align's unopposed motion to amend the complaint and notice of

investigation to add 3Shape Trios A/S of Copenhagen, Denmark as an additional respondent in this investigation. *See* 83 FR 13781–82 (March 30, 2018), *unreviewed,* Notice (March 27, 2018). The Office of Unfair Import Investigations did not participate in the investigation.

On March 1, 2019, the ALJ issued his final ID finding that no violation of section 337 has occurred. On March 18, 2019, Align filed a petition for review and 3Shape filed a contingent petition for review of the ID. On March 26, 2019, all of the parties filed responses to the respective petitions for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in-part. Specifically, the Commission has determined to review the ID's findings on (1) importation; (2) the construction of ''processor''; (3) the construction of ''confocal imaging techniques''; (4) all findings concerning infringement; (5) all findings concerning invalidity; (6) all findings concerning whether Align's products practice one or more claims of the asserted patents; and (7) all findings concerning whether Align's financial investments and activities relating to Align's products meet the domestic industry requirement.

In connection with its review, the Commission is interested in responses to the following questions from the parties:

1. Discuss whether the ''processor'' term of the asserted claims is understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure? Is the ''processor'' of the asserted claims a general purpose processor? Please discuss and identify any expert testimony addressing these questions.

2. If the Commission determines that the claimed ''processor'' of the asserted claims is subject to means-plus-function treatment under 35 U.S.C. 112, ¶ 6, please identify the corresponding structure(s) in the specification and the proper construction for each of the asserted patents.

3. Did Respondents show by clear and convincing evidence that a person of ordinary skill in the art would not find, from reading the specification, that the inventor had ''possession'' of a hand-held device having the claimed processor for the '228, '456, and '207 patents? *See Ariad Pharm., Inc.* v. *Eli Lilly and Co.,* 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Include citations to expert testimony in your response.

4. Does the language of claim 1 of the '228, '456, and '207 patents require that the ''depth data'' be the depth of the scanned three-dimensional object? *See* 3Shape Pet. at 13–14.

5. Did Align waive its argument that its domestic industry products practice the asserted patents by introducing a new theory/evidence for the first time in its petition for review? *See* Align Pet. at 43–45; 3Shape Resp. at 19–20.

6. For the '228, '456, and '207 patents, is the evidence relied on by the parties before the ALJ sufficient to establish that the domestic industry products ''associate the depth data with the color image data''? Please discuss all relevant evidence.

7. Did Respondents waive their challenge to the specific percentages used to determine the significance of Align's domestic industry investments? Align Resp. at 45.

8. In analyzing domestic industry, did the ID improperly credit expenses that were incurred after the filing of the complaint in this investigation or expenses that were unrelated to the domestic industry products? *See* 3Shape Pet. at 53–54. If certain expenses were improperly included in the analysis, please discuss whether Align's investments without the improper expenses were significant.

The parties are requested to brief only the discrete issues above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the subject patents expire and the HTSUS numbers under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondents' products at issue in this investigation.

The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, July 30, 2019. Reply submissions must be filed no later than the close of business on Tuesday, August 6, 2019. Opening submissions are limited to 75 pages. Reply submissions are limited to 50 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) Of the Commission's Rules of Practice and Procedure (19 CFR 2.10.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1091'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/*

handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–15684 Filed 7–23–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1067]

Certain Road Milling Machines and Components Thereof; Issuance of a Limited Exclusion Order and Two Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue: A limited exclusion order (''LEO'') prohibiting the unlicensed entry of infringing road-milling machines and components thereof covered by one or more of claim 29 of U.S. Patent No. 7,828,309 (''the '309 patent'') or claims 2, 5, 16, or 23 of U.S. Patent No. 9,656,530 (''the '530 patent'') that are manufactured abroad for or on behalf of, or imported by or on behalf of, any of Caterpillar Prodotti Stradali S.r.L. of Minerbio, Italy; Caterpillar Americas CV of Geneva, Switzerland; Caterpillar Paving Products, Inc. of Minneapolis, MN; and Caterpillar Inc. of Peoria, IL (''Caterpillar,'' or ''Respondents'') or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and a cease and desist order (''CDO'') directed against respondents Caterpillar Paving Products, Inc. and Caterpillar Inc., and their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), on August 25, 2017, based on a complaint filed by Wirtgen America, Inc. of Antioch, Tennessee (''Wirtgen''). 82 FR 40596–97 (Aug. 25, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 9,644,340 (''the '340 patent''); 9,624,628 (''the '628 patent''); 7,530,641 (''the '641 patent''); and the '309 and '530 patents. The complaint named Caterpillar Bitelli SpA of Minerbio, Italy (''Caterpillar Bitelli'') and Caterpillar as respondents. *Id.* at 40596. The Commission's Office of Unfair Import Investigations was named as a party, but later withdrew from the investigation. Subsequently, the investigation was terminated as to respondent Caterpillar Bitelli. ALJ Order No. 11 dated December 19, 2017 (*unreviewed* January 18, 2018). The investigation was also terminated with respect to the '628 patent. ALJ Order No. 30 dated March 27, 2018 (*unreviewed* April 27, 2018).

The evidentiary hearing on the question of violation of section 337 was held April 20–24, 2018. The ALJ issued a final ID on violation on October 1, 2018. The ALJ found that a violation of section 337 has occurred in this investigation with respect to the '530 and '309 patents, and no violation of section 337 has occurred with respect to the '641 and '340 patent. The ALJ issued his recommended determination on remedy, the public interest and bonding on October 18, 2018. The ALJ recommended that if the Commission finds a violation of section 337 in the present investigation, the Commission should: (1) Issue an LEO covering products that infringe the patent claims as to which a violation of section 337 has been found; (2) issue a CDO; and (3) require no bond during the period of Presidential review.

Both parties to the investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The parties also timely filed their respective public interest statements pursuant to 19 CFR 210.50(a)(4). Responses from public were likewise received by the Commission pursuant to notice. 83 FR 53296–97 (Oct. 22, 2018).

On April 17, 2019, the Commission issued a notice in which it determined to review-in-part the final ID. *See* 84 FR 16882–84 (Apr. 23, 2019). In its notice, the Commission determined not to review any issues relating to the '340, '641, and '530 patents and reversed the finding of no invalidity as to claim 36 of the '309 patent. *See* 84 FR 16882–84 (Apr. 23, 2019). The Commission requested written submissions on remedy, the public interest, and bonding. *Id.* at 1683. On May 8, 2019, Wirtgen and Caterpillar filed their opening briefs in response to the notice, and on May 15—their responsive briefs. No other submissions were received by the Commission.

Having examined the record in this investigation, including the parties' submissions on remedy, the public

[1] All contract personnel will sign appropriate nondisclosure agreements.

interest, and bonding filed in response to the Commission Notice, the Commission has determined that the appropriate form of relief in this investigation is: (1) An LEO prohibiting the unlicensed entry of infringing road-milling machines and components thereof covered by one or more of claim 29 of the '309 patent or claims 2, 5, 16, or 23 of the '530 patent that are manufactured abroad for or on behalf of, or imported by or on behalf of, any of the Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and (2) a CDO directed against Caterpillar Paving Products, Inc. and Caterpillar Inc., and their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond of fourteen (14) percent of entered value of the covered products during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: July 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–15689 Filed 7–23–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cardinal Health

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 23, 2019. Such persons may also file a written request for a hearing on the application on or before August 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 31, 2019, Cardinal Health, 15 Ingram Boulevard, LaVergne, Tennessee applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Secobarbital	2315	II

The company plans to only distribute to licensed registrants for the purpose of medical use.

Dated: July 15, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–15728 Filed 7–23–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Restek Corporation

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 23, 2019. Such persons may also file a written request for a hearing on the application on or before August 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

In accordance with 21 CFR 1301.34(a), this is notice that on April 12, 2019, Restek Corporation, 110 Benner Circle, Bellefonte, Pennsylvania 16823–8433 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to import the listed controlled substance in bulk for manufacture of analytical reference material which, in its final form, is an exempted product.

Dated: July 15, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–15738 Filed 7–23–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: AMRI Rensselaer, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 23, 2019. Such persons may also file a written request for a hearing on the application on or before August 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

In accordance with 21 CFR 1301.34(a), this is notice that on May 7, 2019, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substance to manufacture a bulk controlled substance for distribution to its customers.

Dated: July 15, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–15737 Filed 7–23–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[Docket No. DEA–392]

Drug Enforcement Administration Bulk Manufacturer of Controlled Substances Application: IsoSciences, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

In accordance with 21 CFR 1301.33(a), this is notice that on May 21, 2019, IsoSciences, LLC, 340 Mathers Road, Ambler, Pennsylvania 19002–3420 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Methcathinone	1237	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
Dihydromorphine	9145	I
Heroin	9200	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Thebacon	9315	I
Normethadone	9635	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I

Controlled substance	Drug code	Schedule
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Amphetamine	1100	II
Methamphetamine	1105	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Isomethadone	9226	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Thiafentanil	9729	II
Alfentanil	9737	II
Sufentanil	9740	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to manufacture bulk controlled substances for use in analytical testing. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: July 11, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–15739 Filed 7–23–19; 8:45 am]

BILLING CODE 4410–09–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's Board of Directors and its six committees will meet July 28–30, 2019. On Sunday, July 28, the first meeting will commence at 12:30 p.m., Eastern Daylight Time (EDT), with the meetings thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, July 29, the first meeting will commence at 9:30 a.m. (EDT), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. The closed session meeting of the Board of Directors will commence promptly upon adjournment of the open session of the Board of Directors meeting.

PLACE: The Courtyard by Marriott Portland, Downtown Waterfront, 321 Commercial Street, Portland, Maine 04101.

STATUS: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-in Directions for Open Sessions:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348.
- Once connected to the call, your telephone line will be *automatically* ''MUTED''.
- To participate in the meeting during public comment press #6 to ''UNMUTE'' your telephone line, once you have concluded your comments please press *6 to ''MUTE'' your line.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

Meeting Schedule

Sunday, July 28, 2019: Time: 12:30 p.m.*

1. Operations & Regulations Committee
2. Governance and Performance Review Committee
3. Communications Subcommittee Committee
4. Institutional Advancement Committee

Monday, July 29, 2019: 9:30 a.m.

1. Audit Committee
2. Delivery of Legal Services Committee

Tuesday, July 30, 2019: 8:00 a.m.

1. Finance Committee
2. Board of Directors

Status of Meeting: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

* Please note that all times in this notice are in *Eastern Daylight Time.*

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5

Continued

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new Leaders Council invitees and to receive a briefing on the development activities.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection.

A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

July 28, 2019

Operations & Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of April 7, 2019
3. Consider and act on Notice of Proposed Rulemaking for 45 CFR part 1610 and 1630—Use of Non-LSC Funds, Program Integrity, and Cost Standards
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Mark Freedman, Senior Associate General Counsel
4. Consider and act on the 2019–2020 Rulemaking Timeline
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
5. Public comment
6. Consider and act on other business
7. Consider and act on adjournment of meeting

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on April 7, 2019
3. Approval of minutes of the Committee's Closed Session meeting on April 7, 2019
4. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
5. Report on transition planning
   - Carol Bergman, Vice President for Government Relations & Public Affairs
   - Ron Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
6. Consider and act on other business
7. Public comment
8. Consider and act on adjournment of meeting

July 28, 2019

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of April 8, 2019
3. Communications and Social Media update
   - Carl Rauscher, Director of Communications and Media Relations
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

July 28, 2019

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of April 8, 2019
3. Update on Leaders Council and Emerging Leaders Council
   - John G. Levi, Chairman of the Board
4. Development report
   - Nadia Elguindy, Director of Institutional Advancement
5. Consider and act on *Resolution #2019–XXX,* Minnesota Charitable Organization Annual Report Form
6. Public Comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

9. Approval of minutes of the Committee's Closed Session meeting of April 8, 2019
10. Development activities report
    - Nadia Elguindy, Director of Institutional Advancement
    - Jim Sandman, President
11. Consider and act on motion to approve Leaders Council and Emerging Leaders Council invitees
12. Consider and act on other business
13. Consider and act on motion to adjourn the meeting

July 29, 2019

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on April 8, 2019
3. Approval of minutes of the Committee's Closed Session meeting on April 8, 2019
4. Approval of minutes of the Combined Audit and Finance Committee's Open Session on April 8, 2019
5. Approval of minutes of the Combined Audit and Finance Committee's Closed Session on April 8, 2019
6. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audits
7. Management update regarding risk management
   - Ron Flagg, Vice President for Legal Affairs, General Counsel and Corporate Secretary
8. Briefing on integrity of LSC electronic data
   - Jada Breegle, Chief Information Officer
9. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - Roxanne Caruso, Assistant Inspector General for Audits
10. Public comment
11. Consider and act on other business
12. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

13. Approval of minutes of the Committee's Closed Session meeting of April 8, 2019
14. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
    - Lora Rath, Director of Compliance and Enforcement
15. Briefing on status of Audit recommendations and, pursuant to Section VIII(C)(1) of the Committee Charter, review of LSC's systems of internal controls that are designed to minimize the risk of fraud, theft, corruption, or misuse of funds
    - Debbie Moore, Treasurer & Chief Financial Officer

U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

16. Consider and act on adjournment of meeting

July 29, 2019

Delivery of Legal Services Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on April 8, 2019
3. Discussion of future topics for Delivery of Legal Services Committee panel presentations
4. Panel presentation on expanding access through technology projects
   - Jack Hancock, Client-Focused Technology Innovator, Pine Tree Legal Assistance
   - J. Singleton, Legal Technology Project Manager, Minnesota Legal Services State Support
   - Gordon Shaw, Director of Client Access, Community Legal Aid
   - Moderator: Lynn Jennings, Vice President of Grants Management
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

July 30, 2019

Finance Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Closed Session meeting of April 7, 2019
3. Approval of the minutes of the Combined Finance and Audit Committees' Open Session meeting of April 8, 2019
4. Approval of the minutes of the Combined Finance and Audit Committees' Closed Session meeting of April 8, 2019
5. Approval of minutes of the Committee's Open Session telephonic meeting of June 6, 2019
6. Presentation of LSC's Financial Reports for the quarter ending June 30, 2019
   - Debbie Moore, Treasurer and Chief Financial Officer
7. Presentation of LSC's Financial Projection for the year ending September 30, 2019, and consider and act on FY 2019 Revised Consolidated Operating Budget, *Resolution 2019–XXX*
   - Debbie Moore, Treasurer and Chief Financial Officer
8. Report on the FY 2020 appropriations process
   - Carol Bergman, Director of Government Relations & Public Affairs
9. Consider and act on Temporary Operating Budget for FY 2020, *Resolution 2019–XXX*
   - Debbie Moore, Treasurer and Chief Financial Officer
10. Report on status of upcoming technology expenditures
    - Jada Breegle, Chief Information Officer
    - Debbie Moore, Treasurer and Chief Financial Officer
11. Public comment
12. Consider and act on other business
13. Consider and act on adjournment of meeting

July 30, 2019

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of April 8, 2019
4. Approval of minutes of the Board's Open Session telephonic meeting of May 21, 2019
5. Chairman's Report
6. Members' Report
7. President's Report
8. Inspector General's Report
9. Consider and act on the report of the Operations and Regulations Committee
10. Consider and act on the report of the Governance and Performance Review Committee
11. Consider and act on the Institutional Advancement Committee
12. Consider and act on the report of the Finance Committee
13. Consider and act on the report of Delivery of Legal Services Committee
14. Consider and act on the report of the Audit Committee
15. Consider and act on resolution, In Memoriam of Judge Sarah Singleton
16. Consider and act on resolution, In Recognition and Appreciation of Distinguished Service by Members of the LSC Opioid Task Force
17. Consider and act on resolution, In Recognition and Appreciation of Distinguished Service by Sidley Austin Associates
18. Public comment
19. Consider and act on other business
20. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

21. Approval of minutes of the Board's Closed Session meeting of April 9, 2019
22. Briefing by Management
23. Briefing by Inspector General
24. Consider and act on list of prospective Leaders Council members
25. Consider and act on General Counsel's report on potential and pending litigation involving LSC
26. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Non-confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

Accessibility: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 18, 2019.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2019–15671 Filed 7–22–19; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

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ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 7 meetings of the Arts Advisory Panel to the National

Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Literature (review of applications): This meeting will be closed.

Date and time: August 6, 2019; 1:00 p.m. to 3:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: August 7, 2019; 1:00 p.m. to 3:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 15, 2019; 11:00 a.m. to 1:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 15, 2019; 2:30 p.m. to 4:30 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 16, 2019; 11:00 a.m. to 1:00 p.m.

Creative Placemaking (review of applications): This meeting will be closed.

Date and time: September 4, 2019; 1:00 p.m. to 3:00 p.m.

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: September 10, 2019; 2:00 p.m. to 4:00 p.m.

Dated: July 19, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–15690 Filed 7–23–19; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Proposed Collection; 30-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the National Endowment for the Humanities (NEH) has requested that the Office of Management and Budget (OMB) reinstate, without change, NEH's Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Copies of this Generic Information Collection Request (ICR), with applicable supporting documentation, may be obtained by visiting *www.reginfo.gov.*

DATES: Please submit comments by August 23, 2019.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attn: Desk Officer for the National Endowment for the Humanities; or by email to *oira_submission@omb.eop.gov;* or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, General Counsel, National Endowment for the Humanities: 400 Seventh Street SW, Washington, DC 20506, or *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION NEH first published notice of its intent to seek OMB approval for this ICR in the **Federal Register** of May 7, 2019 (84 FR 19963) and allowed 60 days for public comment. The agency did not receive any public comments. The purpose of this notice is to allow an additional 30 days for public comment.

Overview of This Information Collection

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 3136–0140.

Abstract: Reinstatement of this information collection will enable NEH to obtain qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide NEH with insights into customer or stakeholder perceptions, experiences, and expectations; help NEH quickly identify actual or potential problems with how the agency provides services to the public; or focus attention on areas where communication, training, or changes in operations might improve NEH's delivery of its products or services. These collections will allow for ongoing, collaborative and actionable communications between NEH and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

NEH will solicit feedback in areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. NEH will use the responses to plan and inform its efforts to improve or maintain the quality of service and programs offered to the public. If this information is not collected, NEH will not have access to vital feedback from customers and stakeholders about the agency's services and programs.

NEH will only submit an information collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or who may have

experience with the program in the near future;

• Personally identifiable information (PII) is collected only to the extent necessary, and is not retained;

• Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, NEH will indicate the qualitative nature of the information);

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information, and the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but will not yield data that can be generalize to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 10,000.

Estimated Annual Frequency per Response: Once per information collection request.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,500 hours.

Request for Comments

The public is invited to comment on all aspects of this ICR, including: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: July 15, 2019.

Carlos Díaz-Rosillo,

Senior Deputy Chairman, National Endowment for the Humanities.

[FR Doc. 2019–15667 Filed 7–23–19; 8:45 am]

BILLING CODE 7536–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–168 and CP2019–190]

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 26, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–168 and CP2019–190; *Filing Title:* USPS Request to Add Priority Mail Contract 538 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 18, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 26, 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**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–15723 Filed 7–23–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 100 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–169, CP2019–191.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–15712 Filed 7–23–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 539 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–170, CP2019–192.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–15713 Filed 7–23–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 18, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 538 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–168, CP2019–190.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–15644 Filed 7–23–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86410; File No. SR–CboeBZX–2019–023]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 14.11(c) (Index Fund Shares) To Adopt Generic Listing Standards for Index Fund Shares Based on an Index of Municipal Securities

July 18, 2019.

I. Introduction

On April 3, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''Cboe BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Cboe BZX Rule 14.11(c) to adopt generic listing standards for Index Fund Shares (''Shares'') based on an index or portfolio of municipal securities. The proposed rule change was published for comment in the **Federal Register** on April 22, 2019.[3] On May 30, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission has received no comments on the proposal. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change [7]

Cboe BZX Rule 14.11(c) permits the Exchange to list a series of Shares based on an index or portfolio of underlying securities. Currently, Cboe BZX Rule 14.11(c) includes generic listing standards for Shares based on an index or portfolio of equity or fixed income securities or a combination thereof. Municipal Securities [8] are a type of fixed income security, and therefore currently the Exchange may generically list and trade securities overlying an index or portfolio of Municipal Securities provided the index or portfolio satisfies the criteria of Cboe BZX Rule 14.11(c)(4). According to the Exchange, however, indexes and portfolios of Municipal Securities typically do not satisfy the criterion that component securities in an index or portfolio that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each have a minimum

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85656 (Apr. 16, 2019), 84 FR 16753.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85966, 84 FR 26172 (June 5, 2019). The Commission designated July 21, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] For a full description of the proposed rule change, *see* Notice, *supra* note 3.

[8] The proposed rule defines the term ''Municipal Securities'' by incorporating the definition in Section 3(a)(29) of the Act.

original principal amount outstanding of $100 million or more.[9] The Exchange states that generally Municipal Securities are issued with individual maturities of relatively small size, although they typically are constituents of a much larger municipal bond offering.[10]

A. Proposed Cboe BZX Rule 14.11(c)(4)(B)(ii)

1. Applicability

Proposed Cboe BZX Rule 14.11(c)(4)(B)(ii) provides generic listing standards for Shares based on an index or portfolio of Municipal Securities. Because existing Cboe BZX Rule 14.11(c)(4)(B)(i) also applies to Shares based on an index or portfolio of Municipal Securities, the Exchange represents that it would apply existing Cboe BZX Rule 14.11(c)(4)(B)(i) and proposed Cboe BZX Rule 14.11(c)(4)(B)(ii) in a ''waterfall'' manner. Specifically, the Exchange would initially evaluate every series of Shares based on an index or portfolio of Municipal Securities or Municipal Securities and cash against the generic listing standards of existing Cboe BZX Rule 14.11(c)(4)(B)(i) and would apply proposed Cboe BZX Rule 14.11(c)(4)(B)(ii) only to Shares whose index or portfolio does not meet the requirements of Cboe BZX Rule 14.11(c)(4)(B)(i).

2. Proposed Generic Listing Criteria

The Exchange asserts that Cboe BZX Rule 14.11(c)(4)(B)(ii) includes many requirements that are more stringent than those applicable under Cboe BZX Rule 14.11(c)(4)(B)(i). These heightened requirements, according to the Exchange, would deter potential manipulation of such Municipal Securities indices even though the index or portfolio may include securities that have smaller original principal amounts outstanding. The proposed quantitative requirements described below would apply on both an initial and continued basis to a Municipal Securities index or portfolio underlying a series of Shares.

a. Original Principal Amount Outstanding

According to the Exchange, Municipal Securities are typically issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering.[11] Accordingly, the Exchange proposes to reduce the requirement for minimum original principal amount outstanding for component securities from at least $100 million to at least $5 million. Further, the Exchange proposes that qualifying securities must have been issued as part of a transaction of at least $20 million. Lastly, the Exchange proposes to increase the percentage weight of an index or portfolio that must satisfy the original principal amount outstanding requirement from 75% to 90%.

The Exchange asserts that reducing the minimum original principal amount outstanding for component securities will not make an index or portfolio more susceptible to manipulation.[12] The Exchange argues that the requirement that component securities in a Municipal Securities index or portfolio have a minimum principal amount outstanding, in concert with the other requirements of Cboe BZX Rule 14.11(c)(4)(B)(ii), will ensure that such index or portfolio is sufficiently broad-based in scope as to minimize potential manipulation of the index or portfolio.[13] In addition, the Exchange asserts that its proposal to require that 90% of the weight of a Municipal Securities index or portfolio meet the original principal amount outstanding requirement (as opposed to 75% for existing Cboe BZX Rule 14.11(c)(4)(B)(i)) will further deter potential manipulation by ensuring that a greater portion of the index or portfolio meets this minimum size requirement.[14]

The Exchange notes that the Commission has previously approved the listing and trading of several series of Shares where the underlying Municipal Securities index or portfolio required that component securities representing at least 90% of the weight of the index or portfolio have a minimum original principal amount outstanding of at least $5 million and have been issued as part of a transaction of at least $20 million.[15]

b. Component Concentration

Cboe BZX Rule 14.11(c)(4)(B)(i), the current generic listing rules for Shares based on a fixed-income index or portfolio, permits individual component securities to account for up to 30% of the weight of such index or portfolio and the top-five weighted component securities to account for up to 65% of the weight of such index or portfolio. The Exchange proposes to tighten these thresholds, proposing that under Cboe BZX Rule 14.11(c)(4)(B)(ii) an individual Municipal Security may comprise only 10% of the index or portfolio and that the five most heavily-weighted Municipal Securities in an index or portfolio may comprise only 30% of the index or portfolio. The Exchange asserts that its proposal will reduce the susceptibility to manipulation of a Municipal Securities index or portfolio underlying a series of Shares.[16]

c. Issuer Diversification

The current generic listing rules for Shares based on an index or portfolio of fixed-income securities require that an index or portfolio must include securities from at least 13 non-affiliated issuers. Notably, however, the current rules exempt indices consisting of either entirely exempted securities or exempted securities and cash from complying with this diversification requirement.[17] Therefore, under the current generic listing criterion, an index or portfolio comprised of only Municipal Securities (or Municipal Securities and cash) is not required to satisfy any minimum issuer diversification requirement. The Exchange proposes that an index or portfolio of Municipal Securities or Municipal Securities and cash must include securities from at least 13 non-affiliated issuers. The Exchange asserts that requiring such diversification will reduce the likelihood that an index or portfolio may be manipulated by ensuring that securities from a variety of issuers are represented in an index or portfolio of Municipal Securities.[18]

d. Minimum Number of Components

The current generic listing requirements for Shares based on an index or portfolio of fixed-income securities do not have an explicit requirement that an index or portfolio contain a minimum number of securities. However, given that such

[9] *See* Notice, *supra* note 3, 84 FR at 16754. ''Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.'' Cboe BXZ Rule 14.11(c)(4).

[10] *See id.*

[11] *See supra* note 10 and accompanying text.

[12] *See* Notice, *supra* note 3, 84 FR at 16754.

[13] *See id.*

[14] *See id.* at 16754–55.

[15] *See* Securities Exchange Act Release No. 84049 (Sept. 6, 2018), 83 FR 46228 (Sept. 12, 2018) (SR–NYSEArca–2018–38) (order approving, among other things, revisions to the continued listing criteria applicable to the iShares New York AMT-Free Muni Bond ETF).

[16] *See* Notice, *supra* note 3, 84 FR at 16755.

[17] Municipal Securities are included in the definition of exempted securities. *See* Section 3(a)(12) of the Act.

[18] *See* Notice, *supra* note 3, 84 FR at 16755.

rules require an index or portfolio to contain securities from at least thirteen non-affiliated issuers, there is an effective requirement that an index or portfolio of fixed-income securities contain at least thirteen component securities. As described above, a fixed-income index or portfolio comprised of exempted securities (including Municipal Securities) is not required to satisfy the issuer diversification test, and therefore such indices need not have a minimum number of component securities.

The Exchange proposes to require that a Municipal Securities index or portfolio contain at least 500 component securities. According to the Exchange, this proposed requirement will ensure that a Municipal Securities index or portfolio is sufficiently broad-based and diversified to make it less susceptible to manipulation.[19]

B. Proposed Amendments to Cboe BZX Rule 14.11(c)(5)

The Exchange also proposes to amend Cboe BZX Rule 14.11(c)(5) to allow the generic listing and trading of Shares based on a combination of two or more types of indexes, including a combination index that includes Municipal Securities. Currently, the scope of the rule allows the Exchange to generically list Shares overlying on a combination of indexes or an index or portfolio of component securities representing: (1) The U.S. or domestic equity market; (2) the international equity market; *and* (3) the fixed income market. To the extent that an index or portfolio of Municipal Securities is included in a combination, the proposed rule specifies the Municipal Securities index or portfolio must satisfy all requirements of Cboe BZX Rule 14.11(c)(4)(B)(ii). The Exchange also proposes another conforming change to Cboe BZX Rule 14.11(c)(5) to specify that the current requirements related to index value dissemination and related continued listing standards will apply to indexes of Municipal Securities. The Exchange notes that a combination index or portfolio that includes an index or portfolio of Municipal Securities will not be permitted to seek to provide investment results in a multiple of the direct or inverse performance of such combination index or portfolio.[20]

[19] *See id.*

[20] *See* Notice, *supra* note 3, 84 FR at 16756.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–023 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [23] Specifically, the Commission seeks comment regarding the following:

1. The Exchange's current generic listing requirement that at least 75% of the Fixed Income Securities portion of the weight of an underlying index or portfolio be comprised of components that each have a minimum original principal amount outstanding of $100 million is designed to ensure that adequate information is available about a substantial portion of the index components.[24] Do the Exchange' proposed alternative thresholds for Municipal Securities indexes or portfolios similarly ensure that adequate information is available about a majority of the index components? Should one or more alternative criteria be employed to achieve the objective of the current generic listing requirement?

2. Would the Exchange's proposed requirements that the underlying index or portfolio of Municipal Securities include at least 500 components from at least 13 non-affiliated issuers mitigate manipulation concerns? Should one or more alternative criteria be employed to achieve diversification sufficient to mitigate manipulation concerns?

3. Taken collectively, would the proposed generic listing criteria adequately ensure that each index or portfolio of Municipal Securities underlying an issue of Shares is not susceptible to manipulation?

[21] 15 U.S.C. 78s(b)(2)(B).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(5).

[24] *C.f.,* Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194, 29199 (May 24, 2007) (order approving generic listing standards for Shares based on fixed income indexes) (''The Commission believes that [the requirements of Commentary .02] are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available . . .'').

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[25] any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 14, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 28, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Notice,[27] in addition to any other comments they may wish to submit about the proposed rule change.

In this regard, the Commission seeks comment on the Exchange's proposed generic listing standards for Shares based on an index or portfolio of Municipal Securities. The Commission specifically seeks comment on whether the proposed requirement that an underlying index or portfolio must include a minimum of 500 component

[25] 17 CFR 240.19b–4.

[26] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[27] *See supra* note 3.

Municipal Securities is consistent with the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [28]

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–023. 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–CboeBZX–2019–023 and should be submitted by August 14, 2019. Rebuttal comments should be submitted by August 28, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–15657 Filed 7–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 17a–4, SEC File No. 270–198, OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 17a–4 (17 CFR 240.17a–4), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–4 requires exchange members, brokers, and dealers (''broker-dealers'') to preserve for prescribed periods of time certain records required to be made by Rule 17a–3. In addition, Rule 17a–4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

There are approximately 3,764 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is 254 hours per broker-dealer per year. Additionally, the Commission estimates that paragraph (b)(11) of Rule 17a–4 imposes an annual burden of 3 hours per year to maintain the requisite records. The Commission estimates that there are approximately 200 internal broker-dealer systems, resulting in an annual recordkeeping burden of 600 hours. Therefore, the Commission estimates that compliance with Rule 17a–4 requires 956,656 hours each year ((3,764 broker-dealers × 254 hours) + (200 broker-dealers × 3 hours)). These burdens are recordkeeping burdens.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a Compliance Clerk is $70 per hour.[1] Based upon these numbers, the total internal cost of compliance for 3,764 respondents is the dollar cost of approximately $67 million ((956,056 yearly hours × $70) + (600 × $70)). The total burden hour decrease of 86,210 hours is due to a decrease in the number of respondents from 4,104 to 3,764.

Based on conversations with members of the securities industry and the Commission's experience in the area, the staff estimates that the average broker-dealer spends approximately $5,000 each year to store documents required to be retained under Rule 17a–4. Costs include the cost of physical space, computer hardware and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. The Commission estimates that the annual reporting and recordkeeping cost burden is $18,820,000. This cost is calculated by the number of active, registered broker-dealers multiplied by the reporting and recordkeeping cost for each respondent (3,764 registered broker-dealers × $5,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(57).

[1] This figure is based on SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for inflation and an 1,800-hour work-year multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15695 Filed 7–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (''FIMSAC'') will hold a public meeting on Monday, July 29, 2019 at 9:30 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On July 1, 2019, the Commission published notice of the Committee meeting (Release No. 34–86253), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include updates and presentations from the FIMSAC subcommittees.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 22, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–15826 Filed 7–22–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86411; File No. SR–CBOE–2019–037]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 12.3 by Extending the Credit Option Margin Pilot Program Through July 20, 2020

July 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 12.3 by extending the Credit Option Margin Pilot Program through July 20, 2020. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[5] The proposal became effective on a pilot basis to run on a parallel track with FINRA Rule 4240 that similarly operates on an interim pilot basis.[6]

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.[7] The Program, however, continues to be substantially similar to the provisions of the FINRA program. Subsequently, the Exchange filed rule changes to extend the program until January 17, 2014, January 16, 2015, January 15, 2016, January 17, 2017, July 18, 2017, July 18, 2018 and July 18, 2019, respectively.[8] The Exchange believes that extending the expiration date of the Program further will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program for an additional year until July 20, 2020.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR–CBOE–2010–106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make Cboe Option's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority (''FINRA'') Rule 4240, *Margin Requirements for Credit Default Swaps.* Cboe Options Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

[6] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR–FINRA–2009–012).

[7] *See* Securities Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR–CBOE–2012–007).

[8] *See* Securities Exchange Act Release Nos. 68539 (December 27, 2012), 78 FR 138 (January 2, 2013) (SR–CBOE–2012–125), 71124 (December 18, 2013), 78 FR 77754 (December 24, 2013) (SR–CBOE–2013–123), 73837 (December 15, 2014), 79 FR 75850 (December 19, 2014) (SR–CBOE–2014–091), 76824 (January 5, 2016), 81 FR 1255 (January 11, 2016) (SR–CBOE–2015–118), 79621 (December 14, 2016) 81 FR 95236 (December 27, 2016) (SR–CBOE–2016–089), 81083 (July 6, 2017) 82 FR 32219 (July 12, 2017) (SR–CBOE–2017–051), and 83672 (July 19, 2018) 83 FR 35305 (July 25, 2018) (SR–CBOE–2018–052).

[9] The Exchange is filing the proposed rule change for immediate effectiveness. The Exchange is

Additionally, the Exchange believes that it is in the public interest to extend the expiration date of the Program because it will continue to allow the Exchange to list Credit Options for trading. As a result, the Exchange will remain competitive with the Over-the-Counter Market with respect to swaps and security-based swaps. In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule change is substantially similar to existing FINRA Rule 4240.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption of the Program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–037 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–CBOE–2019–037. 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

proposing that the implementation date of the proposed rule change will be July 18, 2019. The proposed rule change will expire on July 20, 2020, which is the same date FINRA's corresponding program expires.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, as required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CBOE–2019–037 and should be submitted on or before August 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15672 Filed 7–23–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16045 and #16046; OHIO Disaster Number OH–00061]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Ohio

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Ohio (FEMA–4447–DR), dated 07/17/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, Flooding, and Landslides.

Incident Period: 05/27/2019 through 05/29/2019.

DATES: Issued on 07/17/2019.

Physical Loan Application Deadline Date: 09/16/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 04/17/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/17/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Columbiana, Greene, Mercer, Montgomery

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16045C and for economic injury is 160460.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–15677 Filed 7–23–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16043 and #16044; TEXAS Disaster Number TX–00519]

Presidential Declaration of a Major Disaster for the State of TEXAS

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4454–DR), dated 07/17/2019.

Incident: Severe Storms and Flooding.

Incident Period: 06/24/2019 through 06/25/2019.

DATES: Issued on 07/17/2019.

Physical Loan Application Deadline Date: 09/16/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 04/17/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/17/2019, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cameron, Hidalgo, Willacy.

Contiguous Counties (Economic Injury Loans Only):

Texas: Brooks, Kenedy, Starr.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 160436 and for economic injury is 160440.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–15678 Filed 7–23–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 10820]

30-Day Notice of Proposed Information Collection: National Security Language Initiative for Youth Evaluation

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the

[16] 17 CFR 200.30–3(a)(12).

Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to August 23, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be sent to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, 2200 C St NW, Washington, DC 20037, who may be reached at (202) 632–6193 or *DonahueNR@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* NSLI–Y Evaluation.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Educational and Cultural Affairs (ECA/P/V).
- *Form Number:* No form.
- *Respondents:* NSLI–Y program alumni, their parents, local program coordinators or resident directors, and a small sample of U.S. high school teachers and administrators.
- *Estimated Number of Alumni Survey Respondents:* 5,390.
- *Estimated Number of Alumni Survey Responses:* 1,797.
- *Average Time per Alumni Survey:* 11.3 minutes.
- *Total Estimated Alumni Survey Burden Time:* 338.4 hours.
- *Estimated Number of Parent Survey Respondents:* 10,780.
- *Estimated Number of Parent Survey Responses:* 701.
- *Average Time per Parent Survey:* 8.6 minutes.
- *Total Estimated Parent Survey Burden Time:* 100.5 hours.
- *Estimated Number of Alumni Focus Group Participants:* 135.
- *Average Time per Alumni Focus Group:* 1.5 hours.
- *Total Estimated Alumni Focus Group Burden Time:* 202.5 hours.
- *Estimated Number of Parent Focus Group Participants:* 108.
- *Average Time per Parent Focus Group:* 1.5 hours.
- *Total Estimated Parent Focus Group Burden Time:* 162 hours.
- *Estimated Number of Local Coordinator/Resident Director Key Informant Interviews:* 35.
- *Average Time per Local Coordinator/Resident Director Key Informant:* 60 minutes.
- *Total Estimated Local Coordinator/Resident Director Key Informant Burden Time:* 35 hours.
- *Estimated Number of High School Teacher/Administrator Key Informant Interviews:* 25.
- *Average Time per High School Teacher/Administrator Key Informant:* 35 minutes.
- *Total Estimated High School Teacher/Administrator Key Informant Burden Time:* 14.6 hours.
- *Total Estimated Burden Time:* 853 annual hours.
- *Frequency:* Once.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The National Security Language Initiative for Youth (NSLI–Y) is a scholarship program to enable American students aged 15–18 to study less commonly taught languages (Arabic, Chinese, Hindi, Indonesian, Korean, Persian, Russian, and Turkish) in summer or academic-year long programs in a variety of countries. In addition to increased language proficiency, participants gain understanding of their host country and its culture. This program is funded pursuant to the Mutual Educational and Cultural Exchanges Act of 1961 (22 U.S.C. 2451–2464).

In order to assess the efficacy and impact of NSLI–Y, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to conduct an evaluation of the program, which will include collection of data from program alumni between 2008 and 2017, their parents, a small sample of U.S. high school teachers and administrators, and local program coordinators and resident directors. As the NSLI–Y program has been run for more 10 years, ECA is conducting this evaluation to determine the extent to which the program is achieving its long-term goals. In order to do so, ECA has contracted Dexis Consulting Group to conduct surveys and focus groups with alumni and their parents and in-depth interviews with local program coordinators/resident directors and the sample of U.S. high school teachers and administrators.

Methodology

As baseline information is limited to the participants' language proficiency tests, it is necessary to collect information directly from program alumni to assess the impact of the NSLI–Y experience beyond language proficiency. As one source of information is potentially biased and limited, additional perspectives will be sought from their parents, who in most cases will have observed any changes in their children after program participation. As some information is easily collected via survey, both of these groups will receive online surveys, but a small number will also be invited to participate in focus groups in 6 cities to be selected (based on where the greatest concentrations of alumni currently reside) to explore key issues in greater depth. Local program coordinators/resident directors will also have identified changes in students over the period of their participation, and therefore, we propose to conduct individual interviews with them. Finally, the Department wishes to understand better the challenges for students in applying for and accepting scholarships, particularly related to participants' ability to obtain high school credit for their academic experience overseas. As these individuals' perspectives and state and district regulations may differ and to minimize the burden on these

respondents, individual interviews will be conducted.

Aleisha Woodward,

Deputy Assistant Secretary.

[FR Doc. 2019–15664 Filed 7–23–19; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35068]

Soo Line Railroad Company d/b/a Canadian Pacific Railway—Acquisition and Operation Exemption—BNSF Railway Company

On December 21, 2018, New Century Ag (NCA) filed a petition to reopen this proceeding or, in the alternative, to revoke under 49 U.S.C. 10502 the exemption authorizing Soo Line Railroad Company d/b/a Canadian Pacific Railway (CP) to acquire and operate the property interests of BNSF Railway Company (BNSF) in 35.26 miles of rail lines jointly owned by CP and BNSF and a contiguous 9.96-mile rail line solely owned by BNSF. By decision served on March 19, 2019, a proceeding was instituted under 49 U.S.C. 10502(d).

By decision served on April 22, 2019, the Board, noting that NCA's allegations raise concerns that may implicate other statutory provisions, held the proceeding in abeyance to allow NCA to consider all options for relief.[1] Following that decision, NCA informed the Board that it does not seek to initiate a new proceeding under other statutory provisions. (NCA Letter 2–3, Apr. 26, 2019.)

In light of this submission and the parties' responses regarding their interest in participating in Board-sponsored mediation, the Board will remove this proceeding from abeyance and schedule an oral argument on August 20, 2019, in Washington, DC. The Board expects NCA, CP, and BNSF to be prepared to discuss their respective arguments and evidence and to respond to questions from the Board. Each party will have 20 minutes of argument time. NCA, as petitioner, may reserve part of its time for rebuttal if it so chooses. Details and instructions for participation and attendance at the hearing, including the time and specific location, will be issued in a separate decision.

It is ordered:

1. This proceeding is removed from abeyance.

2. An oral argument will be held in this proceeding, as discussed above.

3. This decision is effective on its service date.

Decided: July 19, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–15730 Filed 7–23–19; 8:45 am]

BILLING CODE 4915–01–P

[1] The parties were also asked to inform the Board if they were interested in participating in Board-sponsored mediation. With respect to mediation, NCA and BNSF state that they are agreeable to Board-sponsored mediation. (*Id.* at 4; BNSF Letter 1, Apr. 26, 2019.) CP states that it is willing to engage with NCA either directly or through the Board's Rail Customer and Public Assistance program, but that it has no interest in reopening negotiations with BNSF. (CP Letter 3, May 15, 2019.) On June 27, 2019, NCA filed a letter objecting to CP's proposed exclusion of BNSF from mediation and requesting that the Board either order three-party mediation or issue a decision on the merits. (NCA Letter 2, June 27, 2019.) The Board has not ordered mediation at this time.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36299]

Soo Line Railroad Company—Petition for Declaratory Order and Preliminary Injunction—Interchange with Canadian National

On April 30, 2019, Soo Line Railroad Company d/b/a Canadian Pacific (CP) filed a petition for declaratory order and preliminary injunction arising from the termination of an interchange agreement with Wisconsin Central Ltd. d/b/a Canadian National (CN) in the Chicago Terminal Area. CP states that the agreement provides for interchange of CN and CP rail cars in Chicago, Ill., at Spaulding, where the two railroads physically connect. (CP Pet. 1.) According to CP, on March 11, 2019, CN gave CP notice that it would be terminating the interchange agreement effective May 10, 2019. (*Id.* at 2.) CP states in its petition that, instead of Spaulding, CN has stated that it will accept rail cars in interchange at CN's Kirk Yard in Gary, Ind. (*Id.*)

CP requested that the Board issue a declaratory order that CN's Kirk Yard is an unreasonable interchange location, and that the Board issue a preliminary injunction ordering CN to ''continue to receive CP cars at Spaulding.'' (*Id.*) In its reply to the preliminary injunction request, CN stated that CP is ''willing'' to deliver CN-bound cars to the Belt Railway Company of Chicago's Clearing Yard, although CP and CN disagree on who should bear the expenses arising from that option. (CN Reply 1–2 (citing CP Pet., Exs. E & G).)

By decision served on May 9, 2019, the Board directed CN and CP to participate in Board-sponsored mediation and noted its expectation that CN and CP would continue to interchange rail cars at Spaulding while they mediated the dispute. During the course of the mediation, the Board received several filings from CN and CP,[1] in addition to comments from members of the public, including citizens and local government entities, regarding rail traffic near the Spaulding interchange.

The Board has been informed that the mediation concluded unsuccessfully. As mediation has concluded and efforts between the parties to resolve the matter have been unsuccessful to date, the Board will hold an oral argument in this case on August 6, 2019, in Washington, DC. The Board directs CN and CP to participate in the oral argument and expects the parties to be prepared to discuss their arguments and evidence and respond to questions from the Board. Notices of intent to participate by other parties of record will be due by July 29, 2019. Further details regarding the oral argument, including the time and specific location, will be issued in a separate decision.

It is ordered:

1. All filings by CN and CP to date are accepted into the record.

2. An oral argument will be held in this proceeding, as discussed above.

3. This decision is effective on the date of service.

Decided: July 19, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–15729 Filed 7–23–19; 8:45 am]

BILLING CODE 4915–01–P

[1] To the extent any of the submissions by CN or CP may be considered replies to replies under 49 CFR 1104.13(c), those submissions will be accepted in the interest of a more complete record.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement for the GA 400 Transit Initiative in Fulton County, Georgia

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Rescind Notice of Intent to prepare an environmental impact statement.

SUMMARY: The FTA in cooperation with the Metropolitan Atlanta Rapid Transit Authority (MARTA) is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an

Environmental Impact Statement (EIS) for the proposed public transportation improvement project in Fulton County, Georgia is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Mitchell, Environmental Protection Specialist, Federal Transit Administration Region IV, 230 Peachtree Street NW, Atlanta, GA 30303, phone 404–865–5643, email *stanley.a.mitchell@dot.gov.*

SUPPLEMENTARY INFORMATION: The FTA, as lead federal agency, and MARTA published a NOI on March 31, 2015 (80 FR 17147) to prepare an EIS for the MARTA GA 400 Transit Initiative project. This project would extend the existing north-south rail Heavy Rail Transit (HRT) line northward from the North Springs MARTA Station to Windward Parkway near the Fulton/Forsyth County border.

Since that time, FTA and MARTA have reevaluated the transit need in the corridor and have determined that a Bus Rapid Transit (BRT) option is more suitable. Based on this change in the transit mode, FTA is rescinding the March 31, 2015 NOI. The environmental impacts of the BRT service along on GA 400 will be evaluated in a yet-to-be-determined document. No changes will be made to the HRT services as described in the March 31, 2015 NOI. Comments and questions concerning the proposed action should be directed to FTA at the address provided above.

Authority: 49 U.S.C. 5323(c); 40 CFR 1501.7.

Yvette G. Taylor,

Regional Administrator, FTA Region IV.

[FR Doc. 2019–15696 Filed 7–23–19; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0149; PDA–40(R)]

Hazardous Materials: The State of Washington Crude Oil by Rail—Vapor Pressure Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public Notice and Invitation to comment.

SUMMARY: Interested parties are invited to comment on an application by the State of North Dakota and the State of Montana for an administrative determination as to whether Federal hazardous material transportation law preempts the State of Washington's rules relating to the volatility of crude oil received in the state.

DATES: Comments received on or before August 23, 2019 and rebuttal comments received on or before September 23, 2019 will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: North Dakota and Montana's application and all comments received may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The application and all comments are available on the U.S. Government *Regulations.gov* website: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2019–0149 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

A copy of each comment must also be sent to (1) Wayne Stenehjem, Attorney General, The State of North Dakota, Office of the Attorney General, 600 East Boulevard Avenue, Department 125, Bismarck, ND 58505–0040, and (2) Tim Fox, Attorney General, The State of Montana, Office of the Attorney General, Justice Building, Third Floor, 215 North Sanders, Helena, MT 59620–1401. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: I certify that copies of this comment have been sent to Mr. Stenehjem and Mr. Fox at the addresses specified in the **Federal Register**.'')

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.regulations.gov.*

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA's home page at *http://phmsa.dot.gov.* From the home page, click on ''Hazardous Materials Safety,'' then on ''Standards & Rulemaking,'' then on ''Preemption Determinations'' located on the right side of the page. A paper copy of the index will be provided at no cost upon request to Mr. Lopez, at the address and telephone number set forth in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel (PHC–10), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone No. 202–366–4400; facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The State of North Dakota and the State of Montana have applied to PHMSA for a determination whether Federal hazardous material transportation law (HMTA), 49 U.S.C. 5101 *et seq.,* preempts the State of Washington's Engrossed Substitute Senate Bill 5579, Crude Oil By Rail—Vapor Pressure. Specifically, North Dakota and Montana allege the law, which purports to regulate the volatility of crude oil transported in Washington state for loading and unloading, amounts to a de facto ban on Bakken [1] crude.

North Dakota and Montana present two main arguments for why they believe Washington's law should be preempted. First, North Dakota and Montana contend that the law's prohibition on the loading or unloading of crude oil with more than 9 psi vapor pressure poses obstacles to the HMTA because compliance with the law can only be accomplished by (1) pretreating the crude oil prior to loading the tank car; (2) selecting an alternate mode of

[1] According to the applicants, North Dakota and Montana are home to the Bakken Shale Formation, a subsurface formation within the Williston Basin. It is one of the top oil-producing regions in the country and one of the largest oil producers in the world.

transportation; or (3) redirecting the crude oil to facilities outside Washington state. Accordingly, North Dakota and Montana say these avenues for complying with the law impose obstacles to accomplishing the purposes of the HMTA. Similarly, they contend that the law's pre-notification requirements are an obstacle. Last, North Dakota and Montana contend that Washington's law is preempted because aspects of the law are not substantively the same as the federal requirements for the classification and handling of this type of hazardous material.

In summary, North Dakota and Montana contend the State of Washington's Engrossed Substitute Senate Bill 5579, Crude Oil By Rail—Vapor Pressure, should be preempted because:

- It is an obstacle to the federal hazardous material transportation legal and regulatory regime; and
- It is not substantively the same as the federal regulations governing the classification and handling of crude oil in transportation.

II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under section 5125(e)—if (1) complying with the non-Federal requirement and the Federal requirement is not possible; or (2) the non-Federal requirement, as applied and enforced, is an obstacle to accomplishing and carrying out the Federal requirement.

These two sentences set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA's predecessor agency, the Research and Special Programs Administration, had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security. The five subject areas include: the designation, description, and classification of hazardous material; the packing, repacking, handling, labeling, marking, and placarding of hazardous material; the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident; and the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).[2]

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found that many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements. And because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable. Therefore, in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.[3]

A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.97(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed

[2] Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f). *See also* 49 CFR 171.1(f) which explains that a ''facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.''

[3] Public Law 101–615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745 (July 5, 1994).)

in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts the State of Washington's rules relating to the volatility of crude oil received in the state. Comments should specifically address the preemption criteria discussed in Part II above.

Issued in Washington, DC, on July 18, 2019.

Paul J. Roberti,

Chief Counsel.

[FR Doc. 2019–15675 Filed 7–23–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–T and 4506–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 4506–T, Request for Transcript of Return and 4506–C, IVES Request for Transcript of Tax Return.

DATES: Written comments should be received on or before September 23, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Laurie Brimmer, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at 202 317 5756, or through the internet, at *Laurie.E.Brimmer@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Transcript of Tax Return and IVES Request for Transcript of Tax Return.

OMB Number: 1545–1872.

Form Number: Form 4506–T and 4506–C.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related products. Form 4506–T is used to request all products except copies of returns. The information provided will be used to search the taxpayers account and provide the requested information and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested. Form 4506–C is used to permit the cleared and vetted Income Verification Express Service (IVES) participants to request tax return information on the behalf of the authorizing taxpayer.

Current Actions: Previously the Form 4506–T (or 4506–TEZ–OMB number 1545–2154) was used by both the Return and Income Verification system (RAIVS) respondents and IVES Income Verification Express Service (IVES) respondents to order a tax transcript. In effort to protect taxpayer information, IRS implemented a policy change for the Form 4506 series to no longer mail tax transcripts to third parties that have not been vetted through the agency and as a result eliminating line 5a from Form 4506–T.

Since the IVES customer base are third party clients that are fully vetted to receive Taxpayer transcripts, and could no longer use Form 4506–T, IRS implemented a separate f4506–C to service this customer base. The new 4506–C will permit the cleared and vetted IVES clients to request tax return information on the behalf of the authorizing taxpayer.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and Federal, state, local, or tribal governments.

Form 4506–T

Estimated Number of Respondents: 263,857.

Estimated Time per Respondent: 46 minutes (.77 hours).

Estimated Total Annual Burden Hours: 203,169.

Form 4506–C

Estimated Number of Respondents: 18,000,000.

Estimated Time per Respondent: 42 minutes (.70 hours).

Estimated Total Annual Burden Hours: 12,600,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–15705 Filed 7–23–19; 8:45 am]

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217, 218, 229, et al.
Locomotive Image and Audio Recording Devices for Passenger Trains; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 218, 229, 240 and 242

[Docket No. FRA–2016–0036]

RIN 2130–AC51

Locomotive Image and Audio Recording Devices for Passenger Trains

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to require the installation of inward- and outward-facing locomotive image recording devices on all lead locomotives in passenger trains, and that these devices record while a lead locomotive is in motion and retain the data in a crashworthy memory module. FRA also proposes to treat locomotive-mounted recording devices on passenger locomotives as ''safety devices'' under existing Federal railroad safety regulations to prohibit tampering with or disabling them. Further, this NPRM would govern the use of passenger locomotive recordings to conduct operational tests to determine passenger railroad operating employees' compliance with applicable railroad rules and Federal regulations. FRA requests comment on the need for and effects of potential, additional safety requirements.

DATES: Written comments on this proposed rule must be received on or before September 23, 2019. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public hearing. However, if prior to August 23, 2019, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments identified by the docket number FRA–2016–0036 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *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, 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; or
- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC51). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brian Roberts, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, RCC–10, Mail Stop 10, Washington, DC 20590 (telephone (202) 493–6056 or 202–493–6052); Gary G. Fairbanks, Staff Director, Motive Power & Equipment Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE, RRS–15, Mail Stop 25, Washington, DC 20590 (telephone (202) 493–6322); or Christian Holt, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE, RRS–15, Mail Stop 25, Washington, DC 20590 (telephone (202) 366–0978).

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I. Executive Summary

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1686 (Dec. 4, 2015) (FAST Act). Section 11411 of the FAST Act, codified in the Federal railroad safety laws at 49 U.S.C. 20168 (the Statute), requires FRA (as the Secretary of Transportation's delegate)

to promulgate regulations requiring each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains. This NPRM proposes to implement the FAST Act requirements regarding such recording devices.

Before the FAST Act was enacted, FRA announced at a May 2015 meeting of the Railroad Safety Advisory Committee (RSAC) it intended to draft an NPRM that would propose the installation of locomotive recording devices in both freight and passenger train locomotives. In 2014, the RSAC had accepted a task from FRA to address National Transportation Safety Board (NTSB) Safety Recommendations R–10–01 & –02 on locomotive-mounted recording devices (RSAC Task No. 14–01). The RSAC established the Recording Devices Working Group (Working Group) to recommend specific actions regarding the installation and use of locomotive-mounted recording devices, such as inward- and outward-facing video and audio recorders.[1] The RSAC did not vote, or reach consensus, on any recommendations to FRA regarding the adoption of regulatory text addressing locomotive-mounted video and audio recording devices.

In light of the FAST Act mandate, relevant NTSB recommendations, the RSAC Working Group's discussions, and recent accidents and other railroad safety violations that FRA has investigated and is investigating, this NPRM proposes to require the installation and use of inward- and outward-facing recording devices in all lead locomotives in passenger trains to improve railroad safety. The NPRM does not propose to require such recording devices in freight locomotives.

FRA is not proposing to require inward- and outward-facing recording devices in freight locomotives for several reasons. Foremost, the FAST Act requires FRA to promulgate regulations requiring only commuter and intercity passenger railroads to install inward- and outward-facing image recording devices in all of their controlling (or ''lead'') locomotives; there is no corresponding statutory mandate for freight railroads to install such devices in their locomotives. In addition, the cost to freight railroads of implementing such a requirement outweighs its potential safety benefits.[2] Furthermore, many freight railroads, including all Class I railroads, are already in the process of voluntarily installing recording devices on their locomotives without a Federal requirement. Finally, recordings from these voluntarily installed systems are already subject to the current requirements for the preservation of accident data found in 49 CFR 229.135(e).

Regardless, FRA will continue to monitor freight railroads' installation efforts of inward- and outward-facing locomotive recording devices and is inviting public comment on whether FRA should require freight railroads to install these devices in some or in all their locomotives now or in the future. In addition, FRA welcomes public comment on the extent to which FRA should apply the proposed requirements in this NPRM to recording devices freight railroads have already installed in their locomotives or will voluntarily install in the future.

FRA proposes that within four years of the date of publication of a final rule, intercity passenger and commuter railroads must install compliant image recording systems on the lead locomotives of all their passenger trains. FRA proposes that beginning one year after publication of a final rule, any recording systems installed on new, remanufactured,[3] or existing passenger train lead locomotives would have to meet the specified requirements. As required by statute, this NPRM proposes that the last twelve hours of data recorded by such devices on passenger train lead locomotives must be stored in a memory module that meets the existing crashworthiness requirements in FRA's locomotive event recorder regulation at 49 CFR part 229. In addition, this NPRM proposes to treat locomotive-mounted recording devices in passenger locomotives as ''safety devices'' under 49 CFR part 218, subpart D, thereby making it a violation of applicable Federal regulations to tamper with or disable those locomotive-mounted recording devices.

FRA notes that the proposed image recording device requirements for passenger train locomotives would supplement FRA's existing locomotive event recorder regulation at 49 CFR part 229. Locomotive event recorders are required on the lead locomotives of trains traveling over 30 mph and already record numerous operational parameters that assist in accident/incident investigation and prevention.

FRA used a cost benefit analysis to evaluate the impact of the proposed rule on passenger locomotive image recording devices. FRA estimated the costs of this proposed rule over a 10-year period using discount rates of 3 and 7 percent. For the 10-year period analyzed, the estimated quantified net costs to the industry total $31,837,918 (present value (PV), 7 percent), or $34,664,317 (PV, 3 percent). The annualized costs for the 10-year period are $4,533,003 (PV, 7 percent) and $4,063,715 (PV, 3 percent). Some safety benefits of this proposed rule could accrue from the collection of accident causation information, which is critical to prevent future accidents. Other, probably larger, safety benefits could accrue from deterring unsafe behaviors that cause railroad accidents (*e.g.,* text messaging while operating a train). Other benefits accrue from beneficial changes in crew behavior not directly related to safety, such as the ability to: (1) Conduct low-cost operational tests that are currently impractical to perform without cameras (*e.g.,* for prohibited use of personal electronic devices), (2) research and improve crew safety and productivity practices, and (3) enhance investigations of potential trespassers and other unauthorized individuals.

In addition to reviewing the NTSB recommendations discussed in this NPRM and how other DOT modes address inward- and outward-facing cameras in vehicles, FRA also conducted a literature review for scholarly papers and other research on the benefits of inward- and outward-facing recording devices, with a primary focus on inward- and outward-facing locomotive cameras. Although FRA found few substantive academic or technical papers on the safety benefits of inward- and outward-facing cameras in locomotives, FRA did identify a relevant report prepared by the Transportation Safety Board of Canada (TSB).[4] According to TSB's report, the benefits of locomotive recording devices include: (1) Help in post-accident investigations; identification of operational and human factors that contribute to accidents; (2) use of camera footage to identify desirable and undesirable behaviors of railroad employees to determine what procedures or employee behaviors could benefit from additional training, system design or equipment changes; and (3) how the cameras could improve train crew and passenger safety by identifying

[1] *https://rsac.fra.dot.gov/tasks.php.*

[2] *See* Regulatory Impact Analysis pg. 17.

[3] *See* 49 CFR 229.5.

[4] *See* Transportation Safety Board of Canada, Railway Safety Issues Investigation Report: Expanding the use of locomotive voice and video recorders in Canada. Report no. R16H0002 (2016). The report has been placed in the docket for this rulemaking and is available at: *http://www.bst-tsb.gc.ca/eng/rapports-reports/rail/etudes-studies/r16h0002/r16h0002.asp.*

potential security risks both inside and outside of the locomotive cab.

While the literature reviewed by FRA identified several qualitative benefits associated with locomotive recording devices, FRA was unable to find in its literature review any sources that specifically help quantify those benefits, and therefore invites comment and the submission of any data or studies that would help FRA quantify the benefits of inward- and outward-facing locomotive recording devices in this rulemaking.

II. Rulemaking Authority and FAST Act Requirements

FRA is publishing this proposed rule as mandated by section 11411 of the FAST Act, codified at 49 U.S.C. 20168 (the Statute), and under the agency's general railroad safety rulemaking authority at 49 U.S.C. 20103. The former Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' The Secretary's responsibility under these statutory provisions, and the balance of the railroad safety laws, is delegated to the Federal Railroad Administrator. 49 CFR 1.89.

The Statute requires FRA (as the Secretary's delegate) to promulgate this proposed regulation for passenger train locomotives. FRA's proposal implementing each statutory requirement is explained in more detail in the section-by-section analysis. However, in general, the Statute requires that by December 4, 2017, FRA must promulgate a regulation requiring each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward- facing image recording devices in all controlling (or ''lead'') locomotive cabs and car operating compartments in passenger trains. For purposes of this NPRM, FRA intends that railroad carriers providing ''intercity rail passenger transportation'' and ''commuter rail passenger transportation'' subject to this rule to be the same as those covered by 49 U.S.C. 24102 (passenger railroads required to install positive train control (PTC) systems under 49 U.S.C. 20157(a)).

Paragraph (b) of the Statute specifies that each required passenger locomotive image recording device shall have: (1) A minimum 12-hour continuous recording capability; (2) crash and fire protections for any in-cab image recordings stored only within a controlling locomotive cab or cab car operating compartment; and (3) recordings accessible for review during an accident or incident investigation. The rule text proposed in § 229.136, below, would establish the criteria for the image recording devices to meet these three specified standards.

Paragraph (c) of the Statute requires FRA to establish a review and approval process to ensure that the three standards described in paragraph (b) are met for image recording devices on passenger train lead locomotives. Proposed § 229.136(g), below, would require passenger railroads to submit information to FRA regarding whether the recording device system installed on a particular locomotive(s) subject to the final rule meets the established criteria. FRA plans to publish a list of any previously approved systems on its internet website for railroads' convenience.

Paragraph (d) establishes what the passenger railroad carriers subject to the Statute may use image recordings for, and permits FRA to establish other appropriate purposes. The rule text FRA presented to the RSAC addressed the items listed in paragraph (d) (verifying that crew actions are in accordance with applicable safety laws and railroad operating rules, assisting accident investigations, and documenting violations of law). FRA has proposed an amended version of the language it presented to the RSAC in proposed § 229.136(f)(3), below, to address this FAST Act provision and specifically include the use of recordings to detect the presence of unauthorized persons in locomotive cabs. FRA is also requesting comment on whether other appropriate safety-related uses exist for locomotive recordings.

Paragraph (e)(1) of the Statute gives FRA discretion to similarly require audio-recording devices be installed on passenger train lead locomotives and to establish corresponding technical details for such devices. FRA has not proposed specific rule text that would require audio recording devices, but in the preamble below requests comment on whether to require audio recording devices on passenger and freight locomotives in a final rule.

Paragraph (e)(2) of the Statute gives FRA discretion to provide an exemption from the inward- and outward-facing image recording device requirements based on alternative technologies or practices that provide for an equivalent or greater safety benefit or that are better suited to the risks of the operation.

Paragraph (f) of the Statute permits passenger railroads to take appropriate action against employees who tamper with audio or image recording devices installed on their locomotives. FRA has proposed in part 218 that such recording devices on passenger trains be treated as ''safety devices'' under the applicable Federal regulation. FRA proposed this during the RSAC process, stating it was changing its position from that conveyed in a May 2010 FRA letter to the Southern California Regional Rail Authority (Metrolink) through the notice and comment process in this rulemaking.[5] In the 2010 letter, FRA indicated that inward-facing cameras were not considered ''safety devices'' under 49 CFR part 218. For the reasons explained in the section-by-section analysis below, FRA has changed its position on this issue based on the Statute and other recent developments. FRA notes that the letter, which FRA has placed in the public docket for this NPRM, is consistent with paragraph (f) of the Statute because it stated railroad disciplinary action might be appropriate at a railroad's discretion if an employee were found to tamper with a locomotive recording device.

Paragraph (g) of the Statute requires each passenger carrier subject to the FAST Act's recording device requirements preserve recordings for one year after the occurrence of a reportable accident or incident. This preservation requirement for passenger locomotive image and audio recordings is being included in § 229.136 for organizational clarity with other requirements for locomotive image and audio recording devices. Specifically, in its 2010 letter to Metrolink, discussed above, FRA explained that locomotive image recordings, like other locomotive event recordings, must already be preserved for one year following an accident under existing § 229.135(e). While this existing requirement includes recordings from freight locomotive recording devices, the proposed preservation requirement in § 229.136, below, would apply only to passenger locomotive recording devices.

Paragraph (h) of the Statute addresses a significant issue discussed during the RSAC process involving the public availability, including disclosure under the Freedom of Information Act (5 U.S.C. 552) (FOIA), of recordings that FRA takes possession of after a railroad accident. Paragraph (h) is similar to the prohibition on public disclosure of locomotive recordings NTSB takes possession of under 49 U.S.C. 1114(d). Paragraph (h) prohibits FRA from disclosing publicly locomotive audio and image recordings or transcripts of oral communications by or among train

[5] *See* NPRM docket; Mark H. Tessler letter to Metrolink, *Locomotive video cameras,* (May 18, 2010).

employees or other operating employees, or between such operating employees and communication center employees, related to an accident or incident FRA is investigating. FRA may make public a transcript or a written depiction of visual information it deems relevant to the accident at the time other factual reports on the accident are released to the public. This statutory provision is discussed in more detail in the preamble sections addressing privacy and locomotive recording-handling below.

Paragraph (i) of the Statute prohibits a railroad subject to this provision from using an in-cab audio or image recording to retaliate against an employee. FRA believes this provision to be a restatement of existing prohibitions in Federal, State, and local laws that prohibit retaliation against railroad employees, and merely establishes that recordings may not be used as a tool to conduct such illegal retaliation. FRA does not believe Congress intended this provision to apply to railroad rules' violations discovered via railroad review of audio and video recordings under a railroad's established procedures. The purpose of this section and the relevant NTSB recommendations addressing this topic are to identify and address safety violations, such as the prohibited use of personal electronic devices while performing safety-critical duties that endanger public safety. Railroads take disciplinary actions for such rules' violations now (in the absence of locomotive recordings) under the existing legal framework and collective bargaining agreements governing railroad employment. Accordingly, FRA understands this section to address illegal retaliation implicated by existing statutes such as the railroad employee whistleblower law at 49 U.S.C. 20109, and which are addressed via grievance process remedies for wrongful discharge under the Railway Labor Act, 45 U.S.C. 151 *et seq.* Paragraph (i) is silent about freight locomotive recordings because by its terms section 11411 only applies to passenger railroads. However, for passenger railroads, FRA has addressed Congress' intent regarding retaliation in the rule text proposed below. The rule would limit the permitted uses of locomotive recordings and proposes to require that operational tests involving review of in-cab locomotive recordings be randomly conducted within limited time frames under an established written railroad procedure that is subject to FRA review.

Finally, paragraph (j) makes clear the Statute does not restrict a train from continuing in operation upon the occurrence of a locomotive recording device failure. Nonetheless, the Statute requires the railroad to repair or replace the recording device as soon as practicable. FRA's proposal in § 229.136, below, is consistent with this provision, and defines ''as soon as practicable'' to mean that the locomotive must be replaced as the lead locomotive no later than after the next calendar day's inspection if the recording device system has not been repaired or replaced.

III. Background

A. Railroad Accidents & NTSB Locomotive Recorder Recommendations

In developing this proposed rule, FRA reviewed relevant railroad accidents as well as related Safety Recommendations NTSB issued to FRA involving audio and image recordings. Based on FRA's analysis of these accidents and related NTSB Recommendations (discussed immediately below), FRA determined that the requirements of this proposed rule would achieve safety benefits in two primary ways. First, the proposed requirements of this NPRM, if adopted, would provide critical post-accident data, which would help FRA (as well as other Federal and state agencies, railroads, labor groups, and other stakeholders) ascertain the cause of accidents for purposes of preventing future accidents. Second, FRA believes requiring inward-facing recording devices on all lead locomotives in passenger trains would be a deterrent against illegal and unsafe practices that can cause accidents.

1. NTSB Safety Recommendation R–97–009

On February 16, 1996, a Maryland Rail Commuter (MARC) passenger train collided with a National Railroad Passenger Corporation (Amtrak) passenger train near Silver Spring, Maryland. Eleven people were killed and 26 people were injured as a result of the accident. The accident occurred when MARC train 286 was delayed in block for a station stop while operating on an ''approach'' signal indication requiring the train to approach the next signal prepared to stop. However, MARC train 286 proceeded after making the station stop as if operating on a ''clear'' signal indication, could not stop for the subsequent ''stop'' signal, and collided with Amtrak train 3 at Georgetown Junction. The NTSB, which is the independent Federal agency charged by Congress with investigating significant transportation accidents, to include railroad accidents, found that the probable cause of the accident was, in part, ''the apparent failure of the [MARC] engineer and the traincrew because of multiple distractions to operate MARC train 286 according to signal indications . . . .'' [6]

As a result of this accident, the NTSB made recommendation R–97–009 to FRA, recommending that FRA amend 49 CFR part 229 to ''require the recording of train crewmembers' voice communications for exclusive use in accident investigations and with appropriate limitations on the public release of such recordings.'' [7] In making the recommendation, NTSB stated that during its investigation, it could not document crew communications regarding signal indications as the train approached the location where the accident occurred and that locomotive event recorders cannot answer questions about a train crew's knowledge or actions during accident investigations. All three operating crew members aboard MARC train 286 were killed in the accident. NTSB pointed to the long history of cockpit voice recorders (CVR) in the aviation industry, as mandated by the FAA in certain commercial aviation operations since 1964.[8] The NTSB explained that the use of CVRs had been useful during aviation accident investigations and were ''an almost necessary tool in documenting the operational decisions or mistakes of the crew that lead up to an accident.'' [9]

NTSB reiterated its recommendation after a January 1999 collision near Bryan, Ohio, involving three Consolidated Rail Corporation (Conrail) freight trains. The accident occurred when westbound Conrail train Mail-9 was traveling 56 mph and struck the rear of a slower moving freight train ahead of it that was also traveling westbound. Both trains derailed, with derailed equipment then striking and derailing a third freight train that was traveling the opposite (eastbound) direction on an adjacent main track.

The NTSB found that the probable cause of that accident was ''the failure of the crew of train Mail-9 [striking train] to comply with restrictive signal indications while operating at or near maximum authorized speed in dense

[6] National Transportation Safety Board, *Collision and Derailment of Maryland Rail Commuter MARC Train 286 and National Railroad Passenger Corporation Amtrak Train 29 Near Silver Spring, Maryland on February 16, 1996.* Railroad Accident Report NTSB/RAR–97/02 (July 3, 1997); available online at *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR9702.pdf.*

[7] National Transportation Safety Board, *Safety Recommendation R–97–009* (Aug. 28, 1997); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R97_9_21.pdf.*

[8] *Supra,* n. 6 at 51.

[9] *Supra,* n. 6 at 52.

fog.'' [10] Both crew members of the striking train in that incident were killed and NTSB concluded that recorded crew communications might have provided valuable clues in reconstructing the accident, which could have ''possibly enabled the carrier, the railroad unions, and the Federal Railroad Administration to make systemic changes to prevent similar accidents from occurring.'' [11] The NTSB report also cited new statutory authority, codified at 49 U.S.C. 1114(d), that included provisions for the NTSB to protect such recordings from public disclosure during accident investigations.

FRA declined to implement NTSB Recommendation R–97–009, which only recommended the installation of audio recorders, but not image recording devices. At that time, FRA agreed that crew audio recordings could be beneficial for some investigations, but conveyed its concerns to NTSB regarding implementation of the recommendation, which included the significant costs of such a requirement, the existing availability of locomotive event recorder data, competing regulatory priorities, and concern regarding the privacy and comfort of train crews.[12] FRA stated the recommendation might warrant re-examination in the future, but requested it be placed in the status of ''Closed—Reconsidered.'' NTSB ultimately classified the recommendation as ''Closed—Unacceptable Action'' in 2004.[13]

2. NTSB Safety Recommendation R–07–003

Several years later, on July 10, 2005, two Canadian National Railway Company (CN) freight trains collided near Anding, Mississippi. The accident occurred in single-main track territory after the crew of a northbound CN train passed a stop signal without stopping and collided head-on with a southbound CN train. The crews of both trains were killed in the accident. The NTSB's probable cause finding stated the northbound train crew's ''attention to the signals was most likely reduced by fatigue; however, due to the lack of a locomotive cab voice recorder or the availability of other supporting evidence, other factors cannot be ruled out.'' [14] The NTSB concluded that if a locomotive voice recorder had been installed on the controlling locomotive of the northbound train and survived the collision and resulting fire, the recordings would ''yield a better understanding of the cause of the accident and of the ways it might have been prevented.'' [15] As a result, NTSB issued Safety Recommendation R–07–003, recommending FRA require railroads to install on locomotives a crash and fire protected voice recorder, or combined voice and video recorder, with the recordings only to be used for accident investigations.[16] The NTSB referenced several other accidents [17] in making this recommendation in which it believed locomotive video recordings would have been useful in investigating the accidents.

FRA responded to this NTSB recommendation, stating FRA had broached the subject of the NTSB's recommendation regarding voice recorders on two occasions with the RSAC in 2007 without resolution, and planned to discuss the recommendation again at a future RSAC meeting.[18] FRA's response also noted technical concerns with implementing the NTSB recommendation, and discussed its previously-raised privacy and cost-related concerns.[19] A later NTSB response noted FRA had indeed discussed the recommendation at a November 2007 RSAC Locomotive Working Group meeting, and classified FRA's response to the recommendation as ''Open—Acceptable Response.'' However, Recommendation R–07–003 was ultimately classified by NTSB as ''Closed—Unacceptable Action/Superseded,'' on February 23, 2010, after adoption of the report addressing the September 12, 2008, Metrolink accident in Chatsworth, California, discussed directly below.[20]

3. NTSB Safety Recommendations R–10–01 & –02

i. 2008 Metrolink Accident at Chatsworth, California

On September 12, 2008, in Chatsworth, California, a collision occurred between a Metrolink passenger train and a Union Pacific Railroad Company (UP) freight train,[21] after the locomotive engineer operating the Metrolink passenger train failed to stop his train for a stop signal. As a result of the accident, 25 persons on the Metrolink train were killed and 102 injured passengers were transported to the hospital. Property damage was estimated to be more than $12 million. The NTSB found the probable cause of the accident was the Metrolink locomotive engineer's distraction due to the use of a personal cell phone to send text messages resulting in a failure to comply with the signal indication.[22]

Shortly after the Metrolink accident, the Rail Safety Improvement Act of 2008 [23] (RSIA) was enacted and mandated, among other items, that railroads install PTC systems. Also after the accident, FRA issued its Emergency Order No. 26 (E.O. 26). 73 FR 58702 (Oct. 7, 2008). E.O. 26 prohibited railroad operating employees (typically train crew members such as locomotive engineers and conductors) performing safety-related duties from using or turning on electronic devices such as personal cell phones. The requirements in E.O. 26 were codified in amended form at 49 CFR part 220, subpart C, in an FRA final rule published on September 27, 2010, which took effect on March 28, 2011. 75 FR 59580. Among other requirements in the final rule, railroad operating employees are required to receive training on the

[10] National Transportation Safety Board, *Collision Involving Three Consolidated Rail Corporation Freight Trains Operating in Fog on a Double Main Track Near Bryan, Ohio January 17, 1999.* Railroad Accident Report NTSB/RAR–01/01 (May 9, 2001); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0101.pdf.*

[11] *Id.* at 47.

[12] National Transportation Safety Board, *Safety Recommendation History for Safety Recommendation R–97–009:* Available online at: *http://www.ntsb.gov/investigations/data/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-97-009.*

[13] *Id.*

[14] National Transportation Safety Board, *Collision of Two CN Freight Trains Anding, Mississippi July 10, 2005,* Railroad Accident Report NTSB/RAR–07/01 (Mar. 20, 2007); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0701.pdf.*

[15] *Id.*

[16] National Transportation Safety Board, *Safety Recommendation R–07–003* (Apr. 25, 2007); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R07_1_3.pdf.*

[17] *See, e.g.,* National Transportation Safety Board, *Collision Between Two BNSF Railway Company Freight Trains Near Gunter, Texas, May 19, 2004,* Railroad Accident Report NTSB/RAR–06/02 (June 13, 2006); National Transportation Safety Board, *Collision of Union Pacific Railroad Train MHOTU–23 With BNSF Railway Company Train MEAP–TUL–126–D With Subsequent Derailment and Hazardous Materials Release, Macdona, Texas, June 28, 2004,* Railroad Accident Report NTSB/RAR–06/03 (July 7, 2006); National Transportation Safety Board, *Collision of Two Union Pacific Railroad Freight Trains, Texarkana, Arkansas, October 15, 2005,* Railroad Accident Brief NTSB/RAB–06/04 (Oct. 17, 2006).

[18] National Transportation Safety Board, *Safety Recommendation History for Safety Recommendation R–07–003:* Available online at: *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-07-003.*

[19] *Id.*

[20] *Id.*

[21] *See* National Transportation Safety Board, *Collision of Metrolink Train 111 With Union Pacific Train LOF65–12 Chatsworth, California September 12, 2008,* Accident Report NTSB/RAR–10/01 (Jan. 21, 2010); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1001.pdf.*

[22] *Id.* at 66.

[23] Public Law 110–432, Division A, 122 Stat. 4848 (Oct. 16, 2008).

regulation's requirements governing the use of electronic devices while on duty and are also required to be tested by railroad supervisors to determine the employees' compliance with such requirements. 49 CFR 220.313–220.315.

The NTSB's report on the Chatsworth accident resulted in two Safety Recommendations, R–10–01 and R–10–02.[24] Safety Recommendation R–10–01 superseded Safety Recommendation R–07–003, and recommended that FRA:

> Require the installation, in all controlling locomotive cabs and cab car operating compartments, of crash- and fire-protected inward- and outward-facing audio and image recorders capable of providing recordings to verify that train crew actions are in accordance with rules and procedures that are essential to safety as well as train operating conditions. The devices should have a minimum 12-hour continuous recording capability with recordings that are easily accessible for review, with appropriate limitations on public release, for the investigation of accidents or for use by management in carrying out efficiency testing and systemwide performance monitoring programs.

In addition, Safety Recommendation R–10–02 recommended that FRA:

> Require that railroads regularly review and use in-cab audio and image recordings (with appropriate limitations on public release), in conjunction with other performance data, to verify that train crew actions are in accordance with rules and procedures that are essential to safety.

The NTSB's recommendations in response to the Chatsworth accident differed from its previous recommendations regarding locomotive recording devices. FRA believes the prior recommendations were primarily made intending that locomotive recordings would be used as a post-accident investigation tool with the goal of gaining insight into accident causes to appropriately direct safety recommendations to prevent similar accidents from occurring. Recommendations R–10–01 and R–10–02 shared those same goals, but also recommended FRA require regular railroad review of recordings be part of a railroad's operational (efficiency) testing program as a proactive accident prevention tool to gauge employee compliance with applicable rules. Under existing 49 CFR 217.9, railroads are required to have an operational testing program to gauge employee compliance with relevant operating rules, timetables, and special instructions. Under the NTSB's recommendations, FRA would also require railroads to review locomotive image and audio recordings to conduct such operational tests.

In issuing these recommendations, the NTSB's report on the Chatsworth accident explained that the engineer on the Metrolink train who caused the accident knowingly violated railroad rules regarding the use of personal electronic devices while operating his train.[25] The NTSB explained that in the relative privacy of the locomotive cab, the locomotive engineer of the Metrolink train (as is the case with most train operations in this country) could use his personal cell phone without any possibility of being caught, except when a railroad manager might physically be in or near the cab of the locomotive.[26] However, NTSB posited that if the engineer had known he was being recorded, and railroad supervisors would regularly review the recordings, such rules' violations would have been deterred.[27]

ii. 2015 Amtrak Accident at Philadelphia, Pennsylvania

On Tuesday, May 12, 2015, Amtrak passenger train 188 (Train 188) was traveling from Washington, DC, to New York City. Aboard the train were five crew members and approximately 238 passengers. Shortly after 9:20 p.m., the train derailed while traveling through a curve in the track at Frankford Junction in Philadelphia, Pennsylvania. As a result of the accident, eight persons were killed and a significant number of persons were seriously injured. The accident was investigated by NTSB, which took the lead role conducting the investigation of this accident under its legal authority. 49 U.S.C. 1101 *et seq.;* 49 CFR 831.2(b). As is customary, FRA participated in the NTSB's investigation and also investigated the accident under its own statutory authority.

Both NTSB's [28] and FRA's [29] accident investigations concluded that excessive train speed was the cause of the accident. As Train 188 approached the curve from the west, it traveled over a straightaway with a maximum authorized passenger train speed of 80 mph. The maximum authorized passenger train speed for the curve was 50 mph. NTSB determined the train was traveling approximately 106 mph within the curve's 50-mph speed restriction, exceeding the maximum authorized speed on the straightaway by 26 mph and on the curve by 56 mph.[30] NTSB has also indicated the locomotive engineer operating the train made an emergency application of Train 188's air brake system, and the train slowed to approximately 102 mph before derailing in the curve.

On July 8, 2015, NTSB sent a letter to FRA reiterating NTSB recommendations R–10–01 & –02.[31] NTSB's letter explained the engineer of Amtrak 188 stated he could not recall the events leading up to the derailment, and that investigators have been unable to determine information about the engineer's behavior in the moments leading up to the accident.[32] The letter indicated NTSB believes inward-facing locomotive recorders could have provided valuable information to help determine the cause of the accident. In sum, given that information on the actions of the engineer before the accident was lacking, there are potentially critical pieces of information missing about the cause of this accident that resulted in the deaths of eight people. After this accident occurred, Amtrak equipped its ACS–64 locomotives on the Northeast Corridor with inward-facing cameras.

iii. Other Railroad Accidents

The NTSB reiterated Safety Recommendations R–10–01 & –02 in response to other railroad accidents at Red Oak, Iowa; [33] Two Harbors,

[24] National Transportation Safety Board, *Safety Recommendations R–10–01 and R–10–02* (Feb. 23, 2010); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-10-001-002.pdf.*

[25] *Supra,* n. 21 at 55.

[26] *Id.* at 57.

[27] *Id.* at 58.

[28] National Transportation Safety Board, *Derailment of Amtrak Passenger Train 188, Philadelphia, Pennsylvania, May 12, 2015.* NTSB Accident Report NTSB/RAR–16/02 (May 17, 2016); available online at: *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1602.pdf.*

[29] Federal Railroad Administration, *Accident Investigation Report HQ–2015–1052, Amtrak (ATK), Philadelphia, PA, May 12, 2015;* available online at: *https://www.fra.dot.gov/eLib/details/L18424#p1_z50_gD_lAC.*

[30] FRA regulations provide, in part, that it is unlawful to ''[o]perate a train or locomotive at a speed which exceeds the maximum authorized limit by at least 10 miles per hour.'' 49 CFR 240.305(a)(2).

[31] National Transportation Safety Board, *Safety Recommendation History for Safety Recommendation R–10–001:* Available online at: *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-10-001.* NTSB also sent a letter regarding locomotive recorder recommendations to Amtrak.

[32] However, the NTSB's analysis of the engineer's phone records does not indicate that any calls, texts, or data usage occurred during the time the engineer was operating the train. National Transportation Safety Board, *Second Update on its Investigation into the Amtrak Derailment in Philadelphia* (June 10, 2015); available online at: *http://www.ntsb.gov/news/press-releases/Pages/PR20150610.aspx.*

[33] National Transportation Safety Board, *Collision of BNSF Coal Train With the Rear End of Standing BNSF Maintenance-of-Way Equipment Train, Red Oak, Iowa April 17, 2011,* NTSB Accident Report NTSB/RAR–12/02 (Apr. 24, 2012); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1202.pdf.*

Minnesota; [34] Chafee, Missouri; [35] and Goodwell, Oklahoma,[36] respectively. The NTSB has also made similar recommendations to railroads regarding the installation and use of locomotive image and audio recording devices (*see, e.g.,* NTSB Safety Recommendations R–14–08 & –09 [37] to the Metro-North Railroad after the December 2013 accident near Spuyten Duyvil Station in Bronx, New York, in which four Metro-North passengers were killed). These accidents all appear to involve human factor causes, but absent locomotive recordings there is a lack of information regarding the crew actions leading up the accidents.

For example, in the 2011 Red Oak, Iowa, accident, a BNSF Railway Company (BNSF) freight train crew failed to operate their train at restricted speed as required by signal indication, and collided with the rear end of a standing train. Both crew members of the striking train were killed. The NTSB's probable cause determination indicated the cause of the accident was fatigue-related.[38] However, the NTSB noted that without visual evidence of the crewmembers' actions while operating the striking train, valuable information about their performance was not available to accident investigators (a forward-facing video recording from the striking train did not survive the collision and subsequent fire).[39] The NTSB's report stated that a video recording's value in preventing future accidents ''cannot be overstated,'' as installation of such cameras could assist in monitoring compliance with railroads' rules and identifying fatigued locomotive engineers, such that intervention might happen before an accident occurs.[40]

The NTSB similarly discussed inward-facing cameras in its report on the 2012 Goodwell, Oklahoma accident, which occurred when a UP crew failed to comply with wayside signal indications and were killed in a subsequent collision with another freight train.[41] The NTSB indicated that causal factors included the locomotive engineer's apparent vision problems and the conductor's disengagement from his duties.[42] However, NTSB stated that an inward-facing locomotive video recording could have ''shed light on the activities of the [crew] leading up to the collision and why the crew did not respond to wayside signals.'' [43]

FRA has similarly identified the value of inward-facing image recordings for other recent accidents not listed above that might provide the only means of conclusively determining what caused or contributed to an accident, and, more importantly, to develop necessary corrective actions to prevent similar train accidents from occurring. For example, a 2013 accident near Amarillo, Texas,[44] and a 2011 accident near Mineral Springs, North Carolina,[45] both occurred after train crews qualified on the physical characteristics of the territory operated their trains significant distances past dark signals without taking any action to slow or stop their trains. In fact, the striking train in the Mineral Springs accident increased train speed from 31 mph to 48 mph after passing the dark signal. The crewmembers in the Mineral Springs accident were killed in the collision, and the crewmembers in the Amarillo accident were, in FRA's view, unable to definitively articulate reasons why they did not operate their train in compliance with applicable railroad rules. The NTSB found the probable cause of both accidents involved the crews' failure to comply with applicable rules governing train speeds upon encountering dark signals. Inward-facing image recordings would have provided visual information about crew actions and performance leading up to these accidents, enabling railroads and investigators to accurately determine the root cause of the accidents. Without such recordings, regulatory and industry efforts to learn about and ultimately prevent such incidents are inhibited.

The NTSB's reiteration of Safety Recommendations R–10–01 & –02 in response to the 2010 Two Harbors, Minnesota, accident was related to the prohibited use of personal electronic devices by train crew members. In that accident, a CN train crew failed to properly comply with an after-arrival mandatory directive and struck another freight train traveling the opposite direction on single main track. The NTSB's investigation indicated that four of the five crewmembers on the two trains involved in the accident had used their personal cell phones while on duty on the date of the accident contrary to applicable railroad rules and FRA's E.O. 26 discussed above.[46] The NTSB concluded the use of cell phones by crewmembers on both trains involved in the accident was a distraction to the safe operation of the trains,[47] and cited a list of past rail transportation accidents it had investigated where personal electronic device use by train crews was a causal factor.

Those accidents include the May 2004 accident near Gunter, Texas (cited above) where there was significant personal cell phone usage by crew members of both trains involved in the accident while the trains were being operated (accident resulting in the death of one train crewmember).[48] They also include a May 2002 accident involving two BNSF freight trains near Clarendon, Texas,[49] resulting in critical injuries to the crew of a coal train where the probable cause of the accident involved the locomotive engineer's use of a personal cell phone during a safety-critical time period. Finally, the report cited a May 2009 accident involving two Massachusetts Bay Transportation Authority light rail passenger trains (not subject to FRA's jurisdiction) in Boston, Massachusetts, stemming from the train operator's use of a phone to send text messages resulting in injuries to 68 persons.[50]

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[34] National Transportation Safety Board, *Collision of Two Canadian National Railway Freight Trains near Two Harbors, Minnesota, September 30, 2010.* NTSB Accident Report NTSB/RAR–13/01/SUM (Feb. 12, 2013); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1301.pdf.*

[35] National Transportation Safety Board, *Collision of Union Pacific Railroad Freight Train with BNSF Railway Freight Train Near Chaffee, Missouri, May 25, 2013.* NTSB Accident Report NTSB/RAR–14/02 (Nov. 17, 2014); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1402.pdf.*

[36] National Transportation Safety Board, *Head-On Collision of Two Union Pacific Railroad Freight Trains Near Goodwell, Oklahoma, June 24, 2012.* NTSB Accident Report NTSB/RAR–13/02 (June 18, 2013); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1302.pdf.*

[37] National Transportation Safety Board, *Safety Recommendations R–14–07 & R–14–08* (Feb. 18, 2014); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-14-007-009.pdf.*

[38] *Supra,* n. 33 at 72.

[39] *Id.* at 67.

[40] *Id.* at 66.

[41] *Supra,* n. 36 at pp. 34–37.

[42] *Id.* at 44–45.

[43] *Id.* at. 35.

[44] National Transportation Safety Board, *Collision Involving Three BNSF Railway Freight Trains near Amarillo, Texas, September 25, 2013.* NTSB Accident Report NTSB/RAR–15/02 (June 25, 2015); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1502.pdf.*

[45] National Transportation Safety Board, *Railroad Accident Brief NTSB/RAB-13-01* (Jan. 29, 2013); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1301.pdf.*

[46] *Supra,* n. 34 at 20.

[47] *Id.*

[48] *Supra,* n. 17 at p. 39.

[49] National Transportation Safety Board, *Collision of Two Burlington Northern Santa Fe Freight Trains Near Clarendon,Texas May 28, 2002,* Railroad Accident Report NTSB/RAR–03/01 (June 3, 2003); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0301.pdf.*

[50] National Transportation Safety Board, *Collision of Two Massachusetts Bay Transportation Authority Light Rail Passenger Trains, Boston, Massachusetts, May 8, 2009,* Railroad Accident Brief NTSB/RAB–11/06 (Apr. 13, 2011); available online at: *http://www.ntsb.gov/investigations/AccidentReports/*

The NTSB's discussion in the Two Harbors report about the train crews' prohibited personal cell phone use was in the context of the value of locomotive recording devices and other technologies as a tool to deter the unsafe act of the use of personal electronic devices by train crews.[51] The NTSB indicated that additional measures were necessary (such as recording devices and cell phone detectors) to combat what it described as a ''pervasive safety hazard in the rail industry; that is, the unauthorized use of [personal electronic devices (PEDs)] by on-duty crewmembers is too difficult to prevent by rules, policies, and punitive consequences.'' [52]

In addition to the train accidents described above that involved the unauthorized use of personal electronic devices, FRA has investigated several other railroad accidents or violations of Federal railroad safety regulations related to the unauthorized use of personal electronic devices by on-duty railroad employees. These incidents primarily involve the use of personal cell phones.

Despite Federal prohibitions on the use of personal electronic devices that have been in place for many years and required training and testing for all railroad operating employees under §§ 220.313–220.315, railroad incidents involving the prohibited use of personal electronic devices that endanger the lives of the public and railroad employees continue to occur. Recently, FRA investigated a troubling incident where a passenger railroad showed FRA a video recording of one of its locomotive engineers who appeared to be using his personal cell phone while operating a passenger train occupied by over 400 passengers. The results of an investigatory subpoena indicate the engineer appeared to routinely use his personal cell phone in violation of the prohibitions in 49 CFR part 220 while operating passenger trains.

FRA is currently investigating other incidents where personal electronic device use and train crew distraction may be at issue. FRA will take enforcement action, if appropriate, to address violations of Federal regulations governing the use of personal electronic devices during safety-critical periods of time. However, FRA believes the proactive use of locomotive recordings to perform operational tests (*i.e.,* to monitor compliance with Federal regulations and railroad rules prohibiting the use of personal electronic devices) and investigate incidents or complaints of noncompliance of which railroads become aware, will discourage the occurrence of these safety violations. Railroad operating employees often perform a significant portion of their duties in the confines of locomotives and/or rail cars or in remote locations. As noted by NTSB, these locations are often not in the physical vicinity of, or in locations easily observed by, railroad supervisors. As such, compliance with Federal regulations and railroad rules governing the use of electronic devices is difficult to determine and is often based on an honor system. Inward-facing video recordings provide railroad supervisors and safety investigators evidence to determine operating employee compliance with FRA and railroad prohibitions on the use of distracting personal electronic devices while operating trains and performing other safety-sensitive duties. FRA is aware that railroads that have installed in-cab cameras have detected instances of prohibited use of personal electronic device use by operating crew members.

B. FRA Responses to NTSB Recommendations R–10–01 & –02 & Current Position

As discussed above, after the NTSB's initial locomotive crewmembers' voice recorder recommendation in response to the 1996 Silver Spring, Maryland accident, FRA declined to require such devices, noting the significant costs of such a requirement, the existing availability of locomotive event recorder data, competing regulatory priorities, and concern regarding the privacy and comfort of train crews. Nonetheless, FRA's initial responses to the most recent NTSB Safety Recommendations R–10–01 & -02 on voice and image recorders generally supported the safety rationale behind the recommendations.[53] In its responses, FRA agreed with the NTSB that these locomotive recording devices could aid in accident investigations and play a constructive role in risk reduction efforts supported by both employee representatives and rail carrier management. However, FRA expressed concern to the NTSB that the use of voice and image recordings for disciplinary purposes could ''erode morale and offer manifold opportunities for selective enforcement and possible retaliation against employees for reasons having nothing to do with safety.'' [54] FRA also wished to avoid the potential for unwarranted publication of private conversations on the locomotive (that might take place during times when the crew is not actively performing safety-critical duties), and to guard against further erosion of rail labor and management relationships.

Rather than implementing the locomotive recorder recommendations at that time, which FRA believed could have a negative influence on such relationships, FRA instead sought to affirm the NTSB's accident investigation and safety recommendations through other means. Among numerous on-going railroad safety improvement efforts, FRA formed an RSAC Electronic Device Distraction Working Group to develop strategies aimed at curbing the distracting use of electronic devices by railroad employees and conducted industry outreach in support of that effort.[55] The Electronic Device Distraction Working Group included railroad industry, labor, and Federal government representatives. FRA also engaged in active efforts to understand critical safety errors through its Confidential Close Call Reporting System (C3RS) by undertaking pilot projects with several railroads. The C3RS program is meant to bring safety problems to the attention of railroads and FRA before accidents occur.

However, in recent years, FRA has become increasingly concerned by human-factor caused railroad accidents, like those described above, where there is a lack of information to conclusively determine what caused or contributed to an accident that could help FRA determine necessary corrective actions before similar train accidents occur. FRA also has increasing concern because, even after Federal and industry efforts to prohibit on-duty operating employees' use of distracting electronic devices following the Chatsworth accident (where a locomotive engineer who was text messaging caused the deaths of 24 railroad passengers and himself), railroad accidents and safety violations involving such devices continue to occur. In addition, the NTSB has stated the use of such devices in the railroad industry seems to be pervasive.[56]

FRA has concluded the use of inward-facing cameras to combat these safety violations that endanger public safety is warranted, and the need to address this

Reports/RAB1106.pdf. Though not subject to FRA's jurisdiction, this accident was notable in that it was caused by a train operator's failure to respond to signal indication because he was text messaging on a personal electronic device.

[51] *Supra,* n. 34 at 23–24.

[52] *Id.* at 24.

[53] National Transportation Safety Board, *Safety Recommendation History for Safety Recommendation R–10–001:* available online at: *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-10-001.*

[54] *Id.*

[55] *https://www.fra.dot.gov/Page/P0565.*

[56] *Supra,* n. 34 at 24.

continuing safety risk outweighs any crew concerns regarding personal privacy while they operate trains or perform other safety-critical functions in the cab of a railroad's locomotive. FRA believes the proactive use of locomotive recordings will be the most valuable tool available to railroads to deter and detect the prohibited use of personal electronic devices, which can lead to reportable accidents. The detection of such safety violations is difficult due to the nature of train operations, as discussed above. Inward-facing image recordings will also more easily provide exculpatory evidence for train crewmembers in post-accident investigations regarding whether the distracting use of an electronic device or other rules violations were a causal factor. Therefore, consistent with the FAST Act, FRA is proposing in this NPRM that inward- and outward-facing recording devices be installed in the lead locomotives of all intercity passenger and commuter trains.

In December 2013, FRA indicated publicly that it would engage the RSAC in 2014 to initiate a rulemaking on the subject of locomotive voice and image recording devices, as discussed below, and announced in May 2015 that it would publish an NPRM addressing the topic. FRA has informed NTSB of its progress in addressing recommendations R–10–01 & –02, the referral to the RSAC for consideration, and this rulemaking proceeding. As of 2015, NTSB classified the recommendations as ''Open-Acceptable Response'' pending the timely outcome of this rulemaking.

C. Current Use of Recording Devices To Improve Safety & Security in Rail and Other Modes of Transportation

Aviation

The use of recording devices to record operator actions in the transportation industry is not new. Most notably, in 1964, the then Federal Aviation Agency (now the DOT's FAA) published a final rule requiring CVRs be installed on aircraft involved in certain commercial aviation operations.[57] These recorders are still required by FAA regulation and are required to record at least the last two hours of voice communication made by the flight crew, including both the internal cockpit discussions and any radio or intercom communications. *See, e.g.,* 14 CFR 25.1457 and 121.359. The CVR (and also the flight data recorder, which is similar to a locomotive's event recorder in that it records a voluminous number of operational parameters of the aircraft) must also be crash, fire, and water resistant per the requirements in FAA's Technical Standard Order No. 123c.[58] During the RSAC Working Group meetings discussed further below, representatives of both the FAA and a pilot's labor organization gave presentations regarding the history and use of CVRs in the aviation industry.

The NTSB, which has primary legal responsibility to investigate all civil aviation accidents in this country, and FAA have both indicated that the use of CVRs in accident investigations is an indispensable tool to determine the cause of aviation accidents and prevent future similar accidents from occurring. Transcripts of cockpit voice recordings are typically included in NTSB's aviation accident reports, and shed light on operational discussions and decisions of the flight crew before an aviation accident.

When a domestic accident occurs, the NTSB secures the CVR and later organizes a group to review the audio recordings.[59] That group typically includes representative of the FAA, the pilot's labor organization, and at least one pilot typed or current in the accident aircraft model.[60] The group may also typically include other individuals familiar with the individual crew member's voices, those familiar with the airline's procedures, and a representative of the aircraft manufacturer and owner/operator.[61] Federal law prohibits NTSB from releasing cockpit voice recordings it obtains during aviation accident investigations. 49 U.S.C. 1114(c). However, the Board may make public written transcripts of the recordings, and often does so in its aviation accident reports. Federal law in 49 U.S.C. 1154 also contains restrictions on the use of discovery in judicial proceedings to obtain cockpit voice recordings the NTSB has not yet made public.

FAA significantly updated its cockpit voice recorder regulations in a 2008 final rule.[62] The 2008 rulemaking increased the duration of time CVRs are required to record a crew's voice communications from 30 minutes to the current two hours, and amended certain technical requirements governing cockpit voice (and flight data) recorders to improve the quality of recordings and ensure CVRs and flight data recorders retain power. The FAA indicated such changes in accordance with NTSB recommendations were necessary because the limited duration of cockpit voice recordings and loss of power to both CVRs and flight recorders had arisen in the investigation of certain high profile commercial aviation accidents in the last 20 years that are discussed in that rulemaking's NPRM (70 FR 9752–9754, Feb. 28, 2005) (*e.g.,* the CVR for Alaska Airlines flight 261 that crashed and killed 88 persons on January 31, 2000, recorded only 31 minutes of flight crew member conversations, at the beginning of which the crew had already begun discussing an existing mechanical problem with the aircraft).[63]

While the FAA has long required CVRs and flight data recorders, NTSB has also recommended that FAA require the installation of image recording devices in the cockpit of certain commercial aviation aircraft. The most recent NTSB Safety Recommendations on that topic are recommendations A–15–7 & –8 to FAA,[64] recommending that aircraft operated under 14 CFR parts 121 or 135 that are required to be equipped with a cockpit voice recorder and a flight data recorder also be retro-fitted or equipped with a crash-protected cockpit image recording system. The NTSB's rationale for such recommendation is similar to that in its recommendations R–10–01 & –02 to FRA discussed above—that image recordings would provide critical information about crew actions and cockpit environment (and potentially including aircraft instrument panel indications and switch positions) before accidents, enhancing the accident investigation process and the identification of safety issues. The FAA has issued a Technical Standard Order (TSO–C176(a), effective Dec. 19, 2013)) governing the minimum performance standards for cockpit image recorder equipment that is manufactured; however, the FAA does not require image recorders in airplane cockpits.[65]

Commercial Motor Vehicle/Bus/Transit

As with the increasing use of cameras in society in general, the use of

[57] 29 FR 8401 (July 3, 1964).

[58] FAA TSC–C123c, *Cockpit Voice Recorder Equipment* (Dec. 19, 2013); available online at: *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgTSO.nsf/0/c464478183dcbdc686257c450067e591/$FILE/TSO-123c.pdf.*

[59] *http://www.ntsb.gov/investigations/process/Documents/CVR_Handbook.pdf.*

[60] National Transportation Safety Board, *Cockpit Voice Recorder Handbook for Aviation Accident Investigations* (2014); available online at: *http://www.ntsb.gov/investigations/process/Documents/CVR_Handbook.pdf.*

[61] *Id.*

[62] 73 FR 12542 (Mar. 7, 2008).

[63] *Id.*

[64] National Transportation Safety Board, *Safety Recommendations A–15–7 & 15–8* (Jan. 22, 2015); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/a-15-001-008.pdf.*

[65] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgTSO.nsf/0/cb1b17b6950894bf86257c45006dcaea/$FILE/TSO-C176a.pdf.*

recording devices in the cabs of truck-tractors, motor coaches, and school and transit buses is increasing. In-cab cameras (both forward- and driver-facing) are being used by motor carriers throughout the trucking and motor coach industries.[66] For example, Swift Transportation Company, one of the largest motor carriers in the United States, announced in April 2015 that it would be equipping over 6,000 of its trucks with Lytx DriveCam systems, which include forward- and driver-facing cameras.[67] In addition, the FMCSA has issued exemptions from its regulations to motor carriers to allow carriers to install in-cab cameras on a truck's windshield. *See, e.g.,* 80 FR 14231–32, (Mar. 18, 2015); 80 FR 17818 (Apr. 2, 2015). In issuing these exemptions, FMCSA has stated it ''believes the use of video event recorders by fleets to deter unsafe driving behavior is likely to improve the overall level of safety to the motoring public.'' 80 FR at 142332. FMCSA has stated that motor carriers subject to the exemptions may use the video event recorders to increase safety through: ''(1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior for CMVs in passenger service; and (3) enhanced collision review and analysis.'' *Id.*

FMCSA also granted exemptions to motor carriers to support research on behalf of FMCSA to evaluate camera systems and to allow for data collection. 77 FR 71028 (Nov. 28, 2012). During RSAC's October 2014 meeting, the Association of American Railroads (AAR) presented copies of an FMCSA report published in June 2010 to the Working Group regarding a study conducted by the Virginia Tech Transportation Institute (VTTI) to evaluate the use of a driving behavior management system (including driver- and forward-facing image recorders and accelerometers) to improve commercial motor vehicle safety.[68] The report stated the study showed a significant reduction in ''safety-related events'' such as collisions, near-collisions, risky driving behaviors, and cell phone use, when trucks were equipped with monitoring systems and accompanied by supervisor review of events and a driver feedback program. A more recent VTTI study modeled the potential reduction in fatal and injury crashes involving large trucks and buses in this country if a particular event-based video system and driver behavior modification system were used.[69] The report stated an on-board monitoring system involving cameras was used and suggested the use of this system to improve safe driving behavior could prevent 727 fatal commercial motor vehicle crashes (or 20.5% of the total fatal crashes estimated in the report) per year.[70]

In March 2015, the NTSB also issued a report on the use of video systems onboard commercial motor vehicles.[71] The report stated the NTSB had investigated many highway accidents where video systems recorded information critical to the accident investigation process, and contained an in-depth discussion of the use and benefits of onboard video systems during two recent NTSB investigations into accidents involving buses. The report indicated that on-board video recording systems, along with a driver feedback program, may provide for long-term safety benefits. Such systems provide information for evaluating the circumstances leading up to a crash, as well as data regarding vehicle dynamics and occupant kinematics during crashes for assessing crash survivability. The NTSB highlighted how video systems could be improved, such as by increasing camera coverage of all passenger seating positions and improving low-light recording capabilities. The report concluded the use of data collected from video systems on school buses can serve as the ''foundation for a multidisciplinary approach to improving transportation safety.'' [72]

The NTSB report on the use of video systems onboard commercial motor vehicles also made various safety-related recommendations to camera system manufacturers, commercial motor vehicle, school bus, transit, and motor coach industry members, and to the DOT's National Highway Traffic Safety Administration (NHTSA). NTSB recommended industry members utilize onboard video systems that provide visibility forward of the vehicle, of the vehicle driver, and of each occupant seating location (with optimized frame rates and capability for low-light recording).[73] NTSB recommended that NHTSA incorporate standardized procedures into its crash database system for collecting and using pertinent video recordings, injury information and crash data from video-equipped buses.[74]

Finally, in that report the NTSB also referenced its Safety Recommendation H–10–010,[75] which recommends that FMCSA:

> [r]equire all heavy commercial vehicles to be equipped with video event recorders that capture data in connection with the driver and the outside environment and roadway in the event of a crash or sudden deceleration event. The device should create recordings that are easily accessible for review when conducting efficiency testing and systemwide performance-monitoring programs.[76]

This recommendation, along with a corresponding recommendation that FMCSA should require carrier review of video recordings in conjunction with other performance data to verify safe driver actions,[77] was made after a June 2009 accident near Miami, Oklahoma that involved a fatigued commercial motor vehicle (truck-tractor with semitrailer) operator which resulted in the deaths of 10 people. FRA notes the

[66] *See e.g.,* Rip Watson, *Truckload Carriers Broaden Efforts to Recruit, Retain Quality Drivers,* Transport Topics, Mar. 16, 2015; available online at: *http://www.lytx.com/uploads/Transport_Topics_Truckload_Carriers_0515.pdf.* Cliff Abbott, *In-Cab Dash Cams Included in Newest Wave of Trucking Technology, The Trucker,* Nov. 18, 2014; available online at: *https://www.thetrucker.com/News/Stories/2014/11/18/In-cabdashcams includedinnewestwaveoftruckingtechnology.aspx.* David Z. Morris, *There's Pressure in the Industry to Monitor Truck Drivers-and Drivers Aren't Happy,* Fortune, May 26, 2015; available online at: *http://fortune.com/2015/05/26/driver-facing-truck-cameras/.*

[67] James Jaillet, *Swift, Nation's Third-Largest Fleet, Implementing Driver-Facing, Forward-Facing Cameras In All Trucks,* Overdrive Magazine, Apr. 24, 2015; available online at: *http://www.overdriveonline.com/swift-nations-third-largest-fleet-implementing-driver-facing-forward-facing-cameras-in-all-trucks/.*

[68] Federal Motor Carrier Safety Administration, *Evaluating the Safety Benefits of a Low-Cost Driving Behavior Management System in Commercial Motor Vehicle Operations,* Report No. FMCSA–RRR–10–033 (June 2010).

[69] Soccolich, S., and J.S. Hickman. 2014. *Potential Reduction in Large Truck and Bus Traffic Fatalities and Injuries Using LYTX's DriveCam Program,* May 2014. Blacksburg, Virginia: Virginia Tech Transportation Institute; available online at: *http://info.drivecam.com/rs/lytx/images/Lytx-VirginiaTech-Study-LivesSaved-0514.pdf.*

[70] *Id.*

[71] National Transportation Safety Board, *Commercial Vehicle Onboard Video Systems,* NTSB Safety Report NTSB/SR–15/01 (Mar. 3, 2015); available online at: *http://www.ntsb.gov/safety/safety-studies/Documents/SR1501.pdf.*

[72] *Id.*

[73] National Transportation Safety Board, *Safety Recommendation H–15–002* (Apr. 29, 3015); available online at: *http://ntsb.gov/safety/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-15-002.*

[74] National Transportation Safety Board, *Safety Recommendation H–15–001* (Apr. 29, 2015); available online at: *http://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-15-001.*

[75] National Transportation Safety Board, *Safety Recommendation H–10–010* (Oct. 21, 2010); available online at: *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-10-010.*

[76] *Id.*

[77] National Transportation Safety Board, *Safety Recommendation H–10–011* (Oct. 21, 2010); available online at: *http://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-10-011.*

rationale for these recommendations is similar to that made to FRA in Safety Recommendations R–10–01 & –02 discussed above, which is to aid accident investigations and to allow an employer to conduct efficiency testing via review of recordings to identify potentially unsafe behaviors or actions and to take corrective action to prevent future accidents.

Cameras are also widely used on transit buses in this country, both for security (if the drivers or passengers are the victims of criminal acts), and to record motor vehicle accidents. The American Public Transportation Association's (APTA) ''2016 Public Transportation Fact Book'' [78] indicates that as of January 2015, approximately 73 percent of public transportation buses in this country were equipped with closed-circuit television cameras, up from approximately only 13% in 2001. The transit administrations in virtually every major city in the United States have installed recording devices on transit buses on some scale.[79] During RSAC discussions, APTA representatives indicated that recordings sometimes provide exculpatory evidence for the vehicle operator, whether about driver actions operating the vehicle or interactions with bus riders. In sum, the use of onboard recording equipment on commercial motor vehicles and buses in this country is substantial and has rapidly increased in recent years, leading to safety gains as evidenced by the June 2010 FMCSA report on the VTTI study.

Rail

The railroad industry has used locomotive-mounted image recording devices for at least the last two decades. Railroads began installing outward-facing cameras on a large scale in the 1990s. FRA understands that railroads have often used forward-facing recordings to defend themselves in litigation, particularly litigation involving highway-rail grade crossing and trespasser accidents. FRA does not intend for this rulemaking to affect that use of locomotive recordings. Locomotive video recordings have also been used to document track and roadway conditions, such as washouts, that may lead to, or have led to, accidents. FRA's Locomotive Engineer Review Board (LERB)/Operating Crew Review Board (OCRB), which review railroad locomotive engineer and conductor de-certification decisions upon an engineer's or conductor's appeal to FRA under 49 CFR parts 240 and 242, have received forward-facing video recordings (and still-shots of such recordings) as evidence intended to document events leading up to an event, including wayside signal indication or the position of a switch. AAR stated during RSAC Working Group discussions (discussed further in section IV of the preamble below) that as of March 2014, over 20,000 outward-facing cameras had been installed on freight and passenger locomotives.

AAR also told the RSAC Working Group that after the 2008 Chatsworth accident some railroads began installing inward-facing cameras as recommended by NTSB. Metrolink installed inward-facing video cameras on locomotives to implement NTSB's recommendations, for the stated purpose of enhancing safety and security for the general public and for its employees and contractors. A Metrolink presentation informed the Working Group that as of June 2014, it had equipped 57 locomotives and 55 cab cars with ''head end video record'' capabilities, and that the railroad reviewed the video recordings randomly to test for employee compliance with rules governing the use of unauthorized electronic devices, sleeping, and unauthorized persons in the cab of the locomotive. AAR indicated during Working Group discussions in June 2014, that approximately six railroads had equipped 288 locomotives or cab cars with inward-facing cameras since 2009.

Moreover, as mentioned above, after the May 2015 Amtrak accident in Philadelphia in which eight persons were killed, Amtrak announced that it would install inward-facing cameras on all of its ACS–64 locomotives in service on the Northeast Corridor by the end of 2015 (and on subsequently delivered locomotives).[80] Further, since the Working Group discussions concluded in 2015, several passenger and freight railroads have installed inward- and/or outward-facing recording devices without a Federal regulation requiring such action. For example, FRA is aware that the four largest Class I freight railroads in this country (UP,[81] BNSF, CSX Transportation, Inc. (CSX), and Norfolk Southern Railway (NS)) have all either announced they would begin installing inward-facing cameras, or have already started such installation. In fact, UP has begun installation on a large-scale equipping over 2,000 locomotives. In addition, Metro-North and the Long Island Rail Road, the two busiest commuter railroads (by weekday ridership) in this country,[82] have also announced they would begin installing inward- and outward-facing cameras on their locomotive fleets.[83] Long Island Rail Road has even begun the process of installing cameras on their locomotives. Thus, the number of inward-facing cameras installed on locomotives has substantially increased since the Working Group discussions.

At the time of the Working Group discussions, a Class I freight railroad, The Kansas City Southern Railway Company (KCS), gave a presentation regarding its installation of inward-facing cameras. KCS was an early adopter of inward-facing image recorder technology in the freight rail industry. KCS stated its recording devices are active anytime a locomotive is powered, and that such a policy is advantageous for: (1) Security purposes (to document trespass, theft, and other criminal incidents that may not involve railroad employees); and (2) crew safety, specifically to monitor crew performance to provide information about crew actions before accidents, to investigate crew injuries, and to validate a crew cell phone use detection alert. KCS indicated that the forward-facing cameras on its locomotives are equipped with microphones, but those audio-recording devices are not used (the cabling has been removed).

Clearly, the railroad industry's use of locomotive-mounted recording devices

[78] American Public Transportation Association, *2016 Public Transportation Fact Book, 67th Ed.,* (Feb. 2017); available online at: *https://www.apta.com/resources/statistics/Documents/FactBook/2016-APTA-Fact-Book.pdf.*

[79] *See e.g.,* Washington DC (*http://wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=4618*); Chicago (*http://www.transitchicago.com/safety/cameras.aspx#about*); New York City (*http://www.mta.info/news/2012/03/27/safety-first-mta-adding-more-onboard-bus-video-surveillance-cameras*); Boston (*http://www.mbta.com/about_the_mbta/news_events/?id=18423*); Los Angeles (*http://thesource.metro.net/2014/06/26/metro-debuts-new-security-video-monitors-on-buses/*); Kansas City (*http://www.kcata.org/about_kcata/entries/transit_watch*); Dallas (*https://www.dart.org/news/DARTCNGNABIFactSheet.pdf*); and Minneapolis (*http://www.metrotransit.org/transit-police*).

[80] Lori Atani and Michael Laris, *Amtrak Will Install Inward-facing Cameras on Trains,* Wash. Post, May 26, 2015; available online at: *https://www.washingtonpost.com/local/trafficandcommuting/amtrak-will-install-inward-facing-cameras-on-trains/2015/05/26/a6d210fa-03b9-11e5-a428-c984eb077d4e_story.html.*

[81] *https://www.up.com/aboutup/community/safety/technology/index.htm.*

[82] Press Release, Metropolitan Transportation Authority, Long Island Rail Road and Metro-North Railroad Stay Busiest in Nation (Apr. 27, 2015); available online at: *http://www.mta.info/news-long-island-rail-road-metro-north-railroad-lirr-ridership/2015/04/27/long-island-rail-road-and.*

[83] Press Release, Metropolitan Transportation Authority, Metro-North and LIRR To Acquire Video Cameras for Trains (Nov. 17, 2014); available online at: *http://www.mta.info/press-release/metro-north/metro-north-and-lirr-acquire-video-cameras-trains.*

to improve security and railroad safety has rapidly increased. Even though this NPRM does not require freight railroads to install inward- and outward-facing recording devices, FRA supports and will continue to monitor the installation efforts of freight railroads which use this technology to improve the safety of their operations.

IV. Railroad Safety Advisory Committee Proceedings

As discussed above, in March 2014, the RSAC formed the Recording Device Working Group [84] to consider specific actions regarding the installation and use of locomotive-mounted audio and image recording devices. The RSAC voted to adopt Task 14–01, to develop regulatory recommendations addressing the installation and use of the recording devices in controlling locomotive cabs. The task statement stated that any recommendations should address installation requirements and timelines, technical controls, recording retention periods, retrieval of recordings, controlled custody of recordings, crashworthiness standards, use of recordings for accident investigation and railroad safety study purposes, and use of recordings to conduct operational tests.

FRA developed Task 14–01 in response to NTSB Safety Recommendations R–10–01 & –02 and recent railroad accidents. FRA believed it appropriate to evaluate the adoption of regulations addressing inward- and outward-facing locomotive recording devices to advance railroad safety. FRA's intent was to use recordings to: (1) Assist in post-accident/incident investigations (railroad, highway-rail grade crossing, and trespasser); (2) assist in evaluating railroad employee fatigue and distraction, and crew interactions; and (3) add as a training tool for railroad employees and for conducting operational tests of railroad employees. The Working Group was to report recommendations to the full RSAC (or Committee) by April 1, 2015.

The Working Group held five meetings, three of which were multi-day meetings. The Working Group did not reach consensus on any aspect of the task, as FRA reported to the full Committee on May 28, 2015. During the Working Group discussions, FRA announced it intended to require inward-facing cameras and requested the Working Group's assistance to formulate the appropriate details and scope of a potential rulemaking. FRA presented rule text proposals for the Working Group's consideration. For various reasons conveyed during Working Group discussions, labor and industry representatives expressed general disagreement with FRA's position regarding regulatory requirements for inward-facing cameras and other locomotive recording devices. The labor organizations generally opposed any Federal inward-facing camera installation requirements for crew privacy reasons, and argued that FRA's efforts to improve railroad safety were better directed toward other regulatory matters (*e.g.,* fatigue, PTC implementation). Railroads generally expressed opposition based on lack of perceived need for FRA to regulate in the area of locomotive recording devices, expressing concern regarding potential costs and hindrance to the advancement of recording device technology and uses. Rather than attempting to fully summarize the respective positions and arguments during the Working Group process here, FRA defers to labor and industry representatives to convey their respective positions on this NPRM's specific proposals via the notice and comment process.

During the RSAC process, labor and industry representatives on separate occasions asked FRA to independently pursue a voluntary pilot program in lieu of any FRA rulemaking proceeding. This pilot program would have been in addition to existing inward-facing camera usage across the railroad industry (*e.g.,* Metrolink and KCS, which have installed inward-facing cameras on a larger scale than other railroads to date). The purpose of the pilot program would have been to evaluate the impacts of additional locomotive recording device usage and for purposes of gathering additional data. The January 2015 Working Group meetings were canceled so that labor and industry representatives could meet privately to discuss pilot project details. However, labor and industry representatives reported to FRA that they were unable to reach consensus agreement on a voluntary pilot project. At the May 28, 2015 full Committee meeting, FRA informed the Committee that, in the absence of a Committee recommendation, FRA would initiate a rulemaking proceeding to require locomotive recording devices based on the need to implement the safety initiatives.

V. Privacy Concerns

As discussed above, FRA initially expressed to NTSB it had concerns about privacy regarding NTSB's recommendations to install locomotive-mounted audio and image recording devices. The labor organizations also expressed reservations regarding the installation of locomotive-mounted recording devices based on privacy concerns during the Working Group meetings. FRA is addressing the issue of privacy in relation to locomotive-mounted recording devices in this NPRM. Although this discussion focuses on privacy considerations for railroad employees, FRA recognizes that the locomotive recordings might incidentally capture images of members of the public through the outward-facing camera or, depending on the configuration of the cab and the passenger car, the inward-facing camera.

First, there are no legal impediments preventing the agency from requiring recording devices to be installed in the locomotive cab when a train is being operated on the general railroad system of transportation. As discussed above, the FAST Act mandated FRA promulgate regulations requiring the installation of inward- and outward-facing recording devices on lead passenger train locomotives. Under the proposal rule, passenger railroad employees would be on notice of the presence of recording devices in a locomotive's cab. For the reasons described in this preamble, and consistent with relevant laws (including the FAST Act's mandate), court decisions, and FRA's statutory authority to regulate all areas of railroad safety, there is no legal requirement preventing FRA in this rulemaking from requiring locomotive recording devices on passenger locomotives to adhere to certain requirements.

Second, the purpose of image and audio recordings is to deter conduct that may lead to railroad accidents, to aid in railroad accident investigations, and to identify action(s) necessary to prevent accidents in the future. The railroad industry is a highly regulated industry. Train accidents can have catastrophic consequences for the safety of the public, railroad passengers, railroad employees and contractors, and the environment. As such, a large number of Federal statutes and regulations already govern railroad employees' performance of safety-related duties when they occupy the cab of a lead locomotive.

For example, employees who operate trains in this country are subject to warrantless drug and alcohol testing (both random and for cause) (49 CFR part 219), operational testing (*see* 49 CFR parts 217, 218, 220, 240, 242), hours of service laws (*see* 49 U.S.C. ch. 211, 49 CFR part 228), and regulations

[84] The Working Group was comprised of members from the following organizations: AASHTO; Amtrak; ASRSM; APTA; ASLRRA; AAR; BLET; BMWED; BRS; FAA; FRA; IAMAW; NCFO; NTSB; SMART; and Transport Canada.

governing the use of personal electronic devices (49 CFR part 220), among many other requirements. Railroad managers and FRA inspectors can currently occupy the cabs of locomotives at any time to observe railroad train crew members and other employees performing their duties, and listen to crew communications that occur in the cab. In fact, under existing 49 CFR parts 217, 219, 220, 240, and 242, railroads are required to make various observations of on-duty train crewmembers performing their duties. The Supreme Court recognized that ''the expectations of privacy of covered employees [here, train crewmembers] are diminished by reason of their participation in an industry that is regulated pervasively to ensure safety . . . .'' *Skinner* v. *Railway Labor Executives Association,* 489 U.S. 602, 627 (Mar. 21, 1989).

The cab of a locomotive is also not a location for a railroad employee's exclusive use. During a tour of duty other railroad employees, railroad supervisors, FRA inspectors, and other authorized persons may access the cab of the locomotive while it is occupied by a train crew and observe the employee's actions and communications. A train crew member, particularly a member of a road freight crew, might never occupy the cab of a particular locomotive again after the completion of a tour of duty. A train crew boards a locomotive to operate a train during an on-duty period and then alights from the locomotive. Further, even the general public is able to view train crew members occupying the locomotive and certain of their actions through the windows of the locomotive when located near a railroad right-of-way or a highway-rail grade crossing, or in certain cab control car configurations in passenger train service. Railroad radio conversations sent and received from a locomotive cab that may involve train crewmembers, dispatchers, operators, and railroad managers are already often recorded by railroads. Further, employee actions in operating trains that would be affected by this proposed regulation are also already recorded by locomotive event recorders required by existing part 229 as discussed below. Therefore, this NPRM proposes that passenger railroad employees occupying the cabs of locomotives that would be affected by this proposal have express notice (by way of required signage) that the locomotives are equipped with recording devices. FRA also recommends that freight railroads provide similar express notice (via signage or other methods) to their employees working on locomotives with recording devices, although the agency is not proposing to impose such a requirement in this rulemaking.

Also, as discussed above, the goal of the FAA CVR regulations, in effect for over 50 years, is the same as FRA's aim here, which is to investigate and prevent transportation accidents that endanger the lives of traveling passengers, carrier employees, and the public. 29 FR 8401. Like commercial passenger aviation operations governed by FAA CVR regulations, FRA's proposed regulation would apply to passenger trains that transport hundreds of people, often at high speeds.

In addition, other FRA rulemakings that have raised privacy considerations have been upheld because of the government's interest in ensuring public safety. For instance, as touched on above, FRA's initial regulation requiring warrantless drug and alcohol testing of railroad employees [85] was promulgated under FRA's general rail safety rulemaking authority, challenged in Federal Court, and ultimately upheld by the Supreme Court in *Skinner.* FRA promulgated its initial drug and alcohol testing requirements (49 CFR part 219) based on the finding that drug and alcohol abuse by covered railroad employees poses a serious threat to public safety, as evidenced by past accident investigations. 50 FR at 31516. The majority's decision in *Skinner* stated there are ''few activities in our society more personal or private than the passing of urine,'' and also discussed the extensive privacy-related concerns on the subject of the contents of one's blood. 489 U.S. at 617. Nevertheless, the Court held that the drug and alcohol testing FRA's regulations required was ''reasonable'' within the meaning of the Fourth Amendment of the Constitution. 489 U.S. at 634. The Court explained that due to:

> The surpassing safety interests served by toxological tests in this context, and the diminished expectation of privacy that attaches to information pertaining to the fitness of the covered employees, we believe that it is reasonable to conduct such tests in the absence of a warrant or reasonable suspicion that any particular employee may be impaired.

Id. FRA believes the safety risks this NPRM seeks to address by recording an employee's actions while operating a train in the cab of a locomotive are similar to those discussed in *Skinner.* However, recording an employee's actions while operating a locomotive does not present privacy interests comparable to those relating to the contents of one's own blood or urine that the Court in *Skinner* weighed. Locomotive audio and image recordings merely record the actions of train crews and environmental and other factors while a train is operated on behalf of a railroad, which can be observed by the naked eye by a railroad manager [86] or FRA inspector aboard a locomotive and can be recorded by a locomotive's event recorder. In addition, Congress expressly mandated FRA promulgate regulations requiring the installation of recording devices for passenger trains under the FAST Act.

As previously stated, even in the absence of the current Congressional action to require locomotive-mounted recording devices and similar Federal regulatory action, the railroad industry has installed locomotive-mounted recording devices on its locomotives for years. FRA is not aware of any successful legal challenges to such installation. As mentioned above, Metrolink installed in-cab audio and video recording devices after the 2008 accident in Chatsworth, California, that prompted NTSB Safety Recommendations R–10–01 & –02. The BLET challenged Metrolink's installation and use of such cameras in California State and Federal courts on the basis of privacy, substantive due process, procedural due process, and preemption violation claims. Neither court found the installation of such devices unlawful. In an opinion granting Metrolink's motion for summary judgement on the pleadings and dismissing all BLET claims, the United States District Court for the Central District of California stated that Metrolink's installation of locomotive audio and video recording devices had several legitimate purposes: (1) As an accident investigation tool; (2) to improve public safety; and (3) to test locomotive engineers' compliance with Metrolink's operating rules.[87] The Los Angeles County California Superior Court similarly granted Metrolink's motion for summary judgment and entered a declaratory judgement in

[85] 50 FR 31508 (Aug. 2, 1985).

[86] *See Vega-Rodriguez* v. *Puerto Rico Telephone Co.,* 110 F.3d 174, 181 (1st Cir. 1997) (upholding employer's installation of surveillance cameras when the employer notified employees of the location and field of vision of the cameras: ''[t]he bottom line is that since PRTC could [lawfully] assign humans to monitor the work station continuously . . . it could instead carry out that lawful task by means of unconcealed cameras . . . which record only what the human eye could observe'').

[87] *Bhd. of Locom. Eng. and Trainmen, et al.* v. *S. Cal. Reg'l Rail Auth.,* No. CV 09–8286 PA (JEMx), 2010 WL 2923286 (C.D. Cal. June 20, 2010).

Metrolink's favor to resolve the BLET-filed lawsuit.[88]

KCS also voluntarily began installing inward-facing cameras for safety- and security-related purposes ahead of most other freight railroads in this country. KCS filed an accompanying action after the installation of the cameras requesting a declaratory judgment that any disputes over the installation of the cameras were ''minor'' disputes under the Railway Labor Act. The United States District Court for the Western District of Louisiana ruled in KCS' favor, granting KCS' motion for summary judgment and finding that installation of the cameras represented a ''minor'' collective bargaining dispute.[89]

FRA has also long required locomotive event recorders record the operational parameters of the controlling locomotive of a train traveling over 30 mph. 49 CFR 229.135. The purpose of this requirement is for accident/incident investigation and prevention and is required by statute. 49 U.S.C. 20137. FRA explained in its 2005 final rule updating the locomotive event recorder requirements that event recorders:

> [m]ay indirectly prevent future accidents by allowing for in-depth accident causation analysis to take place using complete information, thereby allowing accurate causation determinations, and the development of appropriate and effective countermeasures. Because event recorders also allow the railroad to monitor train handling performance and rules compliance in a widespread and economical way, FRA believes that event recorders might have the potential of increasing skillful train handling and encouraging rules compliance.

70 FR 37930, 37935 (June 30, 2005). FRA's rationale in proposing to require locomotive-mounted image recording devices on lead passenger train locomotives (and potentially audio recording devices) here is the same. An image recording of the train crew in the locomotive supplements the event recorder requirement by providing railroads and Federal and State accident investigators information regarding an engineer's actual manipulation of locomotive controls, and about other crew actions and environmental and other factors prior to an accident. Importantly, such recordings, when regularly reviewed by railroads, may also provide a deterrent to train crews' distracting use of personal electronic devices, which the NTSB has cited as a cause of several railroad accidents, including the catastrophic 2008 Metrolink passenger train accident discussed above. The recordings would provide necessary evidence to railroad management and FRA to take appropriate corrective or enforcement actions for these serious violations of FRA regulations and railroad rules that cause railroad accidents.

As previously stated, FRA is declining to propose requiring the installation of inward- and outward-facing recording devices in freight locomotives. The FAST Act requires FRA to develop regulations that require inward- and outward-facing image recording devices in all passenger train lead locomotives; however, there is no corresponding statutory mandate for freight locomotives. In addition, the cost of implementing such a requirement for freight locomotives could outweigh its positive safety benefits. Furthermore, many freight railroads, including all Class I railroads, are already in the process of voluntarily installing recording devices in their locomotives without a Federal requirement. Therefore, FRA is declining to impose a requirement to install recording devices on freight locomotives at this time.

Even though FRA does not believe there are any legal impediments preventing FRA from promulgating a regulation requiring locomotive audio and image recording devices, FRA still recognizes the privacy concerns FRA conveyed to NTSB in FRA's initial responses to Safety Recommendations R–10–01 & –02, and that railroad uses of recordings, beyond those enumerated in this NPRM, could violate the law. This concern is particularly relevant regarding audio recordings of conversations in the cab of a locomotive. Examples of uses of such recordings that could violate the law are to retaliate against an employee based on the contents of in-cab audio recordings in violation of 49 U.S.C. 20109 (railroad employee whistleblower law) or to interfere with protected labor activities. The FAST Act, at 49 U.S.C. 20168(i), establishes that a passenger railroad carrier is prohibited from using in-cab audio or image recordings to retaliate against an employee. While enforcement of such prohibited retaliation against employees does not lie with FRA, but rather with other Federal and State agencies or the courts in private causes of action, FRA believes passenger railroads should adopt and adhere to policies that strictly prohibit such potential non-safety related abuses of locomotive recordings in violation of the FAST Act's prohibition. FRA's proposals discussed in the section-by-section analysis below were formulated to fulfill this FAST Act requirement.

FRA also believes valid privacy concerns exist on the appropriate protection and dissemination of locomotive recordings that are made, particularly where an accident has occurred and the recordings may be graphic and violent. As raised during Working Group discussions, it is not desirable for railroad employees or their families to have such images released publicly. For example, Congress provided statutory protections for a train's audio and image recordings that NTSB takes possession of during the course of its accident investigations at 49 U.S.C. 1114(d) and 1154(a). When NTSB takes possession of such locomotive recordings, it is prohibited from releasing the contents of such recordings (except that transcripts may be released as part of its accident investigation proceedings).

During Working Group discussions, participants noted FRA did not have similar statutory protections for recordings it takes possession of during investigations, as any records FRA takes possession of during an investigation may be required to be disclosed under FOIA. However, 49 U.S.C. 20168(h) prohibits FRA from publicly disclosing recordings that FRA takes possession of after a railroad accident has occurred. Paragraph (h) is similar to the FOIA exemption for locomotive recordings given to the NTSB at 49 U.S.C. 1411(d), and prohibits FRA from disclosing publicly locomotive audio and image recordings, or transcripts of communications by and among train employees or other operating employees, or between such operating employees and communication center employees related to an accident FRA is investigating. FRA may make public a transcript or a written depiction of visual information that FRA deems relevant to the accident at the time other factual reports on the accident are released to the public.

As explained during Working Group meetings, FRA believes it would rarely take possession of recordings. For the most-serious accidents, FRA anticipates the NTSB would take possession of such recordings as they currently do, but that FRA would have the opportunity to view or listen to the recordings as a party to the investigation and to conduct its own parallel investigation. For less serious accidents or incidents that only FRA investigates, FRA would sometimes proceed as it does now, by having FRA inspectors view the recordings in the railroad's possession. In instances where FRA had a legal or evidentiary need to take physical

[88] *Bhd. of Locom. Engineers* v. *S. Cal. Reg'l Rail Auth.,* No. BC424287 (Super. Ct. L.A. County Cal. June 1, 2011).

[89] *Kan. City S. Railway Co.* v. *Bhd. of Locom. Eng. and Trainmen,* No. 5:13–cv–00838–EEF–MLH (W.D. La. *Jul. 24, 2013*).

possession of a locomotive recording from a railroad after an accident, the FAST Act now protects those recordings from public release.

Concerns regarding a railroad's unauthorized release of locomotive recordings and the privacy implications of such were also raised during the Working Group meetings. Currently, in the absence of an accident where NTSB or FRA has taken possession of a locomotive's recording devices, a railroad's internal policies govern the handling of locomotive audio and video recordings. Certain railroad draft policies were shared with the Working Group during its meetings on the railroads' procedures governing the chain-of-custody for recordings, access to the recordings, and release of the recordings. If adhered to, FRA believed these policies would address concerns regarding the proper control and handling of locomotive recordings.

Recognizing the need to ensure railroads appropriately protect recordings that might implicate privacy-related concerns, FRA has proposed rule text in § 229.136(f) that requires passenger railroads to adopt, and comply with, a chain-of-custody procedure governing the handling and the release of locomotive recordings. The chain-of-custody procedure must specifically address the preservation and handling requirements for post-accident/incident recordings that are provided to the NTSB or FRA during the agencies' accident investigations. A passenger railroad's failure to comply with its procedures would be a violation of the Federal railroad safety regulations if § 229.136(f) is adopted in a final rule in this rulemaking.

FRA decided against proposing specific rule text governing chain-of-custody, handling, and release procedures industry-wide. The industry has much experience in this area given the significant number of locomotives that are already equipped with forward-facing cameras (estimated by AAR at over 20,000) and length of time such locomotives have been equipped, and, also, now with inward-facing recording devices. The industry also has much experience in this area with locomotive event recorders that have long been subject to preservation and handling requirements after the occurrence of an accident under existing § 229.135(e). It is therefore more practical and cost-effective to give railroads the discretion to continue to tailor their individual procedures appropriately. Given the various types of locomotive recording equipment that different railroads may choose to utilize, the various State court evidentiary and chain-of-custody laws and rules that railroads must comply with when the recordings are used in litigation for the railroads' own purposes (*e.g.,* highway-rail grade crossing and trespasser accidents), and the potential cost of requiring railroads to amend their existing procedures that might already be appropriate and provide instruction on such new procedures, FRA does not believe it appropriate to impose specific chain-of-custody and release procedures in the regulation. Further, FRA's safety interest in regulating in this area most strongly lies in ensuring recordings are handled properly post-accident when turned over to NTSB or FRA upon request, and the proposed regulation's text would expressly require the railroads' procedures to address that point. However, FRA acknowledges that some parties have expressed concerns regarding the public release of image or audio recordings that do not involve a reportable accident. Thus, FRA seeks comment from interested parties regarding whether the final rule should include a specific prohibition on the public disclosure by a railroad or individual of any video or audio recording.

VI. Additional Items for Comment

FRA is requesting comment on the below significant requirements or amendments for which it is not proposing specific regulatory text in this NPRM, but which FRA would consider adopting in a final rule in this proceeding.

A. Mandatory Installment of Inward- and Outward-Facing Recording Devices on Freight Locomotives

As previously stated, FRA is declining to propose a requirement in this NPRM that freight railroads install and use inward- and outward-facing recording devices in their locomotives. The FAST Act does not require that such recording devices be installed in freight locomotives. Further, the cost to implement such a requirement could outweigh its safety benefits. FRA estimates that if freight locomotives were required to have image recording devices, the 10-year cost would be $154,990,084 (PV, 7 percent), or $168,970,287 (PV, 3 percent).[90] Finally, many freight railroad, including all Class I railroads, have already installed or are in the process of installing recording devices in their locomotives. Therefore, FRA is declining to propose a requirement to install recording devices on freight locomotives at this time.

FRA will continue to monitor freight railroads and their efforts to voluntarily install inward- and outward-facing recording devices, and also the overall safety records of the freight railroad industry, as it considers whether a future regulatory requirement is necessary. In the meantime, FRA welcomes public comment on whether FRA should implement a requirement that some or all freight railroads equip their locomotives with inward- and outward-facing recording devices. In addition, FRA invites comment on the extent to which FRA should apply the proposed requirements in this NPRM to recording devices that have already been installed by freight railroads in their locomotives. FRA also seeks comment on whether FRA should include a specific provision that prohibits the public release of an image or audio recording by any railroad or person.

B. Audio Recording Devices

The FAST Act, at 49 U.S.C. 20168(e)(1), gives FRA discretion to require audio-recording devices be installed on lead passenger train locomotives, and to establish corresponding technical details for such devices. Further, the relevant NTSB recommendations that FRA is addressing in this NPRM state that in addition to locomotive image recordings, FRA should also require locomotives be equipped with audio recording devices. Indeed, the NTSB sent FRA correspondence emphasizing that to satisfy Recommendations R–10–01 & –02, FRA would need to include both audio and image recording provisions in this rulemaking.[91]

FRA is not proposing to require the installation of locomotive audio recording devices, but is requesting comment on whether to require such devices in a final rule. Accordingly, FRA makes clear that nothing proposed in this NPRM would preclude a railroad from voluntarily installing audio recording devices in its locomotives. As conveyed to the NTSB in FRA's initial responses to the NTSB recommendations regarding audio recording devices, FRA agrees that in certain accidents, audio recording devices could be useful for conducting post-accident investigations. However, as mentioned above, FRA still has

[90] *See* Regulatory Impact Analysis pg. 17.

[91] National Transportation Safety Board, Safety Recommendation History for Safety Recommendation R–10–01; available online at: *http://www.ntsb.gov/safety/safetyrecs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-10-001.*

concerns about audio recordings aboard locomotives made during periods when no safety-related duties are actively being performed (*e.g.,* sitting at a stop signal in a siding). Recordings during such time periods would likely include personal conversations between employees and might have much more potential for abuse than do inward-facing image recordings. Further, FRA is unsure of the added utility of audio recordings in addition to video recordings when weighed against the cost, the potential for abuse, and the loss of personal privacy.

In addition, FRA believes inward-facing image recorders alone may deter the prohibited use of personal electronic devices more effectively than audio recorders. In most circumstances, an inward-facing image recording of appropriate quality will enable railroad supervisors to observe the physical actions of a train crew as they operate the train and perform other safety-related duties, including whether personal electronic devices are being manipulated or handled. FRA is unsure that audio recorders would significantly improve railroad efforts to detect such safety violations that are, in part, the impetus for requiring railroads to regularly review a locomotive's in-cab image recordings.

FRA also believes that train operations are different from flight operations regarding the utility of in-cab audio recordings during a post-accident investigation. For example, in both the 2008 Chatsworth Metrolink accident and the 2015 Philadelphia Amtrak accident, the locomotive engineers operating the trains were the sole occupants of the locomotive cab. The other train crew members were in the passenger consist. Thus, for passenger operations, other than radio communications with other train crewmembers or the train dispatcher which are often already recorded, there may not be any voice communications inside the cab to audio record. This is unlike a typical commercial aviation operation in which multiple crew members occupy the cockpit of an aircraft during flight and undertake numerous required crew communications. Similarly, audio recordings inside freight locomotive cabs, which are typically occupied by multiple crewmembers, might provide relevant post-accident information more often than for accidents involving passenger locomotives. However, FRA is not certain what the utility of such an audio recording requirement might be when weighed against the potential for abuse of such recordings in other contexts and the overall costs of such a requirement, and considering the availability of image recordings, locomotive event recorder data, and radio recordings.

In addition, as discussed above, crew radio communications are often already recorded by railroads as part of their dispatching systems, and are often reviewed by FRA and NTSB as part of railroad accident investigations. FRA believes that such recordings are generally more common (and often include yard operations on Class I and passenger railroads) and recorded in a higher quality (digital) than in 1996, when NSTB investigated the Silver Spring, Maryland MARC train accident discussed above and made its initial recommendation to FRA regarding equipping locomotives with audio recorders.

As noted, FRA also has concerns about the cost of requiring audio recording devices on upwards of 4,500 passenger locomotives and potentially 20,000 freight locomotives. There may be only a small number of accidents where audio recordings might be beneficial. Further, the cost to store data in addition to image recordings in a memory module (with a crashworthy module for passenger locomotives) might increase the costs of compliance with a final rule. FRA understands from Working Group discussions and its own research that the audio recording devices and microphones contained within a locomotive's image recorders are not costly, but railroads indicate a crash-hardened memory module for audio recordings might increase costs of compliance. FRA is also concerned about the background noise levels inside the cabs of certain locomotives and has conveyed that concern to NTSB in the past. Because of the noise, additional equipment such as crew headsets and intercoms with microphones might be needed to record crew voice communications so the recordings can accurately be deciphered by railroad managers and accident investigators. This might also add to the cost of installing such equipment.

In sum, FRA reiterates that it agrees with NTSB that in some post-accident investigations audio recordings might be beneficial to help determine causal factors. However, in light of the concerns discussed above, FRA is continuing to evaluate whether to require audio recording devices in this rulemaking. FRA wishes to continue to evaluate the issue with the benefit of information from public comments submitted in response to this NPRM. Accordingly, FRA requests comment on the following specific questions:

- Would the utility that audio recordings might provide in certain accident investigations, on top of the benefits accruing from image recordings, outweigh concerns regarding: (1) The cost of installation of these additional devices; (2) the cost of crashworthy memory for audio recordings on passenger locomotives; (3) the potential loss of personal privacy for occupants of a locomotive's cab; and (4) the potential for abuse of audio recordings reviewed by railroad supervisors that could occur? Please provide specific information on the costs (for example, the cost of installation in dollars) in your comments.
- If in-cab audio recordings are required in a final rule, should FRA adopt a strict rule that requires such recorders to stop recording once a train has stopped moving?
- In addition to in-cab recordings, should exterior recording devices capable of recording sounds such as the locomotive horn/bell, audible grade crossing warning devices, engine noises, braking noises, and other sounds that may be relevant during post-accident investigations also be required? If so, what is the utility of such recordings when weighed against the potential costs? Please provide specific information on the costs of installation in dollars in your comments.

FRA also requests public comment addressing the appropriate technical specifications for audio recording equipment if the installation of audio recording devices is required in a final rule. Further, if FRA requires locomotive audio recording devices in the final rule, should FRA restrict the usage of those recordings or provide additional protections from public release? FRA believes requiring such devices to be capable of recording voice conversations conducted at typical audible levels (approximately 60–70 decibels) in the cab would be appropriate as a general performance standard. However, FRA requests comment addressing whether headsets with integrated audio microphones, background noise filters, or other specialized audio recording equipment would be necessary to reliably capture such voice conversations based on background noise levels in a locomotive cab. Such comments should also address appropriate technical specifications for any such equipment and the cost.

C. Recording Device Run-Time/Shutoff When Trains Stop Moving

During the RSAC Working Group's discussions, FRA presented proposed rule text that would have required

locomotive image and audio recording devices to record for one hour after a locomotive equipped with such devices had stopped moving. FRA introduced this proposal intending to recognize the potential safety value in recording crew actions in the moments immediately after a train had stopped, for post-accident investigations and other incident investigations. This proposal also attempted to consider crew privacy concerns expressed during Working Group discussions over recording devices continuing to record during long periods of time where no safety-related duties might be actively performed by a train crew (*e.g.,* sitting stationary at a stop signal in a siding). As discussed above, in previously responding to NTSB recommendations on the topic of recording devices, FRA indicated to NTSB that FRA wished to avoid the potential for unwarranted publication of private conversations on the locomotive taking place during non-safety-critical down times that inevitably occur in railroad operations, and to guard against erosion of rail labor and management relationships.

Additionally, during discussions on this topic, representatives of APTA indicated that certain of its member passenger railroads use locomotive-mounted and other surveillance cameras aboard rail passenger equipment for purposes beyond the scope FRA contemplates in this NPRM. For example, APTA explained that an in-cab or other camera on a passenger car could be used for purposes of protecting a train operator or other crewmember by documenting any incidents involving passengers aboard the train, such as disputes between passengers, assaults on train crewmembers, fare disputes, and the unauthorized entry into the cab compartment by a passenger, among other examples. APTA stated these cameras could help police identify perpetrators of crimes and provide exculpatory evidence for train crews regarding events that might occur on a passenger train. These types of events, some of which involve State criminal law matters, go beyond FRA's safety rationale for this proposed rule on recording crew actions to prevent railroad accidents. As such, during RSAC discussions, APTA stated if FRA placed any limits in a rulemaking proceeding on the operation of recording devices after a train had stopped, passenger railroads should be exempted. APTA indicated during Working Group discussions that its passenger railroad members that would be subject to the requirements of this proposed rule may prefer to have locomotive-mounted recording devices in operation any time a train is occupied, regardless of whether a train is moving or not. While not a passenger railroad, KCS indicated to the Working Group that its policy is that a locomotive's image recording system is in operation anytime a locomotive is running.

The proposed rule text in § 229.136 below is silent on the issue of a specific recording device run-time after a locomotive has stopped moving, and is also silent on any shut-off requirements after a locomotive has stopped moving. Under this proposal, passenger railroads would have discretion to decide whether locomotive recording devices would continue to record when a locomotive is not in motion (as long as the railroad retained the last 12 hours of operation of the locomotive on a memory module as proposed in § 229.136). FRA is requesting comment on the appropriate approach to this issue in a final rule. FRA specifically requests comment regarding the safety benefits of recordings made when a locomotive is occupied but not moving, and whether a specific run-time or shutoff requirement in a final rule would present any technical hurdles for railroads (and, if so, their cost in dollars). FRA also requests comment addressing the privacy implications regarding recordings being made during down times where no safety-related duties might be actively performed by a train crew. Further, FRA desires comment addressing the potential risks of overwriting valuable recorded data if an accident occurs in a remote location and the recording devices continue to record after a train is stopped. Finally, FRA requests comment on whether passenger railroads should be exempt from any requirement to stop locomotive-mounted recording devices from recording when a train is stopped.

VII. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 217 (Part 217)

Section 217.9 Program of Operational Tests and Inspections; Recordkeeping

FRA proposes to amend part 217 to address the use of locomotive recordings to conduct operational (efficiency) tests in passenger trains. Part 217 has long required railroads to conduct operational tests to determine the extent of employee compliance with railroad operating rules, timetables, and timetable special instructions. Section 217.9 requires railroads to specify a minimum number of operational tests per year covering the requirements of subpart F of part 218, FRA's regulation addressing the most frequently occurring human-factor caused accidents involving equipment in the foul, shoving movements, and the handling of switches and derails. Section 217.9 also requires railroads' operational testing programs place particular emphasis on other operating rules' violations that are likely to cause accidents. FRA's regulation governing the use of distracting electronic devices by on-duty railroad operating employees also addresses operational testing. Section 220.315 requires railroads' operational testing programs under part 217 include operational tests addressing the restrictions on electronic device use in subpart C of part 220. The overall intent of part 217's operational testing requirement is to raise awareness of, and ensure compliance with, relevant railroad operating rules to prevent the occurrence of accidents.

In that vein, after the 2008 Chatsworth accident where the locomotive engineer was found to have used a personal electronic device while operating passenger trains in contravention of Metrolink operating rules, NTSB Safety Recommendations R–10–01 & –02 recommended using inward-facing cameras to conduct operational tests to ensure compliance with rules prohibiting the use of distracting electronic devices. Due to the nature of railroad operations where train crews typically lack direct managerial supervision while traveling in the cab of a locomotive, the NTSB explained a locomotive image recording may be the only practical method of determining employee compliance with prohibitions on the use of distracting electronic devices while operating a train. The NTSB recommended FRA require railroads to regularly review locomotive recordings to carry out efficiency tests and system-wide performance monitoring programs, and verify that train crew actions comply with applicable rules and procedures essential to safety. In making these recommendations, the NTSB explained that recordings could help railroad management prevent accidents by identifying safety issues before they lead to injuries and loss of life.[92]

FRA agrees with NTSB that the use of in-cab recordings to conduct operational tests is a valuable tool to improve safety, particularly tests conducted to determine compliance with part 220's restrictions on the use of personal electronic devices. FRA believes

[92] National Transportation Safety Board, *Reiteration of Safety Recommendations R–10–01 & R–10–02* (July 8, 2015); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-10-001-002.pdf.*

passenger railroads subject to the recording device requirements promulgated in a final rule will utilize inward-facing image and audio recordings as a method to conduct operational tests. However, FRA has not proposed requiring passenger railroads to utilize in-cab recordings to conduct operational tests in this NPRM. This is consistent with existing part 217, which generally does not mandate the methods railroads must use to conduct operational tests. Part 217 requires railroads to adopt a written program of operational tests, and to conduct operational tests according to that written program. FRA requests comment on whether in a final rule the agency should require passenger railroads to utilize the devices' recordings as a method of performing operational tests.

FRA is proposing to amend part 217 by establishing minimum requirements that passenger railroads must comply with if they choose to utilize locomotive recordings to conduct operational tests. FRA proposes to amend existing § 217.9(b) by adding a new paragraph (b)(3), stating that passenger railroads utilizing inward-facing locomotive image or audio recordings to conduct operational tests and inspections shall adopt and comply with procedures in their written program for how such tests are to be conducted. Proposed paragraph (b)(3) also requires railroads perform such operational tests randomly.

As discussed during the RSAC process, FRA's intent in proposing this requirement is to prevent in-cab image or audio recordings from being used to target employees and to implement Congress' express requirement in the FAST Act that passenger railroads subject to the Statute cannot use such recordings to retaliate against employees. 49 U.S.C. 20168(i). The proposed text of paragraph (b)(3) of this section would require passenger railroads to establish objective, neutral criteria for how employees subject to an operational test using in-cab recordings are selected for such a test within a specified time frame, so that no employee may be selected for a test simply at the railroad's discretion. FRA understands train crew members and other employees that might operate locomotives or perform work in locomotive cabs comprise the group of passenger railroad employees that might be selected to be operationally tested. This proposal to limit these railroads' ''exercise of discretion'' does not mean a railroad's criteria cannot limit applicability of operational tests conducted via locomotive recordings to the specific group of employees operating trains or who otherwise perform work in locomotive cabs. The language in this proposal mimics language in FRA's random drug and alcohol testing regulation at 49 CFR part 219. Overall, FRA believes the procedures for random selection of employees for drug and alcohol testing procedures under part 219 have worked well, and passenger railroads could use those procedures for the random selection of train crewmembers for operational testing using in-cab recordings.

Proposed paragraph (b)(3) also requires that any operational test using passenger in-cab image or audio recordings be performed within 72 hours of the completion of the employee's tour of duty that is the subject of the test. For example, if a passenger train crewmember who is the subject of the operational test using in-cab recordings has a tour of duty that ends at 7:00 p.m. on a Monday, a railroad manager must perform the operational test (review of the recordings from the tour of duty that ended at 7:00 p.m. on Monday) no later than 7:00 p.m. on Thursday. This would mean that any procedures required to be followed to perform an operational test (*e.g.,* a required debriefing with the employee who was the subject of the test under a railroad's program) must be completed within the 72-hour period.

This proposal is intended to maximize the safety benefit of operational testing and, again, to implement Congress' mandate that recordings not be used as a retaliatory tool. Concerns were raised during the Working Group's discussions that an operational test performed at a much later date would have limited safety utility because the employee may not recall the scenario in question, and, in instances where rules non-compliance was alleged, may not be able to appropriately respond to and defend against such an allegation. Ideally, an operational test and the resultant employee feedback would occur in near real time as many railroads' written programs require currently. FRA's 72-hour proposal here recognizes it may take time for a passenger railroad conducting such testing to download and review relevant recordings, while ensuring any necessary discussions with the employee being tested occur without undue delay, preferably as soon as possible. FRA requests comment on this proposed 72-hour time-period limitation. FRA also wishes to make clear this proposed 72-hour limitation applies only to conducting operational tests and would not apply to investigations of railroad accidents/incidents or to violations of Federal railroad safety laws, regulations, and orders, or any criminal laws. FRA emphasizes it believes the best utility for the use of in-cab recordings to conduct operational tests would largely be to determine operating employees' compliance with railroad operating rules and practices addressing restrictions on using personal electronic devices while performing safety-related duties and to deter noncompliance.

Proposed paragraph (b)(4) provides FRA may review a passenger railroad's procedures for conducting such operational tests using in-cab recordings under paragraph (b)(3), and FRA may disapprove such procedures for cause stated under existing § 217.9(h). For example, FRA would utilize such procedures if a passenger railroad's written program did not have appropriate randomness protocols required by proposed paragraph (b)(3). Under existing § 217.9(h), a passenger railroad would then have 35 days to either amend and re-submit its written program, or to provide a written response in support of its program, after which FRA would inform the railroad of FRA's final decision in writing.

Proposed Amendments to 49 CFR Part 218 (Part 218)

Section 218.53 Scope and Definitions

FRA is proposing to amend existing part 218 to deem any locomotive-mounted image or audio recording device or equipment installed in a passenger train as a ''safety device.'' Existing part 218, subpart D prohibits individuals from tampering with a ''safety device,'' and defines that term to mean ''any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering.'' 49 CFR 218.53(c). FRA announced it intended to treat recording devices as ''safety devices'' during Working Group discussions.

FRA also proposes to amend existing § 218.53(c) by correcting the reference to appendix B in the existing definition of ''safety device'' because FRA's statement of agency policy regarding safety devices is actually located in appendix C to part 218. This proposal would merely correct this existing reference. Tampering with safety devices, or knowingly operating (or permitting to be operated) a passenger train with a disabled safety device

constitutes an event for which a passenger locomotive engineer's or conductor's certification must be revoked under existing parts 240 and 242. Thus, under this proposal, a locomotive engineer or conductor of a commuter or intercity passenger train found to have tampered with an in-cab image or audio recording device under §§ 218.55 or 218.57 shall have his or her certification revoked.

FRA is also proposing to add a new paragraph (d) to § 218.53 that makes clear the requirements in §§ 218.59 through 218.61 do not apply to such recording devices voluntarily installed on freight locomotives. Because these devices are voluntarily installed by the freight railroad, the railroad can operate a lead locomotive without such functioning recording devices.

As discussed during Working Group meetings, in 2010 FRA responded to a letter from Metrolink regarding whether FRA considered an inward-facing camera on a Metrolink locomotive to be a ''safety device'' under part 218. In its May 18, 2010, response, which FRA has added to the public docket for this rulemaking, FRA explained to Metrolink that it did not consider such cameras to be safety devices under part 218.[93] At that time, railroads were not utilizing inward-facing image recording devices on a large scale, FRA did not believe it necessary to require installation of such devices, and FRA had not contemplated using cameras as ''safety devices'' when formulating the tampering restrictions in existing part 218. However, through this rulemaking's notice and comment process, FRA is proposing to amend its position on the treatment of in-cab audio and image recording devices on passenger locomotives as safety devices. First, installation of such devices would now be required by Federal regulation, as mandated by Congress in the FAST Act. In addition, the use of such recording devices as a post-accident investigation and safety tool has evolved rapidly in the industry since 2010, even without Federal regulatory action.

Passenger locomotive image and audio recording devices are like locomotive event recorders, which are required by § 229.135 in the lead locomotives of trains traveling more than 30 mph, and which have also long been considered safety devices by existing part 218. Locomotive event recorders record specified parameters regarding operation of a locomotive's controls, allowing for in-depth post-accident causation analysis and determinations, as well as allowing railroads to monitor locomotive engineers' train handling performance and rules compliance. However, as NTSB conveyed, locomotive event recorders cannot answer questions about a train crew's knowledge or actions during accident investigations where such information is lacking, such as for the Amtrak locomotive engineer's actions before the May 2015 accident at Frankford Junction in Philadelphia discussed above.

The discussion in existing appendix C explains that part 218's language is expansive enough to cover safety devices that may appear in the future. Appendix C also explains that FRA may add certain safety devices not previously considered within the scope of part 218's tampering restrictions, should instances of tampering with such devices be discovered. FRA has recently investigated incidents where it appears that the locomotive engineer has willfully tampered with a locomotive's inward-facing camera system. The engineer was operating a freight train with a foreign railroad's locomotive in the lead. The engineer was recorded covering inward-facing cameras on the locomotive, but was apparently unaware of another camera mounted on the ceiling of the engine near the back wall of the cab. That camera recorded him appearing to play a video game on a personal electronic device while operating the moving freight train. The railroad that owns the locomotive discovered this apparent violation of 49 CFR part 220 during a random review of the recording system's footage and provided that recording to FRA.

FRA believes image recording systems and an accompanying prohibition on tampering with such systems in passenger locomotives (and the accompanying consequences for tampering violations) will act as a deterrent to prevent instances of tampering and unsafe behaviors that the cameras would otherwise record. In the example above, the locomotive engineer clearly modified his behavior to avoid being detected by the locomotive's image recording system. Under the proposal here, even covering the locomotive's camera would be a violation that would result in loss of the locomotive engineer's certification. FRA believes the proposed amendments to part 218 would deter a locomotive engineer from covering the locomotive's cameras, and from subsequently using a personal electronic device while operating a moving train. Such a deterrent would directly improve passenger train safety.

In-cab image and audio recording devices will supplement the information recorded by a locomotive event recorder, and in certain accident investigations, may answer questions regarding operator actions (or lack of action) before a railroad accident. FRA believes passenger locomotive in-cab recording devices are valuable railroad safety and operational monitoring devices that should be treated as safety devices prohibited from being willfully tampered with by 49 U.S.C. 20138 and that statute's implementing regulation at part 218, subpart D. In sum, a recording device that is tampered with loses its utility as a safety tool, and as a post-accident investigation tool that might record information that could be used to prevent future railroad accidents. Therefore, FRA believes it is reasonable to treat image and audio recording systems on passenger trains as ''safety devices.''

Section 218.61 Authority To Deactivate Safety Devices

FRA is proposing to revise § 218.61(c) to clarify that locomotive image recording devices on passenger locomotives can only be deactivated under the proposed requirements of 49 CFR 229.136. FRA is also proposing to add language to paragraph (c) to clarify that freight railroads that install inward- and outward facing image recording devices do not have to follow the requirements of 49 CFR 229.136 to deactivate their safety devices.

Appendix C to Part 218 Statement of Agency Enforcement Policy on Tampering

For the reasons discussed directly above, FRA is proposing to amend existing part 218, appendix C by adding ''passenger locomotive-mounted image and audio recording equipment'' to the list of safety devices described in the fourth paragraph of that appendix. Such equipment would include recording devices, any memory modules used to store recording data, or any of these devices' electronic connections or other appurtenances on railroad carriers that provide regularly scheduled intercity or commuter rail passenger transportation. FRA proposes to expressly include these recording devices in the list of safety devices prohibited from being tampered with under part 218, subpart D. This proposed amendment to part 218 would apply to all passenger locomotive image and audio recording systems, regardless of whether a final rule requires installation of such a system on a particular passenger locomotive. Thus, even if a railroad voluntarily chooses to install an image or audio recording

[93] *See* NPRM docket; Mark H. Tessler letter to Metrolink, *Locomotive video cameras,* (May 18, 2010).

system on a passenger locomotive, part 218 would still prohibit tampering with such a system.

Proposed Amendments to 49 CFR Part 229 (Part 229)

Section 229.5 Definitions

FRA is proposing to amend the existing definition in this section of the term ''event recorder memory module'' to include the portion of an event recorder memory module (or a separate memory module) used to record any data from a locomotive's in-cab image or audio recording devices. This proposed FRA regulation implements the FAST Act requirement that inward- and outward-facing image recording devices on lead passenger locomotives have crash and fire protections for any recordings stored only within a controlling locomotive cab or cab car operating compartment. 49 U.S.C. 20168(b). As explained in the analysis for § 229.136 below, FRA is proposing that the existing crashworthiness requirements for locomotive event recorder memory modules in part 229, appendix D apply to passenger locomotive in-cab image or audio recording devices. Thus, FRA would add recordings made by passenger locomotive in-cab image or audio recording devices to the existing definition of ''event recorder memory module'' in this section. The crashworthiness requirements for such recordings would apply to recordings made on lead passenger locomotives, and could also be used by freight railroads in their locomotives but are not required by this NPRM.

FRA is also proposing to amend this section to add a definition for the new term ''image recording system.'' This new term would encompass all equipment that is part of the system for making and retaining the image recordings proposed in § 229.136. This term would include cameras or other electronic devices that capture images and any equipment that converts those images into usable electronic data (capable of being viewed as a video) transmitted to, and stored on, the recording system's memory module. A memory module on which image recording data is stored is considered to be part of the image recording system.

FRA is also proposing to amend this section to add a definition for the new term ''NTSB.'' This new term is the acronym for the National Transportation Safety Board, which is an independent U.S. government investigative agency responsible for civil transportation accident investigation. FRA is defining the proposed term as a shorter form of its longer name: The National Transportation Safety Board. FRA is inserting this term, so FRA can use the shorter form of ''NTSB'' in the regulation.

Finally, FRA is proposing to amend this section to add a definition for the new term ''recording device.'' This new term would generically describe inward- and outward-facing image recording devices and any in-cab audio recording devices on a passenger locomotive. Any in-cab audio recording devices that are installed on a passenger locomotive, irrespective of whether such devices are required by a final rule, would be subject to the preservation requirements proposed in § 229.136.

Section 229.136 Locomotive Image and Audio Recording Devices

FRA proposes to amend part 229 by adding a new § 229.136. This new section would establish installation and technical requirements for inward- and outward-facing recording devices on lead passenger locomotives. This proposed section also would explain the preservation and handling requirements for any recordings such devices make, and the permitted uses of such recordings. As mentioned in the preamble above, FRA proposes to apply the requirements in this section to lead locomotives in trains operated in intercity passenger or commuter service only. The terms ''lead locomotive,'' ''locomotive,'' ''control cab locomotive,'' ''DMU locomotive,'' and ''MU locomotive'' would remain as defined in existing § 229.5.

The FAST Act mandated installation of recording devices only on lead passenger locomotives. FRA is not proposing to require inward- and outward-facing recording devices to be installed in freight locomotives at this time for a variety of reasons that FRA has previously stated in this NPRM. Foremost, the FAST Act requires FRA to promulgate regulations that require all commuter and intercity passenger railroads to install inward- and outward-facing image recording devices in all of their lead locomotives; however, there is no corresponding statutory mandate for freight railroads or their locomotives. In addition, the cost to freight railroads of such a requirement could outweigh its positive safety benefits, which are presented earlier in this NPRM. Finally, many freight railroads, including virtually all Class I railroads, have already begun the process of installing locomotive recording devices in their locomotives. Therefore, FRA is declining to propose requiring recording devices on freight locomotives at this time.

Proposed paragraph (a) of this section would require image recordings be made ahead of the ''F'' end of the lead locomotive (outward-facing) and inside the cab of the lead locomotive (inward-facing) on any train in commuter or intercity passenger service within four years after the date a final rule is published. The rule would require inward-facing recordings to be made on such a passenger train's controlling locomotive if the lead locomotive is not the controlling locomotive. The proposed rule text for this section would also require that if any passenger locomotive is equipped with the required image recording system, the system must be operating and recording when the train is in motion, regardless of the train's speed. For example, a lead passenger locomotive equipped with image-recording devices under this proposed paragraph must have any image recording devices turned on and recording the entire time the train is in motion. This proposal is intended to maximize the safety benefit for lead passenger locomotives equipped with image recording devices, and ensure such devices are always operative at any point. Freight railroad that have voluntarily installed locomotive recording devices do not need to adhere to this requirement. However, FRA believes such a practice may be beneficial to freight railroads that have such devices installed on their lead locomotives. FRA is requesting comment above on whether a final rule should also address recording requirements when trains are stopped.

FRA has used the terminology ''commuter or intercity passenger service'' in proposed paragraph (a) and uses similar language throughout this section to mean the same thing as the terms ''intercity rail passenger or commuter rail passenger transportation'' in the Statute. This language is consistent with existing regulatory language in part 229, specifically § 229.125(h), to describe this service.

FRA clarifies here that the proposals in this NPRM do not apply to any image recorders or any other recording devices that are not mounted in a locomotive (or control compartment of a control cab locomotive) for purposes of recording train crew actions or events occurring ahead of a train's movement (outward-facing camera). Thus, the NPRM proposals would not apply to (or require installation of) any recording devices within the body of a passenger car, mounted on poles in railroad yards, or located on or near roadway facilities, stations, or any other railroad property.

Proposed paragraph (a)(2) contains the phase-in requirements for the

installation of image recording systems. An affected lead passenger locomotive must be equipped with an image recording device system no later than four years after the date a final rule is published. However, FRA proposes to require any image recording systems installed on a lead passenger locomotive more than one year after the date of publication of a final rule comply with the requirements of this section. FRA believes this proposal would help achieve prompt implementation of a final rule's image recording system requirements, while providing a reasonable timeframe to allow passenger railroads to develop, obtain, and install appropriate image recording systems (within four years of the date of publication of a final rule). As discussed above, many passenger railroads have already installed recording systems at their own discretion. However, some of those systems may not fully comply with the requirements of this proposed section. To avoid imposing unnecessary costs on industry and to avoid penalizing early adopters of camera technology being used for safety purposes, FRA included the proposed four-year deadline. FRA considered the potential economic and technical burdens involved with researching, acquiring, and installing image recording systems (and developing and implementing relevant image recording system procedures), when formulating this proposed installation timeline. FRA requests comment regarding the appropriateness of the implementation dates proposed in this section.

FRA proposes in paragraph (a)(3) of this section that passenger railroads must provide notice to crewmembers that they are in a locomotive equipped with recorders via a notation on the Form FRA F6180–49A. This proposal is intended to alert crewmembers that there is no expectation of privacy in the cab of the locomotives while performing duties for the railroad. FRA notes that this proposal would also require notice if a passenger locomotive is equipped with any audio recording devices, even if audio recording devices are not required in a final rule but a railroad has chosen to equip a locomotive with such devices. This proposed regulation would not apply to freight railroads that have voluntarily installed visual or audio recording devices in their locomotives. However, FRA encourages freight railroads to provide notice to their crewmember that recording devices are present.

Paragraph (a)(4) proposes that the image recording system shall record at least the most recent 12 hours of operation of a lead locomotive in commuter or intercity service. This proposal would also apply to any audio recordings if a passenger railroad installs audio recording devices on a lead locomotive. The FAST Act requires a lead passenger train locomotive's image recording systems to have a minimum 12-hour continuous recording capability. This 12-hour minimum recording proposal is also consistent with NTSB Safety Recommendation R–10–01 discussed above. A 12-hour recording period would, in many instances, capture a train crew's entire tour during the time they perform duties under the hours of service laws. NTSB has indicated that crew ''actions or inactions at any time during that period could set the stage for an accident.'' [94]

Paragraph (a)(5) proposes that locomotive recording device data (including audio recorder data if installed) on lead locomotives in commuter or intercity passenger service be recorded on a memory module meeting the requirements for a certified crashworthy event recorder memory module described in part 229, appendix D. Appendix D establishes the general requirements for memory modules certified by their manufacturers as crashworthy, and contains performance criteria for survivability from fire, impact shock, crush, fluid immersion, and hydrostatic pressure. The FAST Act requires passenger locomotive image recording devices have crash and fire protections for any in-cab image recordings stored only within a controlling locomotive cab or cab car operating compartment. Further, NTSB Safety Recommendation R–10–01 also recommended FRA require railroads to install crash- and fire-protected inward- and outward-facing audio and image recorders. FRA is not proposing to require passenger railroads to use a locomotive's existing crashworthy memory module to also store image and audio recordings, although that is an option under this proposal. Railroads may use a memory module to store image and audio recordings separate from that storing event recorder data meeting the requirements of appendix D.

The railroad industry has much experience with the standards in appendix D, and collaboratively created these standards via RSAC recommendations. 70 FR 37920 (June 30, 2005). In sum, FRA believes its proposed paragraph (a)(5) with respect to passenger railroads would fulfill the FAST Act's recording and crash and fire protection requirements and the NTSB's technical recommendations on image recording devices in Safety Recommendation R–10–01.

FRA is not proposing memory module requirements for freight railroads that have or are planning to voluntarily install inward- and outward-facing recording devices on their locomotives. However, FRA recommends that if the railroad choses to use a memory module, it should mount the module in such a way as to provide the module with maximum protection.

In addition, eventually locomotive recording device data may primarily be recorded on standard crashworthy memory module equipment associated with required PTC systems, and the future costs of equipping passenger locomotives with crashworthy memory modules might be overstated by this NPRM's Regulatory Impact Analysis (RIA). The lead locomotive of a train equipped and operating with a PTC system under 49 CFR part 236 must have a locomotive event recorder that records train control data, including specific PTC system data. 49 CFR 236.1005(d). The PTC event recorders for locomotives manufactured after October 1, 2009, must be crashworthy. Such PTC event recorders may also eventually include the functionality to record image and audio recording device data. FRA is aware of crashworthy PTC event recorder products already under development that include image recording memory functions.[95] A single crashworthy event recorder memory module that fulfills the existing locomotive safety requirements of part 229, the PTC requirements of part 236, and any future image recording device requirements adopted in this rulemaking, may make economic and logistical sense for railroads to acquire and install on affected locomotives. In the future, railroads may voluntarily install such a new, single, crashworthy PTC memory module that fulfills multiple railroad safety regulatory requirements on locomotives.

FRA seeks comments on the proposed crashworthy memory retention requirements for passenger locomotive recording devices discussed above. FRA is specifically interested in making the final rule appropriately performance-based and cost-effective. FRA believes it has proposed a cost-effective method of meeting the FAST Act's crashworthiness mandate for passenger train locomotive recording devices while attempting to minimize potential regulatory costs, but is interested in comments addressing potential

[94] National Transportation Safety Board, *Reiteration of Safety Recommendations R–10–01 & R–10–02* (July 8, 2015); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-10-001-002.pdf.*

alternatives to meet an appropriate crashworthiness level to protect stored locomotive image recording system data.

Next, proposed paragraph (b) of this section would establish the requirements for the outward-facing image recording functional capabilities on passenger trains. FRA's proposal would explain what must be captured by outward-facing image recording devices that are installed on passenger trains, but leaves it to a railroad's discretion to decide what equipment it will use to fulfill the proposed requirements (with one exception discussed below). FRA has proposed general functional requirements instead of equipment specifications to accommodate the development of future technologies capable of fulfilling the outward-facing image recorder requirements. The proposed requirements of paragraph (b) apply only to outward-facing image recorders installed on lead passenger train locomotives. Freight railroads may choose to follow these proposed requirements for outward-facing recording devices if they chose to install such devices on their locomotives. However, the proposal would not require they do so.

The proposed outward-facing image recording device requirements for lead passenger train locomotives are intended to fulfill the safety-related investigation purposes of recording: (1) Events leading up to a train collision; (2) highway-rail grade crossing or trespasser accidents, including motor vehicle operator actions leading up to such accidents and the functioning of any visible active grade crossing warning devices; (3) wayside signal indications; (4) visible condition of structures and track (*e.g.,* position of switch points, broken rails where visible, bridge conditions, washouts, *etc.*) that an equipped locomotive approaches and travels over; and (5) any other events relevant to a collision or derailment. FRA developed the proposed text of paragraph (b) with the goal of requiring outward-facing image recording devices on passenger trains to capture images to provide more information to help the safety-related investigations of the above-listed events.

First, proposed paragraph (b) requires the recording system on passenger trains to include an image recording device aligned to point parallel to the centerline of tangent track on which the lead locomotive is traveling. FRA has specified that the recordings made would have to be able to distinguish different wayside signal aspects. FRA believes this feature of outward-facing image recordings would be critical in post-accident investigations, as most of the accidents described above for which the NTSB made image recording device recommendations involved whether signal systems were properly functioning, properly displayed, and complied with by train crews.

Second, proposed paragraph (b) would require outward-facing image recording devices on lead passenger train locomotives to be able to function in both day and lowlight/nighttime conditions with illumination from the equipped locomotive's headlight. FRA also proposes that outward-facing image recording devices on such passenger locomotives record at a minimum recording rate of 15 frames per second (fps) (or its equivalent). FRA chose to propose this minimum recording rate threshold to allow for more memory module storage savings than costlier higher-speed or even continuous-action recording (generally considered to be about 23 fps). Industry raised concerns about the cost of obtaining crashworthy memory modules that could retain 12-hours of higher speed and/or higher resolution image recordings during the Working Group meetings. FRA believes a minimum 15 fps requirement will provide accident investigators and railroads a sufficient image recording to analyze the events leading up to a grade crossing collision or other collisions, while balancing the industry's stated cost concern. For example, in 1/15 of a second a car travelling at 45 miles per hour will move approximately 4.4 feet between frames. FRA believes recordings at 15 fps are adequate to fulfill the safety-related investigatory purposes for such recordings listed above, and notes this standard is the same frame rate speed used in certain widely available motor vehicle dashboard camera systems. In this section, to ensure accident investigators can coordinate various sources of information gathered during a railroad accident investigation, FRA also proposes to require an accurate time and date stamp be on outward-facing image recordings.

Next, the FAST Act establishes that a railroad is not required to cease or restrict operations upon a technical failure of an inward- or outward-facing image recording device, but that such device shall be repaired or replaced ''as soon as practicable.'' 49 U.S.C. 20168(j). In proposed paragraph (b), FRA has specified that ''as soon as practicable'' would mean that if a passenger train's lead locomotive's outward-facing image recording system fails, it could not be used as a passenger train's lead locomotive after the next calendar day's inspection of the locomotive required by § 229.21 unless a railroad has first replaced or repaired the recording system. FRA notes it would not consider the en route image recording device failure on a passenger train's lead locomotive to be a violation under existing part 218, subpart D (for operating a controlling locomotive of a train with a disabled safety device) if the locomotive was not used as a passenger train's lead locomotive after the next calendar day's inspection as proposed. This proposal mirrors FRA's treatment of event recorders that fail en route under § 229.135. FRA believes that an image recording device that fails en route on a passenger train's lead locomotive should be treated in the same manner as an event recorder; however, FRA is requesting comments on the burden to passenger railroads of requiring such a defective image recording device to be repaired or replaced at the next calendar day inspection.

Proposed paragraph (c) of this section would establish functional requirements for the inward-facing image recording device on passenger train lead locomotives. The requirements in this proposed paragraph do not apply to inward-facing image recorders installed on freight trains. Freight railroads may choose to follow these proposed requirements for inward-facing recording devices if they chose to install such devices on their locomotives. However, the proposal would not require they do so.

FRA's proposal does not specify the number of inward-facing recording devices that would be required in a passenger train's lead locomotive, but rather proposes that an installed device must provide complete coverage of all areas of the controlling locomotive cab where a crewmember typically may be positioned, including complete coverage of the instruments and controls required to operate the controlling locomotive in normal use. This would include image recording coverage of extra permanent seats in the cab and any jump seats. Although this NPRM does not require multiple inward-facing recording devices in a lead locomotive, FRA makes clear that nothing proposed in this NPRM would preclude a railroad from installing multiple image recording devices in each of its locomotive cabs; however, the NPRM's RIA assumes that only one inward-facing camera in the locomotive would be necessary to satisfy the proposed requirements of this section.

FRA proposes that a recording device be equipped with sufficient resolution to record train crew actions, including

whether a train crew member is physically incapacitated or is not complying with signal system or other operational control system indications. FRA's intent is not to have image recording devices focused on the faces of the individuals in the cab, but rather to require sufficient clarity so that, over a period of operation, the actions of the cab occupants can be monitored.

FRA's intends that an inward-facing image recording device on passenger train lead locomotives would have sufficient clarity and resolution to show whether occupants of the cab are using or manipulating small hand-held personal electronic devices such as cell phones. FRA is not proposing to require the image recording devices to be capable of showing what was displayed on the screen of such a hand-held device, but simply whether the device was turned on and whether a person was using the device. As discussed above, FRA believes one of the best proactive safety uses of an inward-facing camera system is to conduct operational tests to ensure operating employees' compliance with the restrictions on the use of personal electronic devices under part 220, subpart C.

Inward-facing image recorders would also likely be capable of allowing viewers to identify signs of obvious fatigue, such as motions of the head or body that may indicate obvious fatigue or whether a cab occupant appears to be asleep. For example, constant head nodding or dozing of a locomotive engineer, as well as the engineer slumped over asleep, would be signs of obvious fatigue.

As discussed at length during the RSAC Working Group Meetings, fatigue is an ongoing issue in the railroad industry and is often a relevant causal factor that is considered during post-accident investigations. While FRA has a number of efforts underway to address the problem of fatigue in the industry, the inward-facing image recording device requirement would assist accident investigators in making more accurate fatigue-related determinations, with the ultimate aim of taking actions to prevent future accidents caused by fatigue.

Although FRA understands that camera systems are under development that will permit evaluating a crewmember's alertness based on patterns of eye blinks, it is not FRA's intent to require installation of such a system for passenger locomotives. FRA believes the proposed requirements in this paragraph can be met by the inward-facing recording device recording images at a rate as few as 5 fps (or its equivalent), because motion in the cab occurs at a much lower rate than in front of the lead locomotive. For example, APTA's recommended practice for the selection of recording systems for use in transit-related closed circuit television recording systems [96] specifies that 5 fps is the minimum recommended frame rate for use in low-traffic areas or areas where only walking-pace motion is likely (such as passenger areas). FRA has also proposed in paragraph (c) that the inward-facing image recording system for passenger train lead locomotives be able to record the desired actions using the ambient light in the cab. And, if ambient light levels drop too low for normal operation, the image recorders(s) should automatically switch to infrared or another operating mode that gives the recording sufficient clarity to comply with this rule's requirements. FRA has specified using infrared technology to give sufficient image recordings in low-light or nighttime conditions in the proposed rule text. Feedback from the industry indicates that infrared systems work well to provide sufficient image recording clarity in low-light conditions and does not interfere with a crew's ability to see, especially out the locomotive's windows. KCS' presentation to the Working Group indicted that its infrared camera devices emit a barely distinguishable glow in the cab of the locomotive. Infrared image recording devices are also widely available and relatively inexpensive to purchase. FRA has also referenced ''another operating mode'' to capture using other sufficient low-light image recording capability technologies that exist or may arise. FRA seeks comments on whether any other technology exists or is under development that may accomplish the same purpose as infrared technology use with image recording devices in low-light situations. FRA reminds railroads that any infrared or other lighting operation in low light conditions should not interfere with a crew's vision (*see* 49 CFR 229.127(a)), and that the placement of the image recording devices should not obstruct a crew's view of the right-of-way from its normal positions in the cab (49 CFR 229.119(b)).

Similar to the discussion above for outward-facing image recording devices, FRA is also proposing in paragraph (c) that any inward-facing image recordings in passenger train lead locomotives have an accurate date and time stamp. FRA believes an accurate time and date stamp is essential to the usefulness of the recordings, especially for post-accident investigations. Also, similar to the proposal for outward-facing cameras above, FRA is proposing that when there is an en route failure of a passenger locomotive's inward-facing image recording device, the locomotive could not be used as a train's lead locomotive after the next calendar day's inspection of the locomotive as required by § 229.21 if the recording device is not first repaired or replaced.

Finally, FRA has also proposed under this paragraph (c) that no recordings be made of any activities within a passenger locomotive's sanitation compartment as defined by existing § 229.5. A locomotive's sanitation compartment is an enclosed compartment that contains a toilet facility for employee use. The Working Group discussed this topic, and FRA believes such recordings would be an unwarranted invasion of personal privacy and would likely be illegal. In light of those concerns, FRA is proposing to expressly prohibit recordings of any activities in a passenger locomotive's sanitation compartment or placing any image recording device where it would allow the device to record such activities. FRA strongly recommends that freight railroads likewise ensure that voluntarily installed recording devices do not infringe on the privacy of their locomotives' sanitation compartments.

Proposed paragraph (d) would require wired or wireless connections to be provided to ensure only authorized passenger railroad personnel can download image and audio recordings from the certified crashworthy memory module and any other standard memory module. Due to potential for misuse of recordings locomotive image and audio recording systems make, FRA proposes that passenger railroads use electronic security measures to ensure only authorized railroad personnel can download recordings. Such security measures could include password or passcode protection to access a memory module. Proposed paragraph (d) would give passenger railroads discretion whether to use wired or wireless download connections and which appropriate electronic security measures to adopt. This proposed discretion would accommodate improved electronic information security technologies that develop in the future. FRA seeks comments on whether

[96] American Public Transportation Association Standards Development Program Recommended Practice, *Selection of Cameras, Digital Recording Systems, Digital High-Speed Networks and Trainlines for Use in Transit-Related CCTV Systems,* APTA IT–CCTV–RP–001–11 (June 2011); available online at: *http://www.apta.com/resources/standards/Documents/APTA-IT-CCTV-RP-001-11.pdf.*

appropriate electronic download and security features, such as encryption functions, should be specified in a final rule, or whether such features are better addressed by individual passenger railroads or an industry-adopted standard. While FRA is not proposing to apply paragraph (d) to voluntarily installed inward- and outward-facing recording devices on freight locomotives, FRA suggests freight railroads take necessary steps to prevent the unauthorized downloading of locomotive image and audio recordings. FRA also seeks comments from interested parties as to whether the requirements proposed in this section should apply to any railroad that voluntarily installs image or audio recording devices.

Proposed paragraph (e) of this section would require specified inspection, testing, and maintenance of locomotive image and audio recording device systems on passenger train lead locomotives similar to those found in FRA's locomotive event recorder regulation. Paragraph (e) would first require such a passenger locomotive's image recording system (and any installed audio recording system) have self-monitoring features. This means the recording system can monitor its own operation and display an indication to a passenger train's crew when any data required to be stored is not stored, or when the stored data does not match the data received from the image recording devices. At a minimum, the self-monitoring features must indicate to the passenger locomotive's crew whether the system is turned on, and, in some fashion, that power is available to the system. This proposal leaves to the discretion of the passenger railroads which self-monitoring features to install to avoid inhibiting future changes in available technology that could be used for system self-monitoring. Other, more sophisticated self-monitoring features, if available, must also indicate to a passenger train's crew if a fault with the recording system has been detected. FRA acknowledges that some faults may go undetected under these requirements. However, FRA believes the additional requirement for download of sample recordings at the periodic inspection intervals under proposed paragraph (e) will serve as an appropriate back-up test, similar to the periodic and annual inspection requirements in existing § 229.135 for locomotive event recorders. FRA is declining to apply the requirements proposed in paragraph (e) to locomotive image and audio recording devices voluntarily installed by freight railroads.

FRA seeks comment on whether appropriate restrictions in a final rule should be placed on sample recording device downloads from passenger train lead locomotives made under proposed paragraph (e). FRA anticipates sample downloads for inspection or maintenance purposes might often be taken by non-managerial or operating employees, such as mechanical department employees in a locomotive repair facility. However, FRA believes these sample downloads, like all image or audio recording device downloads from passenger trains, should be subject to the security proposals in § 229.136(d) and (f) to avoid mishandling or misuse of locomotive recordings. Further, FRA believes it may be appropriate in a final rule to require limiting the periodic inspection download to, for instance, the last 30 seconds of operation before the most recent normal shutdown of the system. Further, a requirement that such a download for inspection or testing purposes must be deleted once proper functioning of an image recording system is confirmed might also be appropriate. FRA requests comment on whether these or similar requirements are necessary in a final rule.

Paragraph (f) of this section proposes preservation and handling requirements for image and audio recordings on passenger locomotives' image and audio recording systems. Paragraph (f) would implement the FAST Act's requirements to address the appropriate uses of passenger locomotive recordings and protect such recordings from unauthorized release.

Paragraph (f)(1) would require each passenger railroad subject to proposed § 229.136 to adopt, maintain, and comply with a chain-of-custody procedure governing the handling and release of any locomotive image or audio recordings accessed by railroad personnel. As discussed in Section VI. above, in absence of an accident or incident where FRA or another Federal agency has taken possession of a locomotive's recording devices, a railroad's internal policies govern the handling of locomotive audio and video recordings. The policies passenger railroads establish under proposed subsection (f)(1) would govern the chain-of-custody for recordings, access to the recordings, and release of the recordings. The chain-of-custody procedure would have to specifically address the preservation and handling requirements for post-accident/incident recordings provided to FRA or other Federal agencies. Under this proposal, a passenger railroad's failure to comply with its procedures would make the railroad subject to FRA enforcement action.

FRA has not proposed specific rule text governing the chain-of-custody, handling, and release procedures industry-wide. The industry has much experience in this area given the significant number of passenger locomotives already equipped with outward- and inward-facing image recording devices. The industry also has experience with preservation and handling requirements for locomotive event recorders after the occurrence of an accident under existing § 229.135(e). Given the various types of locomotive recording equipment that different railroads may choose to utilize, various State court evidentiary and chain-of-custody laws and rules with which railroads must comply if the railroads use the recordings in litigation (*e.g.,* highway-rail grade crossing and trespasser accidents), and the potential cost of requiring railroads to amend existing procedures and to provide instruction on such new procedures, FRA does not believe it appropriate to impose specific chain-of-custody and release procedures in regulation text. Rather, passenger railroads must ensure their custody and release procedures and policies meet the requirements for handling recordings under the proposed rule. FRA's safety interest most strongly lies in ensuring recordings are handled properly post-accident.

Proposed paragraph (f)(1) permits passenger railroads to extract and analyze recorded data if the original downloaded data file, or an unanalyzed exact copy of it, is retained in secure custody under the railroad's procedures adopted under paragraph (f)(1) and not utilized for analysis or any other purpose except by direction of FRA or another Federal agency. FRA notes the proposed post-accident/incident preservation requirement in paragraph (f)(2) would apply to any recordings made on a lead passenger locomotive equipped with image or audio recording devices, without regard to whether a final rule requires a particular locomotive to be equipped with such devices. For example, if a passenger railroad voluntarily chose to equip a locomotive with an audio recording system and that locomotive was involved in an accident, the railroad would be required to preserve the audio recording in accordance with proposed paragraph (f)(2), which is discussed below. As explained in FRA's May 18, 2010, letter to Metrolink referenced above, such audio recordings from passenger locomotives are already subject to preservation under existing § 229.135(e)'s locomotive-mounted

recording preservation requirement. Such recordings would continue to be required to be preserved under this proposed paragraph. Thus, FRA's proposal regarding the preservation of locomotive recordings does not represent any regulatory change; however, some passenger railroads that previously did not have inward- or outward-facing image recording devices in their lead locomotives will now have to install such devices and will have to store the associated data.

Paragraph (f)(2) specifies the post-accident preservation requirements for passenger locomotive image and audio recordings. If a locomotive being used in commuter or intercity passenger service is equipped with image or audio recorders and involved in a reportable accident or incident under part 225 of this chapter (Part 225 reportable accident), this paragraph proposes that the railroad using the locomotive at the time of the accident or incident must preserve the devices' data for analysis by FRA or other Federal agencies for up to one year after the accident. The purpose of this proposed provision is to ensure data from passenger locomotive-mounted recording devices is retained for use by FRA as well as other Federal agencies to effectively conduct post-accident/incident investigations and more accurately determine their causes. Additionally, this paragraph's one-year retention requirement would fulfill the FAST Act's mandate that each passenger railroad preserve recording device data for one year after the date of a Part 225 reportable accident.

To allow for analysis by FRA or other Federal agencies during investigations, paragraph (f)(2) proposes to require a railroad to either provide the image and/or audio data in a usable format, or make available any platform, software, media device, etc. that is required to play back the image and/or audio data. In the past, FRA has encountered challenges in investigating accidents/incidents where railroads have provided data to FRA but not the means to read, view, or use the data. This proposal is intended to prevent that issue.

While freight locomotive recording devices are not covered under this proposed paragraph, preservation requirements for recordings from freight locomotive recording devices can be found in existing § 229.135(e). Section 229.135(e) already applies to any locomotive image and audio recordings that exist on a passenger or freight locomotive involved in a Part 225 reportable accident. As FRA explained in its 2010 letter to Metrolink discussed above, existing § 229.135(e) applies by its plain text to ''any other locomotive-mounted recording device or devices designed to record information concerning the functioning of a locomotive or train.'' FRA considers in-cab locomotive cameras to be ''other locomotive-mounted recording devices'' within the meaning of that existing section.

Paragraph (f)(3) would establish permissible uses of a passenger locomotive's image or audio recordings and is similar to proposed text FRA presented during the Working Group meetings. While proposed paragraph (f)(3) only applies to image or audio recordings from passenger locomotives, FRA is asking for comments on whether proposed paragraph (f)(3) should also apply to image or audio recordings from freight locomotives with voluntarily installed recording devices. The FAST Act, at 49 U.S.C. 20168(d), establishes three express purposes for which passenger railroads may use image recordings and gives FRA discretion to designate other appropriate purposes. The three express purposes stated in the FAST Act are for:

> (1) Verifying that train crew actions are in accordance with applicable safety laws and the railroad carrier's operating rules and procedures, including a system-wide program for such verification; (2) assisting in an investigation into the causation of a reportable accident or incident; and (3) documenting a criminal act or monitoring unauthorized occupancy of the controlling locomotive cab or car operating compartment.

49 U.S.C. 20168(d). FRA has divided the first express purpose in the FAST Act into two items under paragraph (f)(3), to expressly state passenger railroads may use recordings to investigate a violation of a Federal railroad safety law, regulation, or order, or a railroad's operating rules and procedures and to conduct operational tests under § 217.9. A railroad's program of operational testing is the existing method of conducting such a system-wide verification of rules compliance. FRA's regulations are issued under the authority of the Federal railroad safety laws, and often require railroads to adopt rules governing safe railroad operations. FRA believes Congress intended the Federal railroad safety regulations issued under the safety laws to be included under the Statute's provision, and FRA also has discretion under paragraph (d)(4) of the Statute to include other purposes FRA deems appropriate.

FRA has also incorporated the FAST Act's permission to use passenger locomotive recordings to assist in conducting investigations into the cause of reportable accidents. As discussed above, the NTSB has long sought to use recordings to help conduct post-accident investigations to accurately determine accident causes with the goal of improving railroad safety. This use will also enable passenger railroads to continue to utilize image recordings in litigation involving grade crossing and trespasser accidents.

Next, FRA has also proposed to incorporate the FAST Act's permission to use recordings on passenger trains to document any criminal acts and unauthorized occupancy of the cab, as well as the investigation of a suspected or confirmed act of terrorism. It is not FRA's intent that any of the proposals in this NPRM would affect the ability of law enforcement personnel or a Federal agency's access or use of passenger locomotive image or audio recordings to conduct criminal investigations, as is expressly stated in proposed paragraph (h) below. No current FRA regulations specifically address unauthorized occupancy of locomotive cabs. However, the issue of unauthorized occupancy of the locomotive cab has arisen many times in the past in the context of railroad accidents and other FRA safety-related investigations, is quite relevant information in accident investigations, and may also arise in certain criminal investigations.

In the FAST Act, Congress permits FRA to deem other appropriate purposes for which passenger railroads could use locomotive image recordings. Therefore, FRA proposes in paragraph (f)(3)(vii) to allow passenger railroads to use recordings to perform inspection, testing, maintenance, or repair activities to ensure inward-facing image recorders are properly installed and functioning. Under proposed § 229.136(e) discussed above, FRA expects that at each periodic inspection § 229.23 requires, the passenger railroad conducting the inspection of the equipped locomotive would take sample download(s) to confirm operation of the system, and, if necessary, repair the system to full operation. However, FRA also intends to allow a passenger railroad to use recordings to ensure the proper functioning of a recording system at any time, especially if a recording system malfunctions and requires repair.

FRA requests comment on whether other appropriate safety-related uses exist for locomotive recordings which it should include in a final rule. Further, although the FAST Act applies only to recordings that image recording devices make on passenger locomotives subject to the Act's requirements, FRA is requesting comment on whether paragraph (f)(3) should apply to recordings made by locomotives in

freight service and any locomotive audio recordings.

Proposed paragraph (g) of this section would implement the FAST Act's recording device review and approval process for passenger railroads. 49 U.S.C. 20168(c). The Act requires FRA to establish a review and approval process to ensure the three standards described in 49 U.S.C. 20168(b) are met (12-hour continuous recording capability, crash and fire protections, and accessibility for accident investigation review). FRA proposes that only passenger railroads (not freight) would have to submit information to FRA regarding whether the recording device system installed on locomotives subject to the final rule meets the established criteria. FRA has not proposed that freight railroads would have to submit such information, because the FAST Act's recording device approval provision applies only to passenger railroads. FRA requests comment regarding whether in the final rule the proposed recording system review and approval requirements should also apply to freight railroads. FRA also requests comment on the potential implications of requiring passenger railroads to maintain a total of 24 hours of continuous recording capability. Specifically, FRA seeks comment on the potential costs and benefits of such a requirement.

A passenger railroad would have to submit the information to FRA for review and approval at least 90 days prior to installing the image recording system, or for existing systems, not more than 30 days after the effective date of a final rule. As a practical matter, FRA would encourage railroads to submit their information to FRA well in advance of the proposed 90-day requirement so that if FRA disapproves of any part of a railroad's submission, the railroad could timely make amendments. This would minimize any impact on the railroad's proposed installation timeline or the use of railroad resources.

A passenger railroad's submission under this proposal would have to address: (1) The image recording system's minimum 12-hour continuous recording attributes; (2) the specifications for the crashworthy memory module utilized to store the image recordings that complies with the performance criteria in existing part 229, appendix D; and (3) the recording system's technical attributes and procedures governing access by authorized personnel, addressing the accessibility of the recorded data in the event of a railroad accident under proposed paragraph (f).

Like several other FRA regulations, FRA has proposed it would review a railroad's submission within 90 days. FRA's Associate Administrator for Railroad Safety and Chief Safety Officer would then provide notice in writing if the railroad's submission has been disapproved. If a railroad's system is disapproved, FRA's written notice would specify the basis for such disapproval. If a railroad's system is disapproved, the railroad would then be prohibited from installing and utilizing the required image recording system until it received approval of an amended submission. In the absence of written disapproval from FRA, FRA would be considered to have approved the railroad's locomotive image recording system. For the convenience of both industry and FRA, FRA plans to publish a list of any previously approved systems on its internet website that railroads can use as a reference.

Proposed paragraph (h) of this section mimics existing § 229.135(f) in FRA's locomotive event recorder regulation. This provision explains that nothing in proposed § 229.136 is intended to alter the existing legal authority of law enforcement officials investigating violations of State criminal laws, the priority of NTSB investigations under 49 U.S.C. 1131 and 1134, or the authority of the Secretary of Transportation to investigate railroad accidents under the applicable Federal statutes.

Proposed paragraph (i) of this section addresses a passenger railroad removing a locomotive image recording device from service, and how it should handle its repair. This proposed paragraph would apply only to image recording devices on locomotives in commuter or intercity passenger service, not recording devices voluntarily installed on locomotives in freight service.

The proposed text would allow passenger railroads to remove a locomotive image recording device from service. In fact, if a railroad knows the device is not properly recording, the railroad would have to remove the device from service. When the passenger railroad removes the locomotive's image recording device from service, a qualified person under FRA's regulations would have to record the date the device was removed from service on Form FRA F6180.49A, under the REMARKS section. However, a locomotive with an out-of-service image recording device could still act as a lead locomotive in a passenger train until the locomotive's next calendar-day inspection under § 229.21. The fact that the locomotive's image recording device is inoperative would not deem the locomotive to be in an improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9. These proposed requirements for removing passenger locomotive recording devices from service mirror already established requirements for removing locomotive event recorders from service under § 229.135(c). However, if the railroad is unable to repair the image recording device before the locomotive's next calendar-day inspection, the locomotive would have to be placed out of service. Therefore, as previously stated, FRA requesting comments on the burden this would put on passenger railroads.

Proposed paragraph (j) of this section is similar to existing § 229.135(g) of FRA's regulation addressing locomotive event recorders and addresses tampering with a locomotive's image or audio recording system. As described above, FRA has proposed to include passenger locomotive recording systems as ''safety devices'' in part 218's tampering regulation. This proposed paragraph explains the potential ramifications for willfully disabling an event recorder or tampering with or altering the data such devices record. FRA would consider the following examples unlawful tampering with a locomotive's recording system when an employee: Disables or obscures an image recording device to prevent the device from recording the intended field of view, disables or interferes with a microphone or other component of an audio recording system, or attempts to disable or tamper with a memory module or other device that stores recorded data.

Finally, proposed paragraph (k) of this section would define the meaning of the term ''train'' for this section. The term train is proposed to mean a single locomotive, multiple locomotives coupled together, or one or more locomotives coupled together with one or more cars. This proposed definition clarifies that lite passenger locomotive consists or single passenger locomotives that are operated would have to be equipped with the image recording devices as prescribed in this section.

Appendix D to Part 229 Criteria for Certification of Crashworthy Event Recorder Memory Module

Finally, FRA proposes to amend existing part 229, appendix D to state the crashworthiness standards in that appendix also apply to a memory module used to store the data recorded by the image recording devices on lead passenger train locomotives required by proposed § 229.136, and any audio

recording devices a passenger railroad installs. FRA believes the existing crashworthy memory module requirements in appendix D intended to protect the microprocessor-based data recorded by a locomotive's event recorder are also the appropriate standards for microprocessor data a lead passenger locomotive's image and audio recording systems record. The railroad industry has extensive experience with the standards in appendix D, and collaboratively created these standards via RSAC recommendations to FRA in 2003 that were incorporated into Federal regulation in 2005. 70 FR 37920 (June 30, 2005).

Appendix D establishes the general requirements, testing sequence, and required marking for memory modules certified by their manufacturers as crashworthy. Appendix D also contains performance criteria for memory module survivability from fire, impact shock, crush, fluid immersion, and hydrostatic pressure. Any memory module used to store the last 12 hours of data from an image or audio recording device meeting the performance criteria in appendix D would comply with the crashworthiness proposal in this NPRM.

FRA understands the NTSB prefers stricter recorder survivability standards than those in appendix D. NTSB has recommended FRA require event recorder data to also be recorded in another location remote from the lead locomotive(s) to minimize the likelihood of data destruction in an accident, as has occurred in certain accidents. NTSB Safety Recommendation R–13–22.[97] However, the existing crashworthiness standards in appendix D require a memory module capable of surviving the majority of railroad accidents. FRA believes a new, more stringent standard that would prevent the destruction of data in every passenger railroad accident scenario is likely not cost beneficial, and is also likely unnecessary given the future implementation of PTC systems.

As discussed above, the railroad accidents in which the NTSB has discussed locomotive image and audio recording device recommendations were human-factor caused accidents. Nearly all those human-factor caused railroad accidents were PTC-preventable. Thus, upon the implementation of PTC systems (Amtrak has already implemented a PTC system on segments of track on the Northeast Corridor), the likelihood of similar accidents occurring should be eliminated or greatly reduced. In turn, the need should diminish for more stringent crashworthy memory module requirements to preserve image and audio recordings for use to investigate human-factor caused accidents on main track.

FRA proposes that a memory module meeting the specified performance criteria in either Table 1 or Table 2 of section C of appendix D would be acceptable. As FRA discussed in the rulemaking promulgating the crashworthy memory module standards, each set of criteria in Tables 1 and 2 is a performance standard and FRA has not included any specific test procedures to achieve the required level of performance. FRA did not believe it necessary to include specific testing criteria in the regulation as the industry and manufacturers are in the best position to determine the exact way they will test for the specified performance parameters. 69 FR 39785 (June 30, 2004). Not requiring specific test procedures also accommodates any future testing methods that develop.

Finally, under the FAST Act (49 U.S.C. 20168(e)(2)), FRA has discretion to exempt railroads from the inward- and outward-facing image recording device requirements based on alternative technologies or practices that provide for an equivalent or greater safety benefit or are better suited to the risks of the operation. FRA believes it may be appropriate to exercise this discretion under the Act to provide an exemption from the proposed crashworthiness requirements in this NPRM. FRA is contemplating an exemption from the crashworthiness requirements where lead passenger locomotive recordings are immediately transmitted and stored at a remote location off of the locomotives(s) when technology reliably allows for such a recording system. This proposal is also consistent with the FAST Act's requirement for crashworthy storage only when recordings are stored on a controlling locomotive's cab. 49 U.S.C. 20168(b)(2).

Based on Working Group discussions, FRA understands that current technology does not always permit such a wirelessly transmitted data recording system to work effectively in all locations (*e.g.,* at remote locations or locations where physical features such as tunnels or elevation result in no reliable wireless transmission of data). FRA requests comment on this topic, including whether this exemption might best be addressed on an individual railroad or operation via the waiver process at 49 CFR part 211. This exemption would be consistent with the intent of NTSB Recommendation R–13–22 discussed above, in that data regarding the operation of a locomotive that is stored remotely is not at risk of being lost in an accident involving that locomotive.

VIII. Regulatory Impact and Notices

A. Executive Order 12866, Executive Order 13563, Executive Order 13771, and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action within the meaning of Executive Order 12866 (E.O. 12866) and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). FRA made this determination by finding that, although the economic effects of this proposed regulatory action would not exceed the $100 million annual threshold defined by E.O. 12866, the proposed rule is significant because of the substantial public interest in transportation safety. The proposed rule attempts to follow the direction of Executive Order 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. However, FRA was unable to determine how effective locomotive image recording devices would be at reducing accidents. Thus, instead of presenting the quantifiable benefits, FRA presented the benefits qualitatively, as discussed further below. Finally, this proposed rule is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

This NPRM directly responds to the Congressional mandate in section 11411 of the FAST Act that FRA, by delegation from the Secretary, require each railroad that provides intercity rail passenger or commuter rail passenger transportation to install image recording devices on the controlling locomotives of passenger trains. FRA believes the requirements of this proposed rule, as applied to passenger trains, are directly or implicitly required by the FAST Act and will promote railroad safety.

FRA has prepared and placed a RIA addressing the economic impact of this proposed rule in the Docket (Docket no. FRA–2016–0036). The RIA details estimates of the costs of this proposed rule that are likely to be incurred over a ten-year period. FRA estimated the costs of this proposed rule using discount rates of 3 and 7 percent. For the 10-year period analyzed, the estimated quantified costs for passenger

[97] National Transportation Safety Board, *Safety Recommendation R–13–22* (Aug. 14, 2013); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-13-018-023.pdf.*

railroads, which must comply with all proposed requirements in the NPRM, total a present value (PV) of $31,837,918 (PV, 7 percent), and $34,664,317 (PV, 3 percent). FRA is interested to learn from industry stakeholders about potential alternatives to meet a reasonable crashworthiness level for locomotive image recording systems for passenger locomotives. FRA believes it has proposed a cost-effective method of meeting the FAST Act's crashworthiness mandate for passenger locomotives while attempting to minimize potential regulatory costs. FRA is interested in comments addressing additional crashworthiness options, with the intent to make a final rule appropriately performance-based and cost-effective. Specifically, FRA seeks public input on the forces memory systems should ideally be able to withstand, and the fire resistance necessary for the data to survive. As discussed in the preamble above, FRA may consider passenger locomotive memory module crashworthiness protection requirements unnecessary (or met) in the future if recorded data is stored at a remote location off of a locomotive consist, safe from accident destruction. FRA did not propose to require this option because the agency does not believe current technology would reliably allow for such remote transmission and storage in all instances, and such a system would likely be much more costly to develop in order to transfer the recorded data to a centralized location. FRA requests comment regarding whether a remote storage option has any utility (or is feasible) at present or in the future.

In addition to complying with the FAST Act's statutory mandate for passenger locomotives, FRA's original reason for requiring image recording devices to be installed in the locomotives is the collection of causal information. For example, in the 2015 Amtrak accident in Philadelphia, Pennsylvania, image recording devices could have helped provide additional causal information during the post-accident investigation. Causal data is especially critical for the prevention of future accidents when no apparent accident cause can be determined through other means. Further, images can become key to identifying new safety concerns that otherwise would be difficult to research or identify, which could lead FRA and the railroad industry to better understand areas in which safety could be improved. Other, probably larger, safety benefits would also primarily accrue from the deterrence of unsafe behaviors that cause railroad accidents. For instance, the presence of locomotive image recording devices could have deterred the engineer from text messaging while operating the Metrolink train involved in the 2008 accident at Chatsworth, California. In the RIA, FRA discusses and provides examples of how the deterrent effect of locomotive image recording devices could reduce negative behavior because train crews know their actions are being recorded.[98]

Other benefits include: (1) Giving railroads the ability to perform operational efficiency tests that were impossible to perform in a practical manner without cameras *(e.g.,* for prohibited use of personal electronic devices) and at a lower cost; (2) providing information to research how crews perform (both to improve safety and to improve productivity); (3) providing better physical security of trains; and (4) increasing railroad productivity.

While FRA is declining to require locomotive recording devices in freight locomotives, many freight railroads have informed FRA the above reasons are why railroads are installing camera systems even without an FRA regulation. FRA's analysis shows there are many factors that are difficult to quantify that combine to warrant the proposed rule. FRA believes that given current railroad business and operational practices, this analysis demonstrates the quantifiable benefits for this proposed rule would not exceed the costs.

Tables: Costs of the proposed rule:

TABLE 1—10-YEAR COSTS AND COST SAVINGS

[Discounted, 7 and 3 percent]

Table 1. 10-year costs and cost savings (discounted, 7 and 3 percent)	Discounted at 7%	Discounted at 3%	Annualized at 7%	Annualized at 3%
Costs	$32,884,651	$35,915,229	$4,682,035	$4,210,360
Camera	27,441,173	29,956,299	3,907,006	3,511,792
Crashworthiness	5,443,479	5,958,929	775,029	698,568
Cost Savings:				
Operational Testing Benefits	1,046,734	1,250,912	149,031	146,645
Net Costs	31,837,918	34,664,317	4,533,003	4,063,715

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As discussed below, FRA does not believe this proposed rule would have a significant economic impact on a substantial number of small entities. However, FRA is requesting comments on whether the proposed rule would impact small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information, including comments received in the public comment process, to determine whether the rule will have a significant the economic impact on small entities.

1. Reasons for Considering Agency Action

FRA is initiating this NPRM in response to a statutory mandate in

[98] *See* Benefits, Section 1.1, of the RIA for more information.

section 11411 of the FAST Act. Section 11411 requires the Secretary to promulgate regulations requiring each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

This NPRM proposes regulations that would require each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains. If enacted, these proposed requirements would fulfill Section 11411 of the FAST Act, which mandates the installation of these devices in all controlling passenger train locomotives.

3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121 subpart A.

This proposed rule would apply primarily to railroad carriers that provide regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public. However, one passenger railroad is considered a small entity: The Hawkeye Express (operated by the Iowa Northern Railway Company (IANR)). All other passenger railroad operations in the United States are part of larger governmental entities whose service jurisdictions exceed 50,000 in population, and, based on the definition, are not considered small entities. Hawkeye Express is a short-haul passenger railroad that is not a commuter railroad or an intercity passenger railroad, and would not be affected by the NPRM proposals.

As the only small entity that could potentially be impacted by this regulation is not classified as a commuter railroad or an intercity passenger railroad, it would not be affected by the NPRM proposals; thus, FRA does not believe that the provisions of the NPRM would impact any small entities. However, FRA requests comments as to the impact that the proposed rule would have on any small passenger railroad and on passenger railroads in general.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

In general, this NPRM would require the installation of inward- and outward-facing locomotive image recording devices on all lead locomotives in passenger trains and requires the railroads to maintain records from these devices for one year after a reportable accident. This NPRM would also govern the use of the recordings to conduct operational tests in order to determine if a railroad employee is in compliance with applicable railroad rules and Federal regulations. Additionally, passenger railroads would need to have a chain-of-custody procedure that specifically addresses the preservation and handling requirements for post-accident/incident recordings provided to FRA or the NTSB under part 229.136(f)(2) of this NPRM.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA does not believe there are any relevant Federal rules that duplicate, overlap with, or conflict with the proposed regulations in this NPRM.

FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on any small entity that would result from the adoption of the proposed language in this NPRM. FRA particularly encourages any small entity that could potentially be impacted by the proposed amendments to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the NPRM's economic impact on small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar equivalent cost
217.7—Operating Rules; Filing and Recordkeeping—Filing of code of operating rules, timetables, and special instructions with FRA.	2 new railroads	2 documents	1 hour	2 hours	150
—Amendments to code of operating rules, timetables, and special instructions by Class I, Class II, Amtrak, and commuter railroads.	55 railroads	165 revised documents.	20 minutes	55 hours	4,125
—Class III and other railroads: Copy of code of operating rules, timetables, and special instructions.	5 new railroads	5 submitted documents.	55 minutes	5 hours	375

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar equivalent cost
—Class III railroads: Amendments to code of operating rules, timetables, and special instructions.	704 railroads	2,112 amendments	15 minutes	528 hours	39,600
217.9—Program of Operational Tests: Written record of each railroad testing officer.	755 railroads	4,732 records	2 minutes	158 hours	11,534
—Development and adoption of procedure ensuring random selection of employees by railroads utilizing inward-facing locomotive and in-cab audio recordings to conduct operational tests and inspections (New Requirement).	45 railroads	40 adopted procedures.	24 hours	960 hours	72,000
—Written program of operational tests and inspections.	5 new railroads	5 programs	9.92 hours 1 minute.	50 hours	5,850
—Records of operational tests/inspections.	755 railroads	9,120,000 records	70 minutes	152,000 hrs	11,096,000
—Railroad copy of current program operational tests/inspections—amendments.	55 railroads	165 program revisions.	2 hours	193 hours	14,475
—Written quarterly review of operational tests/inspections by RR.	37 railroads	148 reviews	2 hrs/5 sec	296 hours	21,608
—6-month review of operational tests/inspections/naming of officer.	37 railroads	74 reviews + 37 names.		148 hours	10,804
—6-month review by passenger railroads designated officers of operational testing and inspection data.	Amtrak + 33 railroads.	68 reviews + 34 names.	2 hrs/5 sec	136 hours	9,928
—Records of periodic reviews	71 railroads	290 records	1 minute	5 hours	375
—Annual summary of operational tests and inspections.	71 railroads	71 summary records.	61 minutes	72 hours	5,400
—FRA disapproval of RR program of operational tests/inspections and RR written response in support of program.	755 railroads	5 support documents.	1 hour	5 hours	375
—RR amended program of operational tests/inspections.	755 railroads	5 revised programs.	30 minutes	3 hours	225
217.11—.					
—RR copy of program for periodic instruction of employees.	5 new railroads	5 program copies	8 hours	40 hours	3,000
—RR copy of amendment of program for periodic instruction of employees.	755 railroads	110 copies	30 minutes	55 hours	4,125
218.95—Instruction, training, examination—employee records.	755 railroads	98,000 records	1 minute	1,633 hours	122,475
—RR written response to FRA disapproval of program of instruction, testing, examination.	755 railroads	5 responses	1 hour	5 hours	375
—Amended RR program of instruction, testing, examination.	755 railroads	5 amended programs.	30 minutes	3 hours	225
218.97—RR copy of good faith challenge procedures.	755 railroads	4,732 copies	6 minutes	473 hours	35,475
—RR employee good faith challenge of RR directive.	98,000 workers	15 gd. faith challenges.	10 minutes	3 hours	219
—RR resolution of employee good faith challenge.	15 railroads	15 responses	5 minutes	1 hour	73
—RR officer immediate review of unresolved good faith challenge.	15 railroads	5 reviews	30 minutes	3 hours	219
—RR officer explanation to employee that Federal law may protect against employer retaliation for refusal to carry out work if employee refusal is a lawful, good faith act.	15 railroads	5 answers	1 minute	.08 hour	6
—Employee written/electronic protest of employer final decision.	10 railroads	10 protests	15 minutes	3 hours	219
—Employee copy of protest	10 railroads	10 copies	1 minute	.17 hour	12
—Employer further review of good faith challenge after employee written request.	10 railroads	3 requests + 3 reviews.	15 minutes	2 hours	146
—RR verification decision to employee in writing.	10 railroads	10 decisions	10 minutes	2 hours	146

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar equivalent cost
—Employer's copy of written required by this section.	755 railroads	755 copies	5 minutes	63 hours	4,725
—RR verification decision copies	20 railroads	20 copies	5 minutes	2 hours	150
218.99—Shoving or Pushing Movement: RR operating rule complying with section's requirements.	755 railroads	32 rule revisions	1 hour	32 hours	2,400
218.101—Leaving Equipment in the Clear: Operating Rule that Complies with this section.	755 railroads	32 amended rules	30 minutes	16 hours	1,200
218.103—Hand-Operated Switches: Operating Rule that Complies with this section.	755 railroads	32 revised op. rules.	60 minutes	32 hours	2,400
—Job briefings: Minimum requirements specified in operating rules.	755 railroads	5 modified op. rules.	30 minutes	3 hours	225
229.136—Locomotive mage Recording Systems (New Requirements)—Duty to equip and record: Noting the presence of any image and audio recording system on each lead locomotive in intercity and commuter rail passenger service in ''Remarks'' section of Form FRA F 6180.49A.	4,500 passenger locomotives.	4,120 notes	15 seconds	17 hours	1,241
—Image recording system capturing at least most recent 12 hours of operation of an intercity passenger or commuter rail passenger locomotive.	4,500 passenger locomotives.	4,120 recordings	12 hours	49,440 hrs	0
—Passenger railroads voluntary adoption and development of chain of custody (c of c) procedures.	27 railroads	20 c of c procedures.	48 hours	960 hours	72,000
—Passenger railroad preservation of accident/incident data of image recording system from locomotive using such system at time of accident/incident (includes voluntary freight railroads & restates previous requirement under section 229.135(e)).	31 railroads	163 saved recordings.	12 hours	1,956 hours	140,832
—Provision by passenger railroad of written description of technical aspects any locomotive image recording system to FRA for approval.	31 railroads	31 written descriptions/plans.	50 hours	1,550 hours	113,150
—Removal of locomotive recording device from service from locomotive in commuter or intercity passenger service and handling for repair: Notation on Form FRA 6180.49A in ''Remarks'' section of date the device was removed from service.	31 railroads	20 notations	15 minutes	5 hours	305
Total	N/A	9,240,241	N/A	210,915	11,470,639

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292, or Ms. Kimberly Toone, Records Management Officer, Federal Railroad Administration, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE, 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr.

Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. FRA will be seeking approval for the information collection requirements associated with this rule under OMB No. 2130–0035.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this NPRM under the principles and criteria contained in Executive Order 13132. This NPRM could affect State and local governments to the extent that they sponsor, or exercise oversight of, passenger railroads. Because this proposed rule is required by Federal statute for passenger railroads under 49 U.S.C. 20168, the consultation and funding requirements of Executive Order 13132 do not apply. However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this proposed rule under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Therefore, preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999). FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's NEPA Procedures, ''Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.'' *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this proposed regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to propose that passenger railroads install recording devices on locomotives and use those devices to help investigate and prevent railroad accidents. FRA does not anticipate any environmental impacts from these proposed requirements and finds there are no extraordinary circumstances present in connection with this proposed rule.

F. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534 May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

G. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this proposed rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that the proposals in this rule are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this proposed rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (March 31, 2017). Executive Order 13783 defines ''burden'' to mean unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. FRA determined this proposed rule will not potentially burden the development or use of domestically produced energy resources.

J. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this proposed rule on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979. The requirements proposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects

49 CFR Part 217

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Locomotives, and Tampering.

49 CFR Part 229

Locomotives, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 217—RAILROAD OPERATING RULES

■ 1. The authority citation for part 217 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ Subpart A—General

■ 2. In § 217.9, add paragraphs (b)(3) and (4) to read as follows:

§ 217.9 Program of operational tests and inspections; recordkeeping.

* * * * *

(b) * * *

(3) A railroad that utilizes inward-facing locomotive image or in-cab audio recordings to conduct operational tests and inspections shall adopt and comply with a procedure in its operational tests and inspections program that ensures employees are randomly subject to such operational tests and inspections involving image or audio recordings. The procedure adopted by a railroad must:

(i) Establish objective, neutral criteria to ensure every employee subject to such operational tests and inspections is selected randomly for such operational tests and inspections within a specified time frame;

(ii) Not permit subjective factors to play a role in selection, *i.e.,* no employee may be selected based on the exercise of a railroad's discretion; and

(iii) Require that any operational test or inspection performed using locomotive image recordings be performed within 72 hours of the completion of the employee's tour of duty that is the subject of the operational test. Any operational test performed more than 72 hours after the completion of the tour of duty that is the

subject of the test is a violation of this section. The 72-hour limitation does not apply to investigations of railroad accidents/incidents or to violations of Federal railroad safety laws, regulations, and orders, or any criminal laws.

(4) FRA may review a railroad's procedure implementing paragraph (b)(3) of this section, and, for cause stated, may disapprove such procedure under paragraph (h) of this section.

* * * * *

PART 218—RAILROAD OPERATING PRACTICES

■ 3. The authority citation for part 218 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131, 20138, 20144, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart D—Prohibition Against Tampering With Safety Devices

■ 4. In § 218.53, revise paragraph (c) and add paragraph (d) to read as follows:

§ 218.53 Scope and definitions.

* * * * *

(c) *Safety Device* means any locomotive-mounted equipment used either to assure the locomotive engineer is alert, not physically incapacitated, and aware of and complying with the indications of a signal system or other operational control system, or a system used to record data concerning the operations of that locomotive or the train it is powering. See appendix C to this part for a statement of agency policy on this subject.

(d) The provisions in §§ 218.59 and 218.61 do not apply to locomotive-mounted image and audio recording equipment on freight locomotives.

■ 5. In § 218.61, revise paragraph (c) to read as follows:

§ 218.61 Authority to deactivate safety devices.

* * * * *

(c) If a locomotive in commuter or intercity passenger service is equipped with a device to record data concerning the operation of that locomotive or the train it is powering, that device may be deactivated only under the provisions of § 229.135 of this chapter. Inward- and outward-facing image recording devices on commuter or intercity passenger locomotives may be deactivated only under the provisions of § 229.136 of this chapter. This section does not apply to inward- and outward-facing image recording devices that are installed on freight locomotives.

■ 6. In appendix C to part 218, revise the fifth sentence of the fourth paragraph to read as follows:

Appendix C to Part 218—Statement of Agency Enforcement Policy on Tampering

* * * * *

Safety Devices Covered by This Rule

* * * This regulation applies to a variety of devices including equipment known as ''event recorders,'' ''alerters,'' ''deadman controls,'' ''automatic cab signal,'' ''cab signal whistles,'' ''automatic train stop equipment,'' ''automatic train control equipment,'' ''positive train control equipment,'' and ''passenger locomotive-mounted image and audio recording equipment.'' * * *

* * * * *

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 7. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137–38, 20143, 20168, 20701–03, 21301–02, 21304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 8. In § 229.5, revise the definition of ''event recorder memory module'' and add in alphabetical order definitions of ''image recording system,'' ''NTSB,'' and ''recording device'' to read as follows:

§ 229.5 Definitions.

* * * * *

Event recorder memory module means that portion of an event recorder used to retain the recorded data as described in §§ 229.135(b) and 229.136(a) through (c).

* * * * *

Image recording system means a system of cameras or other electronic devices that record images as described in § 229.136, and any components that convert those images into electronic data transmitted to, and stored on, a memory module.

* * * * *

NTSB means the National Transportation Safety Board.

* * * * *

Recording device means a device that records images or audible sounds, as described in § 229.136.

* * * * *

Subpart C—Safety Requirements

■ 9. Add § 229.136 to read as follows:

§ 229.136 Locomotive image and audio recording devices.

(a) *Duty to equip and record.* (1) Effective [DATE 4 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE], each lead locomotive of a train used in commuter or intercity passenger service must be equipped with an image recording system to record images of activities ahead of the locomotive in the direction of travel (outward-facing image recording device), and of activities inside the cab of the locomotive (inward-facing image recording device).

(i) If the lead locomotive is equipped with an image recording system, the system must be turned on and recording whenever a train is in motion, at all train speeds.

(ii) If operating circumstances cause the controlling locomotive to be other than the lead locomotive, railroads must also record images of activities inside the cab of the controlling locomotive.

(iii) Both cabs of a dual-cab locomotive shall be equipped with inward- and outward-facing image recording systems. Image recordings for only a dual-cab locomotive's active cab and the leading end of the locomotive's movement are required to be made and retained.

(2) Image recording systems installed after [DATE 1 YEAR AFTER DATE OF PUBLICATION OF FINAL RULE] on new, remanufactured, or existing lead locomotives used in commuter or intercity passenger service shall meet the requirements of this section. Lead locomotives used in commuter or intercity passenger service must be equipped with an image recording system meeting the requirements of this section no later than [DATE 4 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE].

(3) For lead locomotives in commuter or intercity passenger service, railroads must note the presence of any image and audio recording systems in the REMARKS section of the Form FRA F6180–49A in the locomotive cab.

(4) The image recording system shall record at least the most recent 12 hours of operation of a lead locomotive in commuter or intercity passenger service.

(5) Locomotive recording device data for each lead locomotive used in commuter or intercity passenger service shall be recorded on a memory module meeting the requirements for a certified crashworthy event recorder memory module described in appendix D to this part.

(b) *Outward-facing recording system requirements for locomotives in commuter or intercity passenger service.* (1) The outward-facing image recording system for lead locomotives in commuter or intercity passenger service shall:

(i) Include an image recording device aimed parallel to the centerline of tangent track within the gauge on the front end of the locomotive;

(ii) Be able to distinguish the signal aspects displayed by wayside signals;

(iii) Record at a frame rate of a minimum of 15 frames per second (or its equivalent) and have sufficient resolution to record the position of switch points 50 feet in front of the locomotive;

(iv) Be able to capture images in daylight or with normal nighttime illumination from the headlight of the locomotive; and

(v) Include an accurate time and date stamp on outward-facing image recordings.

(2) If a lead locomotive in commuter or intercity passenger service experiences a technical failure of its outward-facing image recording system, then the system shall be removed from service and handled in accordance with paragraph (i) of this section.

(c) *Inward-facing image recording system requirements for locomotives in commuter or intercity passenger service.* (1) The inward-facing image recording system on lead locomotives in commuter or intercity passenger service shall include image recording device positioned to provide complete coverage of all areas of the controlling locomotive cab where a crewmember typically may be positioned, including complete coverage of the instruments and controls required to operate the controlling locomotive in normal use, and:

(i) Have sufficient resolution to record crewmember actions, including whether a crewmember is physically incapacitated and whether a crewmember is complying with the indications of a signal system or other operational control system; and

(ii) Record at a frame rate of at least 5 frames per second and be capable of using ambient light in the cab, and when ambient light levels drop too low for normal operation, automatically switch to infrared or another operating mode that enables the recording sufficient clarity to comply with the requirements of this paragraph (c)(1).

(2) The inward-facing recording(s) on lead locomotives in commuter or intercity passenger service shall include an accurate time and date stamp.

(3) No inward-facing image recordings on locomotives in commuter or intercity passenger service may be made of any activities within a locomotive's sanitation compartment as defined in § 229.5, and no image recording device shall be installed in a location where the device can record activities within a sanitation compartment.

(4) If a lead locomotive in commuter or intercity passenger service experiences a technical failure of its inward-facing image recording system, then the system shall be removed from service and handled in accordance with paragraph (i) of this section.

(d) *Image and audio recording system download protection requirements for locomotives in commuter or intercity passenger service.* Railroads must provide convenient wire or wireless connections to allow authorized railroad personnel to download audio or image recordings from both any standard memory module and a certified crashworthy memory module in lead locomotives in commuter or intercity passenger service. The railroads also must use electronic security measure(s) to prevent unauthorized download of the recordings.

(e) *Inspection, testing, and maintenance for image recording systems on locomotives in commuter or intercity passenger service.* The image recording system on lead locomotives in commuter or intercity passenger service shall have self-monitoring features to assess whether the system is operating properly, including whether the system is powered on.

(1) If a fault with the image recording system is detected, the locomotive shall not be used in the lead position after its next daily inspection required under § 229.21.

(2) At each periodic inspection required under § 229.23, the railroad conducting the inspection shall take sample download(s) to confirm operation of the system, and, if necessary, repair the system to full operation.

(f) *Handling of recordings*—(1) *Chain-of-custody procedure.* Each railroad with locomotives in commuter or intercity passenger service subject to this section shall adopt, maintain, and comply with a chain-of-custody procedure governing the handling and the release of the locomotive image recordings described in paragraphs (a) through (c) of this section and any locomotive audio recordings. The chain-of-custody procedure must specifically address the preservation and handling requirements for post-accident/incident recordings provided to FRA or other Federal agencies under paragraph (f)(2) of this section.

(2) *Accident/incident preservation.* If any locomotive in commuter or intercity passenger service is equipped with an image or audio recording system and is involved in an accident/incident that must be reported to FRA under part 225 of this chapter, the railroad that was using the locomotive at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA or other Federal agencies. A railroad must either provide the image and/or audio data in a format readable by FRA or other Federal agencies; or make available to FRA or other Federal agencies any platform, software, media device, etc. that is required to play back the image and/or audio data. This preservation requirement shall expire one (1) year after the date of the accident unless FRA or another Federal agency notifies the railroad in writing that it must preserve the recording longer. Railroads may extract and analyze such data for the purposes described in paragraph (f)(3) of this section, only if:

(i) The original downloaded data file, or an unanalyzed exact copy of it, is retained in secure custody under the railroad's procedure adopted under paragraph (f)(1) of this section; and

(ii) It is not utilized for analysis or any other purpose, except by direction of FRA or NTSB.

(3) *Recording uses.* A railroad may use the image and audio recordings from a locomotive in commuter or intercity passenger service subject to this section to:

(i) Investigate an accident/incident that is required to be reported to FRA under part 225 of this chapter;

(ii) Investigate a violation of a Federal railroad safety law, regulation, or order, or a railroad's operating rules and procedures;

(iii) Conduct an operational test under § 217.9 of this chapter;

(iv) Monitor for unauthorized occupancy of a locomotive's cab or a control cab locomotive's operating compartment;

(v) Investigate a violation of a criminal law;

(vi) Assist Federal agencies in the investigation of a suspected or confirmed act of terrorism; or

(vii) Perform inspection, testing, maintenance, or repair activities to ensure the proper installation and functioning of an inward-facing image recorder.

(g) *Locomotive image recording system approval process.* Each railroad with locomotives in commuter or intercity passenger service subject to this section must provide the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, RRS–15, 1200 New Jersey Avenue SE, Washington, DC 20590, with a written description of the technical aspects of any locomotive image recording system installed to comply with this section.

(1) The written description must include information specifically

addressing the image recording system's:

(i) Minimum 12-hour continuous recording capability;

(ii) Crashworthiness; and

(iii) Post-accident accessibility of the system's recordings.

(2) The railroad must submit the written statement not less than 90 days before the installation of such image recording system, or, for existing systems, not less than 30 days after [EFFECTIVE DATE OF FINAL RULE].

(3) The FRA Associate Administrator for Railroad Safety and Chief Safety Officer will review a railroad's submission and may disapprove any recordings systems that do not meet the requirements of this section. FRA will notify the railroad of its disapproval in writing within 90 days of FRA's receipt of the railroad's written submission, and shall specify the basis for any disapproval decision.

(h) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation(s) of State criminal law(s), and nothing in this section is intended to alter in any way the priority of NTSB investigations under 49 U.S.C. 1131 and 1134, or the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

(i) *Removal of device from service and handling for repair.* Notwithstanding the duty established in paragraph (a) of this section to equip certain locomotives with image recording devices, a railroad may remove from service an image recording device on a locomotive in commuter or intercity passenger service, and must remove the device from service if the railroad knows the device is not properly recording. When a railroad removes a locomotive image recording device from service, a qualified person shall record the date the device was removed from service on Form FRA F6180–49A, under the REMARKS section. A locomotive on which an image recording device has been taken out of service as provided in this paragraph may remain as the lead locomotive only until the next calendar-day inspection required under § 229.21. A locomotive with an inoperative image recording device is not deemed to be in an improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9.

(j) *Disabling or interfering with locomotive-mounted audio and video recording equipment.* Any individual who willfully disables or interferes with the intended functioning of locomotive-mounted image or audio recording system equipment on a passenger locomotive, or who tampers with or alters the data recorded by such equipment, is subject to a civil penalty and to disqualification from performing safety-sensitive functions on a railroad as provided in parts 209 and 218 of this chapter.

(k) As used in this section—*Train* means: (1) A single locomotive;

(2) Multiple locomotives coupled together; or

(3) One or more locomotives coupled with one or more cars.

■ 10. Revise the introductory text of appendix D to part 229 to read as follows:

Appendix D to Part 229—Criteria for Certification of Crashworthy Event Recorder Memory Module

Section 229.135(b) requires railroads to equip certain locomotives with an event recorder that includes a certified crashworthy memory module. Section 229.136(a)(1) requires passenger railroads to install locomotive-mounted image recording systems in every lead locomotive used in commuter or intercity passenger service. Section 229.136(a)(5) requires that data from these image recording systems be recorded on a certified crashworthy memory module. This appendix prescribes the requirements for certifying an event recorder memory module (ERMM) or a locomotive-mounted audio and/or image recording device memory module as crashworthy. For purposes of this appendix, a locomotive-mounted audio or image recording device memory module is also considered an ERMM. This appendix includes the performance criteria and test sequence for establishing the crashworthiness of the ERMM and marking the event recorder or locomotive-mounted image or audio recording system containing the crashworthy ERMM.

* * * * *

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

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Part III

Department of Homeland Security

8 CFR Parts 204 and 216
EB–5 Immigrant Investor Program Modernization; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204 and 216

[CIS No. 2555–14; DHS Docket No. USCIS–2016–0006]

RIN 1615–AC07

EB–5 Immigrant Investor Program Modernization

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Homeland Security (DHS) regulations governing the employment-based, fifth preference (EB–5) immigrant investor classification and associated regional centers to reflect statutory changes and modernize the EB–5 program. In general, under the EB–5 program, individuals are eligible to apply for lawful permanent residence in the United States if they make the necessary investment in a commercial enterprise in the United States and create or, in certain circumstances, preserve 10 full-time jobs for qualified United States workers. This rule provides priority date retention to certain EB–5 investors, increases the required minimum investment amounts, reforms targeted employment area designations, and clarifies USCIS procedures for the removal of conditions on permanent residence. DHS is issuing this rule to codify existing policies and change certain aspects of the EB–5 program in need of reform.

DATES: This final rule is effective November 21, 2019.

FOR FURTHER INFORMATION CONTACT: Edie C. Pearson, Policy Branch Chief, Immigrant Investor Program Office, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE, 3rd Floor, Washington, DC 20529; Telephone (202) 357–9350.

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I. Executive Summary

A. Purpose of the Regulatory Action

DHS is updating its regulations governing EB–5 immigrant investors and regional centers to reflect statutory changes and codify existing policies. This final rule also changes areas of the EB–5 program in need of reform.

B. Legal Authority

The Secretary of Homeland Security's authority for this final rule can be found in various provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* as well as the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828; the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758; and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing this final rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, including by establishing such regulations as the Secretary deems necessary to carry out her authority; section 101(b)(1)(F) of the HSA, 6 U.S.C. 111(b)(1)(F), which establishes that a primary mission of DHS is to ensure that the overall economic security of the United States is not diminished by the Department's efforts, activities, and programs aimed at securing the homeland; and section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary.

The aforementioned authorities for this final rule include:

- Section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5), which makes visas available to immigrants investing in new commercial enterprises in the United States that will benefit the U.S. economy and create full-time employment for not fewer than 10 United States workers.
- Section 204(a)(1)(H) of the INA, 8 U.S.C. 1154(a)(1)(H), which requires individuals to file petitions with DHS when seeking classification under section 203(b)(5).
- Section 216A of the INA, 8 U.S.C. 1186b, which places conditions on permanent residence obtained under section 203(b)(5) and authorizes the Secretary to remove such conditions for immigrant investors who have met the applicable investment requirements, sustained such investment, and

otherwise conformed to the requirements of sections 203(b)(5) and 216A.

• Section 610 of Public Law 102–395, 8 U.S.C. 1153 note, as amended, which created the Immigrant Investor Pilot Program (the ''Regional Center Program''), authorizing the designation of regional centers for the promotion of economic growth, and which authorizes the Secretary to set aside visas authorized under section 203(b)(5) of the INA for individuals who invest in regional centers.

C. Summary of the Final Rule Provisions

DHS carefully considered the public comments received and this final rule adopts, with appropriate changes, the regulatory text proposed in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on January 13, 2017. *See EB–5 Immigrant Investor Program Modernization;* Proposed Rule, 82 FR 4738. This final rule also relies on all of the justifications articulated in the NPRM, except as reflected below.

This rule makes the following changes as compared to the NPRM:

• The rule clarifies that the priority date of a petition for classification as an investor is the date the petition is properly filed.

• The rule clarifies that a petitioner with multiple approved immigrant petitions for classification as an investor is entitled to the earliest qualifying priority date;

• The rule retains the 50 percent minimum investment differential between a targeted employment area (TEA) and a non-TEA instead of changing the differential to 25 percent as proposed, thereby increasing the minimum investment amount in a TEA from $500,000 to $900,000 (rather than $1.35 million, as DHS initially proposed);

• The rule makes a technical correction to the inflation adjustment formula for the standard minimum investment amount and the high employment area investment amount, such that future inflation adjustments will be based on the initial investment amount set by Congress in 1990, rather than on the most recent inflation adjustment. Thus, for instance, the next inflation adjustment will be based on the initial minimum investment amount of $1,000,000 in 1990, rather than this rule's minimum investment amount of $1,800,000, which is a rounded figure. This change better implements the intent of the proposed rule; it ensures that future inflation adjustments more accurately track inflation since 1990, rather than being based on rounded figures.

• The rule modifies the original proposal that any city or town with a population of 20,000 or more may qualify as a TEA, to provide that only cities and towns with a population of 20,000 or more *outside* of metropolitan statistical areas (MSAs) may qualify as a TEA.

• The rule modifies the application of the rule, such that amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon the changes in this rulemaking will not independently result in denial or revocation of a petition, provided the petition meets certain criteria.

• The rule also makes other minor non-substantive and clarifying changes.

This final rule makes the following major revisions to the EB–5 program regulations:

1. Priority Date Retention

The final rule authorizes certain EB–5 petitioners to retain the priority date [1] of an approved EB–5 immigrant petition for use in connection with any subsequent EB–5 immigrant petition.[2] *See* final 8 CFR 204.6(d). Petitioners with approved immigrant petitions might need to file new petitions due to circumstances beyond their control (for instance, DHS might have terminated a regional center associated with the original petition), or might choose to do so for other reasons (for instance, due to business conditions a petitioner may seek to materially change aspects of his or her qualifying investment). This rule generally allows EB–5 petitioners to retain the priority date of a previously approved petition to avoid delays on immigrant visa processing associated with loss of a priority date. DHS believes that priority date retention may become increasingly important due to the strong possibility that the EB–5 category will remain oversubscribed for the foreseeable future.

In the final rule, DHS amends the originally proposed regulatory text by defining the term ''priority date'' to mean the date that the petition is properly filed. *See* final 8 CFR 204.6(d). DHS inadvertently left this definition out of the NPRM's proposed regulatory text, *see* 82 FR 4738, even though this definition is in the current regulation, *see* 8 CFR 204.6(d) and acknowledged in the NPRM preamble, *see* 82 FR 4738, 4739 n. 1 (''An EB–5 immigrant petition's priority date is normally the date on which the petition was properly filed. In general, when demand exceeds supply for a particular visa category, an earlier priority date is more advantageous than a later one.''). This change is for clarity.

DHS also amends the originally proposed regulatory text by changing ''approved EB–5 immigrant petition'' to ''immigrant petition approved for classification as an investor, including immigrant petitions whose approval was revoked on grounds other than those set forth below,'' and also ''approved petition'' to ''immigrant petition approved for classification as an investor.'' The purpose of these revisions is to clarify that an investor may retain a priority date from petitions that had been approved but have since been revoked on grounds not specifically excepted in the provision. DHS further amends the originally proposed regulatory text by changing ''based upon that approved petition'' to ''using the priority date of the earlier-approved petition.'' This revision makes it clear that once a petitioner uses that approved petition's priority date to obtain conditional permanent residence, that priority date is no longer available for use on any later-filed petition.

Last, DHS amends the originally proposed regulatory text by adding the sentence: ''In the event that the alien is the petitioner of multiple immigrant petitions approved for classification as an investor, the alien shall be entitled to the earliest qualifying priority date.'' This sentence was added to mirror a similar sentence at 8 CFR 204.5(e) pertaining to other employment-based categories, and clarifies which date applies should an investor have multiple approved petitions.

2. Increases to the Investment Amounts

Pursuant to 8 U.S.C. 1153(b)(5)(C), DHS consulted with the Departments of State and Labor [3] to increase the minimum investment amounts for all new EB–5 petitioners in this final rule. *See* final 8 CFR 204.6(f). The increase will ensure that program requirements reflect the present-day dollar value of the investment amounts established by Congress in 1990. Specifically, consistent with the NPRM, the rule increases the standard minimum investment amount, which also applies to high employment areas, from $1

[1] An EB–5 immigrant petition's priority date is the date on which the petition was properly filed. In general, when demand exceeds supply for a particular visa category, an earlier priority date is more advantageous than a later one.

[2] This is subject to conditions and limitations described in more detail elsewhere in this rule.

[3] DHS includes in the docket for this rulemaking a letter from each department detailing the consultation.

million to $1.8 million. Final 8 CFR 204.6(f)(1), (3). This change represents an adjustment for inflation from 1990 to 2015 as measured by the unadjusted Consumer Price Index for All Urban Consumers (CPI–U), an economic indicator that tracks the prices of goods and services in the United States.[4] This rule also makes a technical correction to the inflation adjustment formula, so that future inflation adjustments will be based on the initial investment amount set by Congress in 1990, rather than on the most recent inflation adjustment.

For investors seeking to invest in a new commercial enterprise that will be principally doing business in a TEA, the proposed rule would have decreased the differential between TEA and non-TEA minimum investment amounts to 25 percent, thereby increasing the TEA minimum investment amount to $1.35 million, which is 75 percent of the increased standard minimum investment amount. However, based on a review of the comments, the final rule will retain the 50 percent differential, and only increase the minimum investment amount from $500,000 to $900,000. Final 8 CFR 204.6(f)(2).

In addition, the final rule sets the schedule for regular CPI–U-based adjustments in the standard minimum investment amount, and conforming adjustments to the TEA minimum investment amount, every 5 years, beginning 5 years from the effective date of these regulations.

3. TEA Designations

Congress authorized DHS to set a different minimum investment amount for investments made in TEAs, or ''targeted employment areas'' (*i.e.,* rural areas and areas of high unemployment). *See* INA section 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii). The final rule reforms the TEA designation process to ensure consistency in TEA adjudications and better ensure that TEA designations more closely adhere to congressional intent. Specifically, the final rule eliminates the ability of a state to designate certain geographic and political subdivisions as high unemployment areas; instead, DHS will make such designations directly, using standards described in more detail elsewhere in this final rule. *See* final 8 CFR 204.6(i). DHS believes these changes will help address inconsistencies between and within states in designating high unemployment areas, and better ensure that the reduced investment threshold is reserved for areas experiencing sufficiently high levels of unemployment, as Congress intended.

DHS is making three changes from the NPRM, with respect to TEA designations. First, DHS is modifying its proposal on high unemployment areas to include only cities and towns with a population of 20,000 or more *outside of MSAs* as a specific and separate area that may qualify as a TEA. *See* final 8 CFR 204.6(j)(6)(ii)(A). By contrast, the NPRM proposed to allow any city or town with high unemployment and a population of 20,000 or more to qualify as a TEA, regardless of whether located within an MSA. Under the current regulatory scheme, TEA designations are not available at the city or town level, unless a state designates the city or town as a high unemployment area and provides evidence of such designation to a prospective EB–5 investor for submission with the Form I–526. *See* proposed 8 CFR 204.6(j)(6)(ii)(A). DHS recognizes the proposal was inadvertently over-inclusive because DHS intended the proposal to provide non-rural cities and towns located outside of MSAs additional methods to qualify as a TEA, but the proposal would have allowed cities and towns with high unemployment and a population of 20,000 or more located within MSAs to qualify. DHS did not necessarily intend to permit cities and towns within MSAs to qualify or to create any new distinctions between cities and towns of various populations within MSAs. The final rule modifies the proposal to include only cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that may qualify as a TEA based on high unemployment. *See* final 8 CFR 204.6(j)(6)(ii)(A).

Second, DHS is finalizing a technical change to 8 CFR 204.6(i) and (j)(6)(B) by removing the mention of ''geographic and political subdivisions'' for special designations. Because DHS proposed and is finalizing the census tract process for special designations, references to other subdivisions are no longer required.

Third, DHS is making an additional technical change to the description of special designation TEAs at 8 CFR 204.6(i) proposed in the NPRM, replacing ''contiguous'' as it is used to describe additional census tracts that can be added to the census tract(s) in which the NCE is principally doing business, with ''directly adjacent.'' This technical change was made to mirror the description of special designation TEAs elsewhere in the rule and to minimize confusion to the public, as the term ''contiguous'' could be read to include census tracts beyond those directly adjacent to the census tract(s) in which the NCE is principally doing business.

4. Removal of Conditions

The final rule revises the regulations to clarify that derivative family members must file their own petitions to remove conditions on their permanent residence when they are not included in a petition to remove conditions filed by the principal investor. *See* final 8 CFR 216.6(a)(1)(ii). In addition, the rule improves the adjudication process for removing conditions by providing flexibility in interview locations and updates the regulation to conform to the current process for issuing permanent resident cards. *See generally* final 8 CFR 216.6.

5. Miscellaneous Changes

The final rule updates the regulations to reflect miscellaneous statutory changes made since DHS first published the regulation in 1991 and clarifies definitions of key terms for the program.[5] By aligning DHS regulations with statutory changes and defining key terms, the rule provides greater certainty regarding the eligibility criteria for investors and their family members.

This final rule will apply to petitioners who file on or after the effective date. To respond to concerns regarding the potential effect of this rule on existing petitioners, DHS has clarified in the final regulatory text that DHS will not deny a petition filed prior to this rule's effective date (or revoke an approved petition) based solely on the fact that the underlying investment offerings have been amended or supplemented as a result of this rulemaking to maintain compliance with applicable securities laws. *See* final 8 CFR 204.6(n). This addresses situations in which, for instance, an investor is actively in the process of investing into an ongoing offering and filed a Form I–526 petition that is pending on the effective date of this final rule, but the documents for the offering need to be modified to ensure compliance with applicable securities laws because of the increase to the minimum investment amounts resulting from this rulemaking DHS provides further detail on this provision below.

[4] *See Bureau of Labor Statistics,* CPI–U Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm.*

[5] *See* final 8 CFR 216.6(a)(4)(i) and (c)(1)(i). DHS proposed this specific change to remove references to the requirement that immigrant entrepreneurs establish a new commercial enterprise, because the requirement was removed by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758. 82 FR at 4751. However, this change was inadvertently left out of the proposed regulatory text. This final rule reflects the appropriate changes.

D. Summary of Costs and Benefits

This final rule changes certain aspects of the EB–5 program that are in need of reform and updates the regulations to reflect statutory changes and codify existing policies. This final rule makes five major categories of revisions to the existing EB–5 program regulations. Three of these categories, which involve (i) Priority date retention; (ii) increasing the investment amounts; and (iii) reforming the TEA designations, are substantive. The two other major categories, focused on (iv) the removal of conditions; and (v) miscellaneous changes, involve generally technical adjustments to the EB–5 program. Details concerning these three major substantive and two major technical categories of changes are provided in above sections, and in Table 2 in terms of benefit-cost considerations.

Within the five major categories of revisions to existing regulations, this final rule also makes some changes from the NPRM. Most importantly, the reduced investment amount for TEAs will be raised to $900,000 instead of the proposed $1.35 million, in order that the 50 percent differential between investment tiers be maintained. The other changes between this final rule and the NPRM are not expected to create costs and are listed here:

- Clarifies that the priority date of a petition for classification as an investor is the date the petition is properly filed;
- Clarifies that a petitioner with multiple approved immigrant petitions for classification as an investor is entitled to the earliest qualifying priority date;
- Modifies the original proposal that any city or town with a population of 20,000 or more may qualify as a TEA, to provide that only cities and towns with a population of 20,000 or more *outside* of metropolitan statistical areas (MSAs) may qualify as a TEA;
- Modifies the application of the rule, such that amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon the changes in this rulemaking will not independently result in denial or revocation of a petition, provided the petition meets certain criteria;
- Makes a technical correction to the inflation adjustment formula for the standard minimum investment amount and the high employment area investment amount, such that future inflation adjustments will be based on the initial investment amount set by Congress in 1990, rather than on the most recent inflation adjustment; and
- Makes minor non-substantive and clarifying changes.

DHS analyzed the five major categories of revisions carefully. EB–5 investment structures are complex, and typically involve multiple layers of investment, finance, development, and legal business entities. The interconnectedness and complexity of such relationships make it very difficult to quantify and monetize the costs and benefits. Furthermore, since demand for EB–5 investments incorporate many factors related to international and U.S. specific immigration and business, DHS cannot predict with accuracy changes in demand for the program germane to the major categories of revisions that increase the investment amounts and reform the TEA designation process. DHS has no way to assess the potential reduction in investments either in terms of past activity or forecasted activity, and cannot therefore quantitatively estimate any impacts concerning job creation, losses or other downstream economic impacts driven by these major provisions. DHS provides a full qualitative analysis and discussion in the Executive Orders 12866 and 13563 section of this final rule.

There are several costs involved in the final rule for which DHS has conducted quantitative estimates. For the technical revision that clarifies that derivative family members must file their own petitioners to remove conditions on their permanent residence when they are not included in the principal investor's petition, we estimate costs to be approximately $91,023 annually for those derivatives. Familiarization costs to review the rule are estimated to be $629,758 annually.

In addition, DHS has prepared a Final Regulatory Flexibility Analysis (FRFA) under the Regulatory Flexibility Act (RFA) to discuss any potential impacts to small entities. As discussed further in the FRFA, DHS cannot estimate the exact impact to small entities. DHS, however, does expect some impact to regional centers and non-regional center projects. As it relates to the FRFA, each of 1,570 business entities involved in familiarization of the rule would incur costs of about $401.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS

Current policy	Adopted change	Impact
Priority Date Retention		
Current DHS regulations do not permit investors to use the priority date of an immigrant petition approved for classification as an investor for a subsequently filed immigrant petition for the same classification.	DHS will allow an EB–5 immigrant petitioner to use the priority date of an immigrant petition approved for classification as an investor for a subsequently filed immigrant petition for the same classification for which the petitioner qualifies, unless DHS revokes the petition's approval for fraud or willful misrepresentation by the petitioner, or revokes the petition for a material error.	Benefits: • Makes visa allocation more predictable for investors with less possibility for large fluctuations in visa availability dates due to regional center termination. • Provides greater certainty and stability regarding the timing of eligibility for investors pursuing permanent residence in the U.S. and thus lessens the burden of unexpected changes in the underlying investment. • Provides more flexibility to investors to contribute to more viable investments, potentially reducing fraud and improving potential for job creation. Costs: • None anticipated.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS—Continued

Current policy	Adopted change	Impact
Increases to Investment Amounts		
The standard minimum investment amount has been $1 million since 1990 and has not kept pace with inflation—losing almost half its real value. Further, the statute authorizes a reduction in the minimum investment amount when such investment is made in a TEA by up to 50 percent of the standard minimum investment amount. Since 1991, DHS regulations have set the TEA investment threshold at 50 percent of the minimum investment amount. Similarly, DHS has not increased the minimum investment amount for investments made in a high employment area beyond the standard amount.	DHS will account for inflation in the investment amount since the inception of the program. DHS will raise the minimum investment amount to $1.8 million to account for inflation through 2015, and includes a mechanism to automatically adjust the minimum investment amount based on the unadjusted CPI–U every 5 years. DHS will retain the TEA minimum investment amount at 50 percent of the standard amount. The minimum investment amount in a TEA will initially increase to $900,000. DHS is not changing the equivalency between the standard minimum investment amount and those made in high employment areas. As such, DHS will set the minimum investment amounts in high employment areas to be $1.8 million, and follow the same mechanism for future inflationary adjustments.	Benefits: • Increases in investment amounts are necessary to keep pace with inflation and real value of investments; • Raising the investment amounts increases the amount invested by each investor and potentially increases the total amount invested under this program. • For regional centers, the higher investment amounts per investor will mean that fewer investors will have to be recruited to pool the requisite amount of capital for the project, so that searching and matching of investors to projects could be less costly. Costs: • Some investors may be unable or unwilling to invest at the higher levels of investment. • There may be fewer jobs created if significantly fewer investors invest at the higher investment amounts. • For regional centers, the higher amounts could reduce the number of investors in the global pool and result in fewer investors, thus potentially making the search and matching of investors to projects more costly. • Potential reduced numbers of EB–5 investors could prevent certain projects from moving forward due to lack of requisite capital. • An increase in the investment amount could make foreign investor visa programs offered by other countries more attractive.
TEA Designations		
A TEA is defined by statute as a rural area or an area that has experienced high unemployment (of at least 150 percent of the national average rate). Currently, investors demonstrate that their investments are in a high unemployment area in two ways: (1) Providing evidence that the Metropolitan Statistical Area (MSA), the specific county within the MSA, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business, has experienced an average unemployment rate of at least 150 percent of the national average rate; or (2) submitting a letter from an authorized body of the government of the state in which the new commercial enterprise is located, which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area.	DHS will eliminate state designation of high unemployment areas. DHS also amends the manner in which investors can demonstrate that their investments are in a high unemployment area. (1) DHS will add cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that may qualify as a TEA based on high unemployment. (2) DHS will amend its regulations so that a TEA may consist of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business if • the new commercial enterprise is located in more than one census tract; and • the weighted average of the unemployment rate for the tract or tracts is at least 150 percent of the national average. (3) DHS will also amend its regulations so that a TEA may consist of an area comprising the census tract(s) in which the new commercial enterprise is principally doing business, including any and all adjacent tracts, if the weighted average of the unemployment rate for all included tracts is at least 150 percent of the national average.	Benefits: • Rules out TEA configurations that rely on a large number of census tracts indirectly linked to the actual project tract by numerous degrees of separation. • Potential to better stimulate job growth in areas where unemployment rates are the highest, consistent with congressional intent. Costs: • This TEA provision could cause some projects and investments to no longer qualify as being in high unemployment areas. DHS presents the potential number of projects and investments that could be affected in Table 5.
Current technical issues: • The current regulation does not clearly define the process by which derivatives may file a Form I–829 petition when they are not included on the principal's petition. • Interviews for Form I–829 petitions are generally scheduled at the location of the new commercial enterprise. • The current regulations require an immigrant investor and his or her derivatives to report to a district office for processing of their permanent resident cards.	DHS will amend its regulations to include the following technical changes: • Clarify the filing process for derivatives who are filing a Form I–829 petition separately from the immigrant investor. • Provide flexibility in determining the interview location related to the Form I–829 petition. • Amend the regulation by which the immigrant investor obtains the new permanent resident card after the approval of his or her Form I–829 petition because DHS captures biometric data at the time the immigrant investor and derivatives appear at an ASC for fingerprinting. • Add 8 CFR 204.6(n) to allow certain investors to remain eligible for the EB–5 classification if a project's offering is amended or supplemented based upon the final rule's effectiveness.	Conditions of Filing: Benefits: • Adds clarity and eliminates confusion for the process of derivatives who file separately from the principal immigrant investor. Costs: • Total cost to applicants filing separately will be $91,023 annually. Conditions of Interview: Benefits: • Interviews may be scheduled at the USCIS office having jurisdiction over either the immigrant investor's commercial enterprise, the immigrant investor's residence, or the location where the Form I–829 petition is being adjudicated, thus making the interview program more effective and reducing burdens on the immigrant investor.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS—Continued

Current policy	Adopted change	Impact
		• Some petitioners will benefit by traveling shorter distances for interviews and thus see a cost savings in travel costs and opportunity costs of time for travel and interview time. Costs: • None anticipated. Investors obtaining a permanent resident card: Benefits: • Cost and time savings for applicants for biometrics data. Costs: • None anticipated. Eligibility Following Changes to Offering: Benefits: • An amendment to a project's offering based on the final rule's provisions might not result in the denial or revocation of a petition. Costs: • None anticipated.
Miscellaneous Changes		
Current miscellaneous items: • 8 CFR 204.6(j)(2)(iii) refers to the former U.S. Customs Service. • Public Law 107–273 eliminated the requirement that alien entrepreneurs establish a new commercial enterprise from both INA section 203(b)(5) and INA section 216A. • 8 CFR 204.6(j)(5) introductory text and (j)(5)(iii) reference ''management''; • Current regulation at 8 CFR 204.6(j)(5) has the phrase ''as opposed to maintain a purely passive role in regard to the investment''; • Public Law 107–273 allows limited partnerships to serve as new commercial enterprises; • Current regulation references the former Associate Commissioner for Examinations. • 8 CFR 204.6(k) requires USCIS to specify in its Form I–526 decision whether the new commercial enterprise is principally doing business in a targeted employment area. • Sections 204.6 and 216.6 use the term ''entrepreneur'' and ''deportation.'' These sections also refer to Forms I–526 and I–829. • 8 CFR 204.6(i) and (j)(6)(ii)(B) use the phrase ''geographic or political subdivision'' in describing state designations of high unemployment areas for TEA purposes. • The priority date of a petition for classification as an investor is the date the petition is properly filed.	DHS will amend its regulations to make the following miscellaneous changes: • DHS is updating references at 8 CFR 204.6(j)(2)(iii) from U.S. Customs Service to U.S. Customs and Border Protection. • Removing references to requirements that alien entrepreneurs establish a new commercial enterprise in 8 CFR 216.6. • Removing references to ''management'' at 8 CFR 204.6(j)(5) introductory text and (j)(5)(iii); • Removing the phrase ''as opposed to maintain a purely passive role in regard to the investment'' from 8 CFR 204.6(j)(5); • Clarifies that any type of entity can serve as a new commercial enterprise; • Replacing the reference to the former Associate Commission for Examinations with a reference to the USCIS AAO. • Amending 8 CFR 204.6(k) to specify how USCIS will issue a decision. • Revising sections 8 CFR 204.6 and 216.6 to use the term ''investor'' instead of ''entrepreneur'' and to use the term ''removal'' instead of ''deportation.'' • Removing references to ''geographic or political subdivision'' in 8 CFR 204.6(i) and (j)(6)(ii)(B). • Providing clarification in 8 CFR 204.6(d) that the petitioner of multiple immigrant petitions approved for classification as an investor generally is entitled to the earliest qualifying priority date.	These provisions are technical changes and will have no impact on investors or the government.

In addition to the above, applicants will need to read and review the rule to become familiar with the final rule provisions. Familiarization costs to read and review the rule are estimated at $629,758 annually.

E. Effective Date

This final rule will be effective on November 21, 2019, 120 days from the date of publication in the **Federal Register**. DHS has determined that this 120-day period is reasonable to ensure that EB–5 petitioners and the EB–5 market have time to adjust their plans to the changes made under this rule. DHS believes it will be able to implement this rule in a manner that will balance the equities of stakeholders and avoid delays of processing these and other petitions.

F. Implementation

The changes in this rule will apply to all Immigrant Petition by Alien Investor (Form I–526) petitions filed on or after the effective date of the final rule. Form I–526 petitions filed prior to the effective date of the rule will be allowed to demonstrate eligibility based on the regulatory requirements in place at the time of filing of the petition. DHS has determined that this manner of implementation best balances operational considerations with fairness to the public.

II. Background

A. The EB–5 Program

As part of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978, Congress established the EB–5 immigrant visa classification to incentivize employment creation in the United States. As enacted by Congress, the EB–5 program makes lawful permanent resident (LPR) status available to foreign nationals who invest at least $1 million in a new commercial enterprise (NCE) that will create at least 10 full-time jobs in the United States. *See* INA section 203(b)(5), 8 U.S.C. 1153(b)(5). The INA permits DHS to

specify a higher investment amount if the investment is in a high employment area or a lesser investment amount if the investment is in a TEA, defined to include certain rural areas and areas of high unemployment. *Id.*; 8 CFR 204.6(f). The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB–5 classification. *See* INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not less than 3,000 of these visas must be reserved for foreign nationals investing in TEAs. *See* INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).

B. The Regional Center Program

Enacted in 1992, section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828, established a pilot program that requires the allocation of a limited number of EB–5 immigrant visas to individuals who invest through DHS-designated regional centers. The Regional Center Program was initially designed as a pilot program set to expire after 5 years, but Congress has continued to extend the program to the present day. *See, e.g.,* Public Law 115–141, Div. M, Tit. II, sec. 204 (Mar. 23, 2018).

Under the Regional Center Program, foreign nationals base their EB–5 petitions on investments in new commercial enterprises located within ''regional centers.'' DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). While all EB–5 petitioners go through the same petition process, those petitioners participating in the Regional Center Program may meet statutory job creation requirements based on economic projections of either *direct* or *indirect* job creation, rather than only on jobs directly created by the new commercial enterprise. *See* 8 CFR 204.6(m)(3). In addition, Congress authorized the Secretary to give priority to EB–5 petitions filed through the Regional Center Program. *See* section 601(d) of Public Law 102–395, 106 Stat. 1828, as amended by Public Law 112–176, Sec. 1, 126 Stat. 1326 (Sept. 28, 2012).

Requests for regional center designation must be filed with USCIS on the Application for Regional Center Designation Under the Immigrant Investor Program (Form I–924). *See* 8 CFR 204.6(m)(3)–(4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting an Annual Certification of Regional Center (Form I–924A) on an annual basis or as otherwise requested by USCIS. *See* 8 CFR 204.6(m)(6)(i)(B). USCIS may seek to terminate a regional center's participation in the program if the regional center no longer qualifies for the designation, the regional center fails to submit the required information or pay the associated fee, or USCIS determines that the regional center is no longer promoting economic growth. *See* 8 CFR 204.6(m)(6)(i). As of September 10, 2018, there were 886 designated regional centers.

C. EB–5 Immigrant Visa Process

A foreign national seeking LPR status under the EB–5 immigrant visa classification must go through a multi-step process during which the investor must sustain the investment. The individual must first file an Immigrant Petition by Alien Investor (Form I–526, or ''EB–5 petition'') with USCIS. The petition must be supported by evidence that the foreign national's lawfully obtained capital is invested (*i.e.,* placed at risk), or is actively in the process of being invested, in a new commercial enterprise in the United States that will create full-time positions for not fewer than 10 qualifying employees.[6] *See* 8 CFR 204.6(j).

If USCIS approves the EB–5 petition, the petitioner must take additional steps to obtain LPR status. In general, the petitioner may either apply for an immigrant visa through a Department of State (DOS) consular post abroad or, if the petitioner is already in the United States and is otherwise eligible to adjust status, the petitioner may seek adjustment of status by filing an Application to Register Permanent Residence or Adjust Status (Form I–485, or ''application for adjustment of status'') with USCIS. Congress has imposed limits on the availability of such immigrant visas, including by capping the annual number of visas available in the EB–5 category and by separately limiting the percentage of immigrant visas that may be issued on an annual basis to individuals born in any one country.

To request an immigrant visa while abroad, an EB–5 petitioner must apply at a U.S. consular post. *See* INA sections 203(e) and (g), 221 and 222, 8 U.S.C. 1153(e) and (g), 1201 and 1202; *see also* 22 CFR part 42, subparts F and G. The petitioner must generally wait to receive a visa application packet from the DOS National Visa Center to commence the visa application process. After receiving this packet, the petitioner must collect required information and file the immigrant visa application with DOS. As noted above, the wait for the visa depends on the demand for immigrant visas in the EB–5 category and the petitioner's country of birth.[7] Generally, DOS authorizes the issuance of a visa and schedules the petitioner for an immigrant visa interview for the month in which the priority date will be current. If the petitioner's immigrant visa application is ultimately approved, he or she is issued an immigrant visa and, on the date of admission to the United States, obtains LPR status on a conditional basis. *See* INA sections 211, 216A, and 221, 8 U.S.C. 1181, 1186, and 1201.

Alternatively, an EB–5 petitioner who is in the United States in lawful nonimmigrant status generally may seek LPR status by filing with USCIS an application for adjustment of status, Form I–485. *See* INA section 245, 8 U.S.C. 1255; 8 CFR part 245. Before filing such an application, however, the EB–5 petitioner must wait until an immigrant visa is ''immediately available.'' *See* INA section 245(a), 8 U.S.C. 1255(a); 8 CFR 245.2(a)(2)(i)(A). Generally, an immigrant visa is considered ''immediately available'' if the petitioner's priority date under the EB–5 category is earlier than the relevant date indicated in the monthly DOS Visa Bulletin. *See* 8 CFR 245.1(g)(1).

Whether obtained through the issuance of an immigrant visa or adjustment of status, LPR status based on an EB–5 petition is granted on a conditional basis. *See* INA section 216A(a)(1), 8 U.S.C. 1186b(a)(1). Within the 90-day period preceding the second anniversary of the date the immigrant investor obtains conditional permanent resident status, the immigrant investor must file with USCIS a Petition by Investor to Remove Conditions on Permanent Resident Status (Form I–829). *See* INA section 216A(c) and (d),

[6] Under current USCIS policy, the investor must sustain these actions through the end of the sustainment period (2 years from the date the investor obtains conditional resident status). The total amount of time will vary, however, depending on when the investor firsts invests or becomes actively in the process of investing as well as the amount of time the investor may wait to obtain status due to oversubscription for the investor's nationality.

[7] When demand for a visa exceeds the number of visas available for that category and country, the demand for that particular preference category and country of birth is deemed oversubscribed. The Department of State (DOS) publishes a Visa Bulletin that determines when a visa may be authorized for issuance. *See* U.S. Dep't of State, Bureau of Consular Aff., Visa Bulletin, *available at https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html.*

8 U.S.C. 1186b(c) and (d); 8 CFR 216.6(a)(1). Failure to timely file Form I–829 results in automatic termination of the immigrant investor's conditional permanent resident status and the initiation of removal proceedings. *See* INA section 216A(c), 8 U.S.C. 1186b(c); 8 CFR 216.6(a)(5). In support of the petition to remove conditions, the investor must show, among other things, that the commercial enterprise was established, that he or she invested or was actively involved in investing the requisite capital, that he or she sustained those actions for the period of residence in the United States, and that job creation requirements were met or will be met within a reasonable time. *See* 8 CFR 216.6(a)(4). If approved, the conditions on the investor's permanent residence are removed as of the second anniversary of the date the investor obtained conditional permanent resident status. *See* 8 CFR 216.6(d)(1).

D. Final Rule

In response to the proposed rule, DHS received 849 comments during the 89-day public comment period. In addition, DHS reviewed 11 comments submitted to the docket USCIS–2016–0008, EB–5 Immigrant Investor Regional Center Program, an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** two days prior to the proposed rule,[8] but which contained content relevant to the proposed rule. As a result, DHS considered a total of 860 comment submissions in response to the proposed rule. Approximately 560 of the comments were letters submitted through mass mailing campaigns and 290 comments were unique submissions. Commenters consisted primarily of individuals, including some investors, but also included anonymous submissions, law firms, advocacy groups, EB–5 job-creating entities, EB–5 new commercial enterprises, regional centers, non EB–5 entity companies, industry professional associations, industry trade/business associations, community or social organizations, members of Congress, and representatives from state and local governments.

Following careful consideration of public comments received, DHS made some modifications to the regulatory text proposed in the NPRM. The rationale for the proposed rule and the reasoning provided in the background section of that rule remain valid with respect to these regulatory amendments, except where new or supplemental rationale is reflected below. Section III of this final rule preamble includes a summary and analysis of public comments that are pertinent to the proposed rule. A brief summary of comments DHS deemed to be out of scope or unrelated to this rulemaking, making a substantive response unnecessary, is provided at the end of Section III. Comments may be reviewed at *http://www.regulations.gov,* docket number USCIS–2016–0006.

III. Response to Public Comments on the Proposed Rule

DHS reviewed all of the public comments received in response to the proposed rule and addresses relevant comments in this final rule, grouped by subject area. DHS does not address comments seeking changes in U.S. laws, regulations, or agency policies that are unrelated to the changes to 8 CFR 204.6 and 216.6 proposed in the NPRM. This final rule does not resolve issues outside the scope of this rulemaking.

A. Need for Rulemaking and Regulatory Process

Comments: Multiple commenters expressed support for general integrity reforms and measures that deter fraud, but recommended the legislative process to reform the program. A few commenters urged DHS to withdraw the proposed rule because the proposed reforms should be under the purview of Congress, as they stated that the reforms are better addressed through the legislative process. The commenters stated that the legislative process generally requires consensus building and input from various stakeholders. One commenter stated that legislative reform would be more comprehensive, address interconnected impacts, and provide for needed reforms that go beyond the statutory authority for regulatory reform. The commenter also expressed concern that pending EB–5 legislation has conflicting changes that, if passed, would supersede many or most of the proposed regulatory changes or render them moot. Another commenter stated that collecting comments on this rule prior to the reauthorization of the EB–5 Regional Center Program was premature; the commenter asserted that a legislative solution could address the issues in the proposed rule without the need for rulemaking. These commenters called for the withdrawal of the proposed rule and asserted that even if these changes were effected through regulation, any regulatory changes should be drafted from scratch under the new administration. Another commenter suggested that the proposed regulation exceeds the scope of legislative changes recently discussed by Congress.

Response: DHS disagrees with commenters that it was premature to propose the rule prior to the reauthorization of the EB–5 Regional Center Program and that the issues addressed in the final rule are best resolved through the legislative process. The final rule addresses overarching issues concerning the EB–5 program generally, not just the Regional Center Program. Additionally, the Regional Center Program has been reauthorized numerous times in recent years, without reform. *See, e.g.,* Public Law 115–123 (Feb. 9, 2018); Public Law 115–120 (Jan. 22, 2018); Public Law 115–96 (Dec. 22, 2017); Public Law 115–31 (May 5, 2017); Public Law 114–254 (Dec. 10, 2016); Public Law 114–223 (Sept. 29, 2016); Public Law 114–113 (Dec. 18, 2015). DHS has worked diligently to provide technical assistance to Congress since 2014 to reform the EB–5 program through legislation. To date, Congress has not passed comprehensive EB–5 reform legislation.[9] In fact, some members of Congress have specifically requested that ''because Congress has failed to reform or end this program, we call on the Department of Homeland Security to expeditiously finalize regulations that would reduce the widespread abuses of the EB–5 program.'' [10] DHS would, of course, faithfully implement any new legislation, if passed.

DHS agrees with the members of Congress who requested taking this regulatory action because of the lack of legislative reforms. DHS is finalizing this NPRM to implement needed regulatory reforms in a timely manner. Although the legislative process has certain benefits, the regulatory process is transparent and includes the solicitation of input from the public. These regulatory reforms do not require new legislation; the statutory authority underlying these regulatory reforms is

[8] The ANPRM is titled, ''EB–5 Immigrant Investor Regional Center Program'' and was published on January 11, 2017 at 82 FR 3211. The eleven comments from the ANPRM docket considered were 0002, 0005, 0006, 0007, 0008, 0009, 0015, 0018, 0021, 0024, and 0025.

[9] A number of pieces of legislation have been introduced. *See generally* S.1501, the ''American Job Creation and Investment Promotion Reform Act of 2015'', 114th Congress (2015–2016); S.2415, the ''EB–5 Integrity Act'', 114th Congress (2015–2016); S.2122, the ''Invest in Our Communities Act'', 114th Congress (2015–2016); H.R. 5992, the ''American Job Creation and Investment Promotion Reform Act of 2016'', 114th Congress (2015–2016); and S.727, the ''Invest in Our Communities Act'', 115th Congress (2017–2018).

[10] Website of U.S. Senator Charles Grassley, *Grassley, Goodlatte Call on DHS to Finalize EB–5 Regulations End Unacceptable Status Quo,* (Mar. 22, 2018), *available at https://www.grassley.senate.gov/news/news-releases/grassley-goodlatte-call-dhs-finalize-eb-5-regulations-end-unacceptable-status-quo.*

set forth at length in the preamble to the proposed rule and elsewhere in this preamble. For example, when creating the EB–5 program, Congress clearly intended that the administering agency may periodically raise the minimum investment amounts. The INA provides that the Secretary of Homeland Security ''in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing'' the $1,000,000 minimum investment amount.[11] Yet, even though the Immigration and Naturalization Service had recommended before the creation of the EB–5 program that the minimum investment amount in an investor visa program be ''adjusted periodically based on some criteria such as the Consumer Price Index,'' [12] this has never been done in the quarter century since the program's creation. Nor do the regulatory reforms require revision solely by virtue of a change in administration. Finally, promulgation of these regulatory reforms does not preclude legislative reform of the EB–5 program by Congress.

Comments: Other commenters disagreed with the approach to bifurcate EB–5 issues into an NPRM and an ANPRM, stating that the issues contained in both were interconnected and must be addressed together. The commenters asked DHS to withdraw the NPRM and amend the ANPRM to include the issues addressed in the NPRM (namely the designation of TEAs and minimum investment levels), as issues for an extended public comment process prior to rulemaking. In doing so, the commenters said DHS should also extend the comment period for the ANPRM for 60 days, in order to solicit more meaningful and data-driven comments.

Response: DHS disagrees with the commenters. The NPRM focused on issues common to all EB–5 petitioners, whether or not they are associated with a regional center. The ANPRM focused exclusively on the Regional Center Program. DHS believed bifurcating the proposals was critical for two reasons: (1) The EB–5 program is in need of reform related to the issues addressed in the NPRM and this final rule; and (2) DHS believed the agency had sufficient data to support the changes proposed in the NPRM for the entire EB–5 program at the time of publication, whereas DHS desired to solicit additional data from stakeholders regarding potential changes to the Regional Center Program. DHS decided to publish an ANPRM to gather this additional information. As DHS did not merge the two proposals, DHS believes an extension to the almost 90-day comment period was not warranted.

B. Priority Date Retention

1. Proposed Standards for Retaining a Priority Date

Comments: Many commenters discussed the proposed standards for retaining a priority date. Several commenters expressed general support for the proposal to allow EB–5 investors to retain the original filing date of their Form I–526 petition as logical and necessary, especially with ''retrogression'' or oversubscription of the category (*i.e.,* lengthening of the period of time before a priority date assigned to a Form I–526 petition becomes current and an EB–5 visa becomes available for issuance). They asserted that priority date retention would provide flexibility to investors as conditions change and may encourage investment in the United States by protecting EB–5 petitioners from having to ''restart the clock'' on their petition due to circumstances outside of their control. One commenter stated that this change will mitigate otherwise catastrophic results that would occur to some petitioners stuck in the visa queue. One commenter stated that preserving the priority date can give the investor an incentive to reinvest in a project. DHS agrees that priority date retention would protect petitioners and encourage investment.

Several commenters stated that all EB–5 petitions should retain the priority date, even if the EB–5 petition is not yet approved, but did not provide any additional justification for this statement. Other commenters proposed that the priority date also be retained for those petitions that were denied due to no fault of the petitioner—for instance, if an associated regional center is terminated before adjudication of the petition due to its failure to meet program requirements—because circumstances can change as a result of potentially lengthy Form I–526 processing times. One commenter suggested that DHS use the same standard as INA section 245(i) to determine whether an EB–5 petitioner may retain a priority date from an earlier filed EB–5 petition, where benefits attach if a petition was approvable when filed, defined by the commenter as properly filed, meritorious in fact, and non-frivolous. This commenter also recommended DHS allow a supplemental Form I–526 filing and priority date retention for petitioners if, under USCIS policy, a material change to an investment project would require the filing of a new Form I–526 petition, as long as the petition was approvable when filed.

Response: The final rule requires that the Form I–526 petition be approved for an EB–5 petitioner to retain the priority date associated with that petition. DHS disagrees with commenters' proposals that a priority date should attach when the petition is filed, rather than when it is approved (including (1) where the pending petition is denied through no fault of the petitioner, or (2) the petition was approvable when filed but a new petition is required due to the USCIS material change policy). Section 203(e) of the INA provides that immigrant visas must be issued to *eligible* immigrants in the order in which a petition on behalf of each such immigrant is filed. USCIS determines such eligibility through its approval of petitions. *See also, e.g.,* INA section 203(b)(5) and (f), 8 U.S.C. 1153(b)(5) and (f); INA section 204(a)(1)(H) and (b), 8 U.S.C. 1154(a)(1)(H) and (b); 8 CFR 103.2(b)(8)(i). Requiring approval of the petition prior to establishment of a priority date is consistent with DHS's historical interpretation of eligibility with respect to order of consideration for visa issuance under INA section 203(e), the Department of State's regulation on priority dates for visa issuance, and DHS's priority date retention regulation for other employment-based categories. *See* 8 CFR 103.2(b)(1) (mandating eligibility from time of filing through adjudication); 22 CFR 42.53(a); 8 CFR 204.5(e) (priority date retention). USCIS determines a petitioner's eligibility as part of adjudication of the petition, and USCIS's approval of the petition along with the filing date establishes the order of consideration for a visa.

Additionally, the commenters' proposals to revise USCIS's material change policy would have implications beyond priority date retention and the scope of this rulemaking. DHS did not propose to revise its material change policy as part of the proposed rule for this action. Rather, DHS solicited public feedback on potential changes to the policy in the EB–5 Immigrant Investor Regional Center Program ANPRM. *See* 82 FR 3211 (Jan. 11, 2017).

Moreover, allowing petitioners to establish a priority date prior to the adjudication of the petition has negative policy and operational implications. DHS believes that assigning a priority date to a pending Form I–526 petition would incentivize frivolous petition

[11] INA section 203(b)(5)(C)(i).

[12] *Legal Immigration Reforms: Hearing Before the Subcomm. on Immigration and Refugee Affairs of the Senate Comm. on the Judiciary,* S. Hrg. 100–990 at 90 (1987) (INS responses to questions by Senator Paul Simon) (1987).

filings solely to establish an earlier priority date. By assigning priority dates only upon petition approval, DHS hopes to eliminate the possibility that investors may file a petition that is unlikely to be approved purely to lock-in an earlier priority date, which may lead to further delays in adjudication. Additionally, allowing petitioners to retain priority dates for unapproved petitions that may have been approvable when filed would present an operational burden that would complicate and prolong the adjudications process, as USCIS would need to determine whether priority date retention is possible for these petitions separate from its normal adjudications framework.

For these reasons, the final rule will only allow an EB–5 petitioner to retain the priority date from an *approved* Form I–526 petition. Priority date retention is not available in cases involving fraud or willful misrepresentation of a material fact by the petitioner, or when DHS determines that it approved the petition based on a material error. *See* final 8 CFR 204.6(d). DHS believes this change will address situations in which petitioners whom USCIS has already determined meet eligibility requirements may become ineligible through circumstances beyond their control (*e.g.,* the termination of a regional center) as they wait for their visa priority date to become current as well as provide investors with greater flexibility to deal with changes to business conditions.

In contrast to the proposed rule, this final rule also clarifies that an investor may retain a priority date from a petition that had been approved but has since been revoked on grounds not specifically described in the provision. The final rule also clarifies that if an investor has multiple approved petitions, the investor is entitled to the earliest qualifying priority date. *See* final 8 CFR 204.6(d).

Comment: One commenter stated that some EB–5 investors with pending Form I–526 petitions may have already invested their funds and created jobs, but their petitions may no longer be approvable due to circumstances outside of their control, such as regional center termination. The commenter stated that the proposal would be unfair due to processing times, as some investors awaiting approval may have already achieved the goals of the program, but cannot retain the priority date, while other similarly situated investors will retain their priority dates simply because their petitions were approved.

Response: As explained above, DHS is only providing priority date retention to EB–5 investors with approved Form I–526 petitions for a range of reasons. DHS also notes that no law, regulation, or DHS policy requires that the petitioner's capital be invested prior to petition approval. On the contrary, INA section 203(b)(5)(A)(i) provides that an investor can qualify for EB–5 status by showing that he or she is ''actively in the process of investing.'' *See also* 8 CFR 204.6(j)(2). Nothing prevents a petitioner from holding his or her contribution of capital in escrow until the petitioner has obtained conditional permanent resident status.[13]

Comments: Several commenters stated the proposal does not protect victims of EB–5 scams where investment capital was diverted, misappropriated, or subjected to an asset freeze. Some commenters suggested that such victims be allowed to choose another project for re-investment and retain the filing date of the pending Form I–526 petition as the priority date. They suggested that, because currently many investors who are victims of various EB–5 scams and other criminal activities conducted by regional centers and project managers, the victims cannot withdraw and reinvest their funding because they would lose their original priority date. One commenter suggested that allowing victims to reinvest and retain the priority date would provide fairness to investors and prevent deliberate EB–5 scams in the future since investors would not be forced to maintain their investment in a fraudulent project just to preserve a priority date.

Response: For the reasons explained above, DHS is only providing priority date retention to EB–5 investors with approved Form I–526 petitions. Although DHS is sympathetic to petitioners with pending petitions who are victims of scams and other criminal activities conducted by regional centers and project managers, a petitioner must be eligible at the time of filing and remain eligible until the petition is adjudicated. Retention of a priority date does not relieve petitioners of their burden to meet the relevant eligibility requirements, including their statutory burden of investing the required minimum investment pursuant to INA 203(b)(5)(A)(i).

In addition, certain changes to a pending Form I–526 petition, including a change in regional center and certain changes relating to the new commercial enterprise or job-creating entity, may constitute a material change to the petition.[14] A change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision.[15] Material changes prior to the approval of an EB–5 investor's Form I–526 petition would render the petition ineligible for the benefit sought. Similarly, material changes after the approval of the Form I–526 but before the petitioner has obtained conditional permanent residence, would constitute good and sufficient cause to issue a notice of intent to revoke, which if not overcome would constitute good cause to revoke the petition's approval.[16] This rule provides petitioners faced with revocation of an approved petition due to a material change the means to retain the priority date of that approved petition when filing a new petition, except in cases of fraud, misrepresentation, or material error. *See* final 8 CFR 204.6(d). DHS did not propose to change its current material change policy, either with respect to pending petitions or its ability to revoke approved petitions, and does not intend to do so in this final rule. Rather, the final rule provides certain petitioners with the opportunity to retain the priority date of their approved petitions if they submit another Form I–526 petition for which they are qualified. *See* final 8 CFR 204.6(d). This additional protection helps reduce the impact of material changes to EB–5 investors with approved petitions due to changed business conditions.

Comments: Some commenters recommended that investors who may be ineligible for EB–5 status due to circumstances outside their control, specifically fraud or force majeure (established by showing any extreme circumstance beyond anyone's control), should not lose the benefit of any period for which the age of the investor's child has been frozen under the Child Status Protection Act (CSPA) such that the child might ''age-out.'' Other commenters suggested ''freezing'' the child's age at the time the EB–5 applicant files his or her Form I–526 without specific reference to the CSPA. Several commenters expressed specific concerns regarding the children of Chinese investors aging out of the program due to the visa backlogs, which may ultimately cause potential investors with young children to invest in other countries.

[13] *See* USCIS Policy Manual, 6 USCIS–PM G (Jun. 14, 2017).

[14] *See* USCIS Policy Manual, 6 USCIS–PM G (Jun. 14, 2017).

[15] *Id.*

[16] USCIS Policy Manual, 6 USCIS–PM G (Nov. 30, 2016).

Response: While DHS appreciates the commenters' concerns regarding minor beneficiaries who may age out during the process, DHS does not intend to change its guidance regarding the applicability of the CSPA. DHS notes that, by statute, once a person turns 21, he or she is no longer a ''child'' for purposes of the INA, subject to certain statutory exceptions by which individuals who surpass that age are or may be considered to remain a ''child'' by operation of law. *See* INA sections 101(b)(1) and 203(h), 8 U.S.C. 1101(b)(1) and 1153(h). The CSPA was enacted on August 6, 2002, and provides continuing eligibility for certain immigration benefits to the principal or derivative beneficiaries of certain benefit requests after such beneficiaries reach 21 years of age. *See* Public Law 107–208; INA sections 201(f), 203(h), 204(k), 207(c)(2), and 208(b)(3), 8 U.S.C. 1151(f), 1153(h), 1154(k), 1157(c)(2), and 1158(b)(3).[17]

The CSPA, among other things, protects minor beneficiaries from aging out of their beneficiary status due to the length of time that it takes DHS to adjudicate petitions.[18] By contrast, the priority date retention provision in this rule is meant to protect investors with approved petitions from losing a priority date while awaiting an immigrant visa. Protection against fraud or force majeure is beyond the scope of the CSPA. DHS has not been presented with any evidence of reduced interest in the EB–5 program due to its application of the CSPA, and has no way of determining in what manner application of the CSPA will affect future investment levels under the EB–5 program. DHS notes, however, that some children of principal beneficiaries of EB–5 petitions may benefit from priority date retention in that, if there is a visa backlog, they may spend a shorter amount of time in the queue, thus reducing the possibility they will reach an age that they no longer qualify as derivative beneficiaries.

Comments: Some commenters suggested that DHS allow an EB–5 investor to freely gift and transfer his or her priority date from an approved petition to another family member (either by switching the principal investor or having a family member file a new Form I–526), such as a child, to prevent a child from aging out, or losing the ability to immigrate if he or she turns 21 while waiting for an immigrant visa to become available.[19] A commenter also suggested DHS allow priority dates to transfer to a petitioner's heir if the petitioner is deceased.

Response: As stated previously, section 203(e) of the INA provides that immigrant visas must be issued to eligible immigrants in the order in which a petition on behalf of each such immigrant is filed. USCIS determines such eligibility through its approval of petitions and establishment of priority dates. Determination of eligibility for one immigrant cannot be substituted for another; each petitioning immigrant must qualify on his or her own merit. INA 203(e); *see* 8 CFR 103.2(b)(1) (''An *applicant or petitioner* must establish that *he or she* is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.'' (emphasis added)).[20] For that reason, the final rule explicitly states that a priority date is not transferable to another alien. *See* final 8 CFR 204.6(d).

Comment: One commenter suggested extending priority date retention benefits to investors who have already obtained conditional LPR status to alleviate the burden on investors who will otherwise be unable to obtain permanent LPR status through no fault of their own. The commenter also asserted that delays in adjudicating I–829 petitions increase the risk to the investor that ''situations in which petitioners may become ineligible through circumstances beyond their control (*e.g.,* the termination of a regional center) may occur.

Response: As explained in the NPRM, DHS proposed priority date retention to provide flexibility to deal with changes to business conditions in light of oversubscription of the program (*i.e.,* demand that outpaced the supply in visa numbers). 82 FR at 4756. Absent priority date retention, petitioners who may have met all of the requirements to participate in the EB–5 program may face harsh consequences upon losing their place in the immigrant visa queue if a material change occurs through no fault of the investor. Once a visa becomes available and a petitioner becomes a conditional permanent resident, oversubscription is no longer a concern. DHS believes there are other protections already in place for individuals who are conditional permanent residents and who seek to remove conditions. For example, an immigrant investor may proceed with the petition to remove conditions and present documentary evidence demonstrating that, notwithstanding deviation from the business plan contained in the initial Form I–526 petition, the requirements for the removal of conditions have been satisfied.[21] Further, a priority date cannot generally be re-used in other employment-based or family-based preference categories once the individual becomes a lawful permanent resident. Thus, consistent with DHS's treatment of individuals who obtain permanent residence under other immigrant classifications, DHS declines to create an anomalous carve-out for one class of immigrants allowing them to repeatedly jump to the beginning of the visa queue ahead of others who may have endured a lengthy wait to obtain a visa. Once a priority date is used by virtue of the petitioner becoming a conditional permanent resident, he or she will have obtained the benefit connected to the priority date, and DHS will not permit the priority date to be retained for further use.

2. Other Comments on Priority Date Retention

Comment: One commenter requested that USCIS clarify that priority dates for EB–5 petitions are determined based on the date of filing the initial petition.

Response: DHS agrees with the commenter and has added language that was inadvertently left out of the NPRM to the final regulatory text. *See* final 8 CFR 204.6(d) (''The priority date of a petition for classification as an investor is the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed.'').

Comment: One commenter expressed concern with DHS proposing priority date retention along with changes to the investment amounts and TEA

[17] Guidance on the agency's application of the CSPA to visa petitions can be found in the USCIS Policy Manual. *See* USCIS Policy Manual, 7 USCIS–PM A (Nov. 30, 2016).

[18] *See* INA section 203(h); USCIS, *Child Status Protection Act, https://www.uscis.gov/greencard/child-status-protection-act.*

[19] INA section 203(d) allows a spouse or child as defined in INA section 101(b)(1)(A), (B), (C), (D), or (E), 8 U.S.C. 1101(b)(1)(A), (B), (C), (D), or (E), to accompany or follow to join a spouse or parent as a family-preference, employment-based, or diversity immigrant. INA section 101(b)(1) defines a child as an unmarried person under 21 years of age. Consequently, if a primary immigrant's child has turned 21 and has not yet immigrated, that child is no longer eligible to accompany or follow to join the primary immigrant.

[20] In addition, INA 203(b)(5)(A) provides that visas shall be made available to qualified immigrants seeking to enter the United States ''for the purpose of engaging in an NCE . . . in which *such alien* has invested or is actively in the process of investing . . . .'' And INA 203(e) states that immigrant visas made available under subsection (a) or (b) of this section shall be issued to ''eligible immigrants in the order in which a petition *in behalf of each such immigrant* is filed.'' DHS believes that these provisions, taken together, are best read as contemplating eligibility by a single petitioner whose visa is made available in the order in which such individual petitioned and established eligibility.

[21] USCIS Policy Manual, 6 USCIS–PM G (Nov. 30, 2016).

designation process. The commenter recommended that if DHS finalizes the priority date retention provision, the following information will also need to be clarified for investors during a transition period: (1) The amount of money investors need to invest during the transition period if they want to move their investment dollars to a different qualifying project (*i.e.,* must they reinvest the amounts required under this rule or may they reinvest at the same investment level permitted before the new regulatory requirements take effect); and (2) whether if investors who are able to reinvest at the earlier levels and retain their priority date would be able to reinvest that money into a project that was located within a TEA in place before the new regulatory requirements have taken effect at the amounts then authorized for investment in TEAs. The commenter expressed a preference for allowing investment consistent with the regulatory regime in existence prior to this rule becoming effective, and allowing investment opportunities in any type of project, regardless of the project's future TEA status once a final rule takes effect.

Response: DHS appreciates the commenter's concerns and has clarified the effective date and implementation process in this final rule preamble in Sections I.E and I.F. The changes in this rule will apply to any Form I–526 filed on or after the effective date of the rule, including any Form I–526 filed on or after the effective date where the petitioner is seeking to retain the priority date from a Form I–526 petition filed and approved prior to the effective date of this rule. A Form I–526 petitioner can retain the priority date from an approved Form I–526 petition filed prior to the effective date of this rule, so long as the petitioner is not lawfully admitted to the United States as a conditional permanent resident based on that earlier-approved petition, and USCIS did not revoke the approval based on the petitioner's fraud or willful misrepresentation or because USCIS determined that it approved the petition based on material error. This rule becomes binding on petitioners on the effective date; beginning at that time, any new petition, regardless of whether the petitioner had previously filed a Form I–526, must meet the eligibility requirements in place at the time of filing. *See* 8 CFR 103.2(b)(1). DHS believes it would be operationally burdensome to set and adjudicate different eligibility requirements for investors who want to move their investment dollars to a different qualifying project and must file a new petition. The regulatory requirements, including the minimum investment amounts and TEA designation process, in place at the time of filing the petition will govern the eligibility requirements for that petition, regardless of the priority date. DHS believes this manner of implementation best balances the needs of investors, parity of treatment among investors, and operational concerns.

Comment: One commenter stated that the priority date proposal would create unexpected delays to petitioners who had done their due diligence and chosen a successful project. The commenter believes that roughly 15 percent of projects are failing or have failed. The commenter argued that, if priority dates can be retained, then most petitioners in failed projects are likely to re-file through a different project, thus causing petitioners already in the queue to wait longer for a visa that otherwise would have become available due to the failed projects. The commenter recommended that priority date retention be restricted to projects where Form I–829 petitions would be denied only because of fraud committed by the ''EB–5 sponsors,'' rather than assisting investors whose projects fail for other reasons. Another commenter stated that innocent investors should not be punished by fraud and scams committed by the investment project.

Response: As contemplated by Congress, the immigrant investor visa was a way to provide aliens an immigration incentive for investing and creating jobs in the United States. For petitioners with approved petitions who invest in projects that appear unlikely to succeed after petition approval and while the investor is awaiting visa availability, priority date retention provides further incentive for them to reinvest in another project in the United States as opposed to withdrawing their investment in the United States. In addition, providing for priority date retention only where a Form I–526 petition has been approved is consistent with Congress's goal of issuing visas to eligible immigrants in the order petitions were filed, in that it allows investors to remain in the queue only if the agency had deemed them eligible for EB–5 classification. Although DHS acknowledges the commenter's point that priority date retention could potentially result in a longer wait in the visa queue for some petitioners, the final rule provides equitable relief to those EB–5 petitioners described in the comment who find that, through no fault of their own, their approved Form I–526 cannot be used to seek admission to the United States as lawful permanent residents. The final rule is also intended to produce parity in priority date retention between EB–5 petitioners and beneficiaries of petitions under other employment-based categories.

In response to commenter concerns that a fraudulent project or sponsor could affect an innocent petitioner, DHS clarifies in the final rule that the fraud or willful misrepresentation of a material fact must be done by the petitioner. *See* final 8 CFR 204.6(d)(1).

Comment: One commenter suggested that because a petition must be approvable both at the time it was filed and also on the date it is adjudicated, the priority date retention proposal would create the potential for the retroactive application of the regulations to pending Form I–526 and Form I–829 petitions as well as to current conditional permanent residents. Citing to *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208, 109 S. Ct. 468, 471 (1998), the commenter argued that there is no precedent for retroactive application of regulations.

Response: The final rule does not change the longstanding requirement at 8 CFR 103.2(b)(1) that a petitioner demonstrate eligibility at the time of filing and throughout adjudication, and thus it does not result in a retroactive application of regulations. The preamble to this final rule also clarifies the effective date of this rule, as well as implementation procedures in Sections I.E and I.F. As explained above, the changes in this rule will apply to all Form I–526 petitions filed on or after the effective date of the final rule. Petitions filed before the effective date will be adjudicated under the regulations in place at the time of filing. As the final rule will only apply to petitions filed on or after the effective date, DHS does not anticipate that the final rule will be applied retroactively.

C. Increases to the Investment Amounts

1. Increase to the Standard Minimum Investment Amount

Comments: Multiple commenters stated that the proposed standard minimum investment amount is too high because it would greatly reduce the number of investors in the EB–5 program, but did not suggest an alternative. Similarly, many commenters agreed that the minimum investment amount should increase, but stated that $1.8 million was too high because, combined with the TEA designation changes, the increase will result in many projects that could previously have been funded with $500,000 individual investments now

needing $1.8 million individual investments. Several commenters noted that the proposed amounts far exceed those proposed and under consideration by Congress, and one commenter suggested reducing the standard and TEA minimum investment amounts by half of the current amount. Other commenters suggested DHS consider investment amounts ranging from $500,000 to $1.5 million. One commenter stated that the amount set in 1990 was too high as evidenced by the program not being fully utilized before 2014 and suggested that setting the investment amount too high will repeat the mistake. The commenter asserted that job creation was the most important principle and the investment amount was just a ''gate keeping mechanism,'' but did not provide additional support for these assertions.

Several commenters expressed support for the proposal to increase the standard investment amount to $1.8 million; some expressed support for the proposed increase, but did not focus on a specific amount. Commenters supporting the proposed minimum investment increases stated that the market can handle an increase in the minimum investment amounts and that leading investor visa programs in other countries require investment amounts higher than those recommended by DHS. Several commenters agreed with updating the minimum investment amount to account for inflation. One commenter agreed with the proposal to increase the minimum investment amount to account for inflation, and stated the increase was necessary to realistically achieve the goal of sustaining 10 full-time employees in light of the increases in national average salaries from 1990 to 2015. Some members of Congress noted that the increase is important in order for the program to recapture the real 1990 investment value and infuse additional capital in to the United States. They further stated that the failure to adjust the minimum investment amount for inflation has cost the U.S. economy billions of dollars each year in potential investment funds, ultimately requiring developers to attract more foreign investors than needed in order to raise the desired amount of capital.

Response: In 1990, Congress set the minimum investment amount for the program at $1 million and authorized the Attorney General (now the Secretary of Homeland Security) to increase the minimum investment amount, in consultation with the Secretaries of State and Labor. INA section 203(b)(5)(C)(i), 8 U.S.C. 1153(b)(5)(C)(i). Neither the former INS nor DHS has exercised its authority to increase the minimum investment amount. As a result, over time, inflation has eroded the present-day value of the minimum investment required to participate in the EB–5 program—leaving it at little more than half its real value when the program was created. Thus, after consulting with the Departments of State and Labor, DHS proposed in the NPRM to increase the minimum investment amount consistent with increases in the CPI–U during the intervening period, for a new minimum investment amount of $1.8 million.

DHS disagrees with the commenter who suggested that lower utilization of the program is evidence that the investment amount was set too high prior to 2014, because DHS has reason to believe other factors significantly contributed to lower utilization of the program. For example, in 2009, a CIS Ombudsman's recommendation for the EB–5 program discussed various reasons for the program's lower utilization related to administrative obstacles and uncertainties that undermined stakeholder confidence, including uncertainty in the program, changes in guidance, concerns of insider access, as well as suspicions of abuse, misrepresentation, and fraud.[22] The Ombudsman also cited to a 2005 Government Accountability Office (GAO) report which attributed ''low participation to a series of factors that led to uncertainty among potential investors. These factors include an onerous application process; lengthy adjudication periods; and the suspension of processing of over 900 EB–5 cases—some of which date to 1995—precipitated by a change in [USCIS'] interpretation of regulations regarding financial [qualifications].'' [23] Although neither the Ombudsman nor the GAO expressly reviewed statutory requirements such as the Congressionally-set minimum investment amount, and were instead focused on USCIS implementation of the EB–5 program and how that may have contributed to low participation, both reports give DHS reason to believe the program's lower utilization in the past is due to a range of reasons.

In addition, DHS notes that other trends led to higher utilization of the program over the last 10 years. For example, the reduction of available U.S.-based commercial lending funds due to the U.S. financial crisis in 2008 led to interest in alternative funding sources, such as the EB–5 program.[24] The commenter who claimed that lower utilization of the program in the past was due to the investment amount being too high also acknowledged that the demand for EB–5 funds from eligible projects is not dependent on the level of investment set by DHS. The commenter claimed that demand was instead set by market factors totally independent of EB–5, most notably risk tolerance of primary lenders and the level of the premium charged by commercial lenders.

Regardless of what factors ultimately accounted for higher utilization of the program, the reality is that the program has become and remains hugely oversubscribed at current investment levels, DHS disagrees with commenters who assert that raising the minimum investment amount would necessarily cause the number of EB–5 investors to return to the levels in the earliest days of the program, or even to fall below the number necessary to ensure full utilization of the 9,940 visas available a year, as demand is related to a range of internal and external factors.[25]

The program makes available 9,940 immigrant visas a year, and as of December 1, 2018, there are 40,017 beneficiaries (principals and immediate family members) of approved EB–5 petitions [26] waiting for the availability of immigrant visas. According to the Department of State's Visa Bulletin for December 2018, petitioners from mainland China must have a priority date (the date of filing of the I–526 petition with USCIS) before August 22, 2014, in order for an immigrant visa to be available.[27] In addition, as of

[22] CIS Ombudsman, *Employment Creation Immigrant Visa (EB–5) Program Recommendations,* March 18, 2009, *available at https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf.*

[23] GAO, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors,* p.3 GAO–05–256 (Apr. 2005).

[24] ''A Roadmap to the Use of EB–5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects,'' Professor Jeanne Calderon and Guest Lecturer Gary Friedland of the NYU Stern School of Business (May 22, 2015) (''Despite the Program's enactment by Congress in 1990, for many years EB–5 was not a common path followed by immigrants to seek a visa. However, when the traditional capital markets evaporated during the Great Recession, developers' demand for alternate capital sources rejuvenated the Program. Since 2008, the number of EB–5 visas sought, and hence the use of EB–5 capital, has skyrocketed. EB–5 capital has become a capital source providing extraordinary flexibility and attractive terms, especially to finance commercial real estate projects.'').

[25] To the extent that the changes made by this rule reduce the number of investors, the INA provides that unused visas would be allocated to different employment-based categories. *See generally* INA section 203(b), 8 U.S.C. 1153(b).

[26] According to internal program office and adjudication records.

[27] U.S. Dep't of State, Bureau of Consular Aff., *Visa Bulletin for December 2018, available at*

December 1, 2018, USCIS had 13,125 pending I–526 petitions that had yet to be adjudicated.[28] Using the average of 1.81 derivative beneficiaries for each EB–5 principal who received an immigrant visa over fiscal years 2014–2016 [29] and assuming that about 10% of petitions filed will be denied, terminated, or withdrawn, this would represent 33,193 potential beneficiaries. Thus, there are already in the pipeline approximately 73,000 beneficiaries or potential beneficiaries—representing over seven years' worth of EB–5 immigrant visas as allocated by Congress.

The inevitable result has been ever growing wait times for immigrant visas to become available for EB–5 petitioners with approved petitions born in mainland China (and their derivative beneficiaries). The annual EB–5 visa cap was reached for the first time in fiscal year 2014.[30] In May 2015, the State Department found it necessary to establish a waiting list for petitioners with approved petitions born in mainland China, when it announced that immigrant visas were available only for such petitioners (with investments in regional center projects and/or projects in TEAs) whose priority dates were earlier than May 1, 2013.[31] That waiting list has since grown, so that EB–5 visas are only now available for petitioners born in mainland China with priority dates before August 22, 2014—which represents a wait of over 40 months. As there are over seven years' worth of beneficiaries in the pipeline, the wait time will likely only grow.

Given that over 80% of EB–5 petitioners who receive immigrant visas do not adjust their status from within the United States, but receive their visas overseas,[32] many potential EB–5 investors may choose not to wait for such an extended period of time before they can immigrate to the United States, especially considering that most petitioners invest the required capital well before their petitions are approved. This might at least in part account for the fact that the number of petitions filed has fallen each year since reaching a high water mark in fiscal year 2015. By fiscal year 2018, the number of petitions filed had fallen by more than half.[33] In the future, the number of foreign investors impacted by the per-country cap and the resultant waiting list for EB–5 visas who choose to file petitions may well further decline to the point that total petitions filed each year may not even account for the 9,940 visas allocated. This decline, of course, would be independent of the particular minimum investment amounts required by regulation, but may mitigate any decline that might be associated with such amounts. This is because some prospective petitioners who might have foregone use of the program due to increases in the investment amounts would have already foregone use of the program due to overall waitlist issues.

To commenters who suggest that DHS establish a new standard minimum investment amount below the $1 million threshold, DHS notes that the current investment amounts are the minimum set by statute, and DHS does not have authority to reduce them beyond those amounts.

Comments: Many commenters suggested that the proposed increase would make the EB–5 program less competitive with other countries' programs. Several commenters suggested that the proposed rule's comparisons to other investor visa programs were flawed and failed to account for the differences between the programs other than the investment amount, highlighting that the EB–5 program stands alone in requiring investors to place their investment at-risk. Two commenters questioned DHS' comparison to Canada's closed Immigrant Investor Venture Capital Program, which they described as having failed because it required a high capital contribution and funds that must be placed at risk, instead of focusing on its Quebec Program. One commenter noted that the comparison failed to account for other investor immigration programs with minimum investment amounts ranging from $40,000 USD to $1.8 million USD, including programs in Antigua and Barbuda, Austria, Belgium, Cayman Islands, Cyprus, Dominica, Grenada, Hong Kong, Ireland, Jersey, Malaysia, Malta, Monaco, Portugal, and Singapore.

Response: Even with the increase, the EB–5 program will remain competitive with other countries' visa programs as discussed in the NPRM.[34] In the NPRM, DHS compared the EB–5 program to the United Kingdom's Tier 1 Investor Visa, Australia's Significant and Premium Investment Programs, Canada's Immigrant Investor Venture Capital Pilot Program, and New Zealand's Investor 1 Resident Visa. *See* 82 FR at 4757. DHS noted in the NPRM that it has no means of ascertaining an investor's preference for a given program, but believes an investor's decision would be based in part on the investment amount and country-specific investment risk preferences of each investor. *Id.* DHS focused on the UK, Australia, Canada, and New Zealand because these countries offer similar program requirements, immigration benefits, and comparable financial risk to the United States.

DHS disagrees with the comment suggesting that these programs do not carry risk. While the types of investments allowed in each program differ, they carry varying levels of financial risk. The UK requires

https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-december-2018.html.

[28] According to internal program office and adjudication records.

[29] *See* DHS, *2016 Yearbook of Immigration Statistics* (table 7); DHS, *2015 Yearbook of Immigration Statistics* (table 7); DHS, *2014 Yearbook of Immigration Statistics* (table 7).

[30] *DHS, 2014 Yearbook of Immigration Statistics* (table 7).

[31] U.S. Dep't of State, Bureau of Consular Aff., *Visa Bulletin for May 2015, available at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2015/visa-bulletin-for-may-2015.html.* This is a result of the interaction between the employment-based green cards per-county caps and the fact that the overwhelming majority of EB–5 visas (75% in fiscal year 2017) go to beneficiaries born in maintain China. *See* section 202 of the INA, 8 U.S.C. 1152; Bureau of Consular Affairs, U.S. State Department, *Report of the Visa Office Fiscal Year 2017* (table V (part 3)).

[32] In fiscal year 2017, 83% of EB–5 visas were issued overseas. See DHS, *2017 Yearbook of Immigration Statistics* (table 7).

[33] In fiscal year 2015, USCIS received 14,373 EB–5 petitions; in fiscal year 2016, 14,147; in fiscal year 2017, 12,165; and in fiscal year 2018, 6,424. *See* U.S. Citizenship and Immigration Services, *Number of Form I–526, Immigrant Petition by Alien Entrepreneur, by Fiscal Year, Quarter, and Case Status 2008–2018, available at https://preview.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2018_qtr4.pdf.*

[34] The United Kingdom's Tier 1 Investor visa requires a minimum investment of £2,000,000 (approximately $2.7 million USD), and offers permanent residence to those who have invested at least £5,000,000 (approximately $8.1 million USD). *Tier 1 (Investor) Visa,* Gov. UK, *https://www.gov.uk/tier-1-investor/overview.* Australia's Significant and Premium Investment Visa Programs require AU $5 million (approximately $3.9 million USD) and AU $15 million (approximately $11.8 million USD), respectively; its ''investor stream'' visa program requires an AU $1.5 million (approximately $1.2 million USD) investment and a host of other requirements. *Business Innovation and Investment Visa,* Australian Government, *http://www.homeaffairs.gov.au/Trav/Visa-1/188-.* Canada's Immigrant Investor Venture Capital Pilot Program required a minimum investment of CDN $2 million (approximately $1.6 million USD) and a net worth of CDN $10 million (approximately $8 million USD) or more. *Immigrant Investor Venture Capital Pilot Program,* Government of Canada, *https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/immigrant-investor-venture-capital/eligibility.html.* New Zealand's Investor 1 Resident Visa requires a NZ $10 million (approximately $7.1 million USD) investment, and its Investor 2 Resident Visa requires a NZ $3 million (approximately $2.1 million USD) investment. *Investor Visas,* New Zealand Now, *https://www.newzealandnow.govt.nz/move-to-nz/new-zealand-visa/visas-to-invest/investor-visa.* Currency exchange calculations are as of January 2018.

investments in government bonds, share capital, or loan capital.[35] Australia permits investment in a variety of options, including bonds, stocks, and equity funds.[36] Canada required investment into an at-risk Immigrant Investor Venture Capital Fund for 15 years.[37] New Zealand's investment options include government bonds, residential property development, and equity in public or private New Zealand firms.[38] Such investments present levels of risk that are generally comparable to the level of risk associated with many EB–5 investments.

With respect to the Quebec Program, DHS does not believe it is comparable to the EB–5 program. The Quebec program requires a CDN $800,000 (approximately $620,000 USD), 5-year non-interest bearing investment.[39] While this amount is lower than the new EB–5 minimum investment amounts, that program also has numerous other primary requirements in order to qualify. These include requirements that the applicant have net assets of CDN $1.6 million (approximately $1.2 million USD), experience in management, as well as a requirement that the investor intends to settle in the Province of Quebec. The EB–5 program does not have additional experience requirements. Additionally, the EB–5 program does not require settlement in a particular location in the United States, which would be highly restrictive. The investor simply loans his or her money to the Canadian government for 5 years. While there is no risk posed to the investor in terms of losing some or all of the principal, the zero-interest condition means that investors in the Quebec program do incur an opportunity cost of investing, as the present value of their investment would be discounted for the five-year period.[40]

DHS reviewed each of the countries where government-provided information was readily available.[41] Some countries may require a lower investment amount, but include additional requirements that the EB–5 program does not require. For example, to be considered for a visa/entry permit to enter the Hong Kong Special Administrative Region for investment as an entrepreneur, the applicant must, among meeting other requirements, have a ''good education background, normally a first degree in a relevant field.'' [42] In general, DHS found that none of the countries raised by commenters present a straight-line comparison to the EB–5 program. There is no way to quantify an individual's desire to resettle in the United States or any other country. Each country has varying requirements, and there is no universal standard of success for an immigrant investor program. That said, DHS believes the increase is reasonable when the minimum investment amount is compared to the investor visa programs of similarly developed economies, such as the United Kingdom, Canada, Australia, and New Zealand, which typically require higher investment thresholds than what DHS proposes.[43]

Comments: A few commenters suggested the increase would favor continued participation by wealthy investors only, instead of encouraging innovative, forward-thinking entrepreneurs, small businesses, and younger investors.

Response: Congress enacted the investor visa program to attract entrepreneurs and job-creators into the U.S. economy [44] and infuse new capital into the country.[45] Congress did not specify any particular type of investor it was seeking.[46] As discussed previously, DHS believes that the increase to the minimum investment amount is appropriate because inflation has eroded the present-day value of the minimum investment required to participate in the EB–5 program since Congress set the initial investment amounts in 1990, and this final rule is an effort at remedying that erosion. In addition, DHS believes the increased amount will attract the same type of investment levels that Congress intended to attract in 1990.

DHS recognizes that many EB–5 petitioners do not necessarily take an entrepreneurial role in the operations of their new commercial enterprise; however, the EB–5 program has been and may continue to be used by petitioners who do take an entrepreneurial role in the operations of their new commercial enterprise. Moreover, under the current regulatory and statutory regime, the EB–5 program contains no specific entrepreneurship requirements. DHS does not differentiate between and collects no data on petitioners who take an entrepreneurial role in the operations of their new commercial enterprise relative to those who do not. Accordingly, DHS has no data to support and there is no persuasive reason to believe that raising the minimum investment amount would disproportionately decrease the number of petitioners who take an entrepreneurial role in their new commercial enterprise relative to those who do not.

Comments: Several commenters stated that the proposed increase to the standard investment amount would result in long wait times for projects involving Chinese EB–5 investors due to currency control efforts in China that limit the transfer of funds, and concluded that the increase therefore will undermine almost any legitimate project. One commenter estimated the proposed increases in investment amounts would extend the transfer time

[35] *Tier 1 (Investor) Visa,* Gov.UK, *available at https://www.gov.uk/tier-1-investor/overview.*

[36] *Business Innovation and Investment Visa,* Australian Government, *available at http://www.homeaffairs.gov.au/Trav/Visa-1/188-.*

[37] *Determine your eligibility—Immigrant Investor Venture Capital Pilot Program,* Government of Canada, *available at https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/immigrant-investor-venture-capital/eligibility.html.*

[38] *Investor Visas,* New Zealand Now, *available at https://www.newzealandnow.govt.nz/move-to-nz/new-zealand-visa/visas-to-invest/investor-visa.*

[39] *Investor Program,* Government of Quebec, *available at http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/index.html.*

[40] We refer to the Quebec program in the present tense because although it had been terminated several years ago, it was reopened recently (2018) for a temporary period.

[41] *Citizenship by Investment,* Antigua & Barbuda, *available at http://cip.gov/ag; Persons of Independent Means and Investors,* Cayman Islands, *available at http://www.immigration.gov.ky/portal/page/portal/immhome/livinghere/independentmeans; Citizenship by Investment,* Commonwealth of Dominica, *available at http://cbiu.gov.dm/faqs; Investment as Entrepreneurs,* Hong Kong Immigration Department, *available at http://www.immd.gov.hk/eng/services/visas/investment.html; Investor and Entrepreneur Schemes,* Department of Justice and Equality, Irish Naturalisation and Immigration Service, *available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs; Jersey Immigration Rules,* States of Jersey, *available at https://www.gov.je/travel/informationadvice/visitors/documents/ld%20immigration%20rules%20jm%20130217.pdf; Individual Investor Programme,* Republic of Malta, *available at http://iip.gov.mt/.*

[42] Investment as Entrepreneurs, Immigration Department, The Government of the Hong Kong Special Administrative Region; *available at http://www.immd.gov.hk/eng/services/visas/investment.html.*

[43] *See* Madeleine Sumption and Kate Hooper, ''Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration'', Migration Policy Institute (October 2014) at 7, *available at https://www.migrationpolicy.org/research/selling-visas-and-citizenship-policy-questions-global-boom-investor-immigration* (''Among the popular English-speaking destinations, the United Kingdom has the highest minimum threshold at GBP 1 million, followed by New Zealand and Australia which require US $1.2 million and US $1.3 million respectively. The United States' minimum is significantly cheaper, at US $500,000, but requires a more risky investment (in private-sector businesses rather than government bonds).'').

[44] 136 Cong. Rec. S35,615 (Oct. 26, 1990).

[45] S. Rept. 101–55, p. 21 (1989).

[46] 136 Cong. Rec. S35,615.

by at least 5 times and another commenter suggesting the transfer time would be close to 11 months. Other commenters suggested a more limited increase to encourage investors from countries other than China to continue to participate in the program. Another commenter stated the proposed increase in investment amounts would render the program dependent on investors from China.

Response: DHS does not believe it is appropriate to limit the increase to the minimum investment amount below what was proposed in order to attempt to attract investment from specific countries, nor does DHS believe that the policies of any specific country should dictate the administration of the EB–5 program. DHS believes the increase to the minimum investment amount based on inflation is appropriate and justified for the reasons described.

2. Use of CPI–U

Comments: Multiple commenters provided input on the methodology used to calculate the proposed investment amount increases or provided alternative approaches. Several commenters stated that DHS should increase the minimum investment amount by the annual household income growth rate because it is a better gauge of job creation over time than an unadjusted CPI metric and would better link the increase to job creation. Another commenter commented that DHS should link the investment amount increase to average wage level because changes in wages better show the amount required to create the requisite number of jobs. Other commenters stated that the increase should consider changes in exchange rates since 1990, and how those changes have affected foreign investors. For instance, one commenter stated that a $1 million investment would have cost 17 million Indian rupees in 1990, but would cost 65 million Indian rupees in 2017. Another commenter stated that the rule should compare the value in U.S. dollars of the currency of the country where the investor has earned or otherwise accumulated his or her capital, because there are several countries where the current minimum investment amount is now higher than it was in 1990, in inflation-adjusted local currency.

Some commenters agreed with the use of CPI–U to calculate the proposed increase, but disagreed with calculating the increase from 1990. Some of these commenters noted that the standard investment amount has never been competitive. They stated that the TEA investment amount only became competitive in 2008, when the price of the investment program began to match demand and the number of petitions began to increase, or in 2011 when the visa allocation was fully utilized. Several commenters noted that 2011 was the first year the number of Form I–526 petitions filed represented nearly the supply of visas available (thus, visa supply nearly equaled visa demand). These commenters recommended that DHS calculate the adjustment to the minimum investment amounts from a base year later than 1990, such as 2008 or 2011.

In addition, one commenter suggested DHS attempt some analysis of the price elasticity of demand for EB–5 visas before adjusting the minimum investment amount based on the CPI–U for the past 25 years in one adjustment.

Response: DHS considered a number of different measures upon which to base the proposed adjustment and future adjustments. DHS considered both the average household income and average wage level as potential bases for the proposed adjustments as the commenters suggested; however, both only look at one factor to determine inflation. DHS acknowledges that job creation outcomes depend on multiple factors in addition to the wage level. Such factors may include, but are not limited to, the perceived level of economic stability and growth potential, taxation, workforce availability, level of infrastructure development and price stability.

DHS chose the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average (BLS CPI Series Id: CUSR0000SA0) because it considers multiple inflationary factors over time.[47] DHS appreciates that singular factors such as average wage and income changes can reflect and influence inflation, but because such factors are narrower in focus, DHS does not believe that they translate to the overall cost of doing business in today's economy as well as the CPI–U does. The unchained CPI–U (BLS CPI Series Id: CUSR0000SA0) for all items is the ''broadest and most comprehensive CPI,'' and is the most widely used measure of inflation.[48] Because the CPI–U is an indicator of the change in costs of goods and services necessary for adequate capitalization of an EB–5 enterprise, DHS believes that the CPI–U also provides an appropriate reference point for the purpose of ensuring the statutorily required level of job creation. DHS therefore believes that, as proposed, the CPI–U is an appropriate measure for changes to the minimum investment amount.

DHS recognizes that other alternative measures may provide a broader or more accurate measure of inflation for certain purposes, but DHS also notes that the government uses CPI–U for a range of inflation adjustments. The technical change that DHS made to the inflation adjustment formula in this rule (tying the adjustment back to 1990, rather than to the prior adjustment) will ensure that disparities between different measures are not exacerbated over time. Thus, DHS believes the CPI–U is the most appropriate reference point for purposes of establishing the new investment amount with respect to determining the present-day cost to the investor.

Some commenters recommended using average household income or average wage level. The commenters stated that those measurements may better reflect the amount required to create the requisite number of jobs. However, as stated above, DHS believes an adequately capitalized enterprise (as determined by the costs of goods or services required to do business) also strongly correlates to job creation, and the CPI–U is valuable in this regard because it is appropriately reflects the change in costs of goods and services. DHS also believes it is appropriate to adjust the minimum investment amount upward based on inflation without directly correlating the minimum investment amount to the statutory requirement to create a minimum of 10 jobs. As DHS stated in the NPRM, Congress did not provide for adjustments in the investment threshold to be directly related to the EB–5 job creation requirements.[49] Indeed, the controlling statutory authorities permit varying investment amounts in various circumstances (*e.g.,* investment in TEAs or high employment areas) while maintaining the requirement that 10 jobs be created.

DHS also disagrees with comments that suggest it should determine the impact of the minimum investment amount on the U.S. economy by considering the relative value of another country's currency, or the relative value of U.S. currency in other countries. The EB–5 program encourages investment in the United States and thus it is

[47] CPI–U measures the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. Bureau of Labor Statistics, Consumer Price Index: Frequently Asked Questions, available at *http://www.bls.gov/cpi/cpifaq.htm;* Bureau of Labor Statistics, Consumer Price Index: Addendum to Frequently Asked Questions, available at *http://www.bls.gov/cpi/cpiadd.htm#2_1.* (last accessed June 28, 2018).

[49] 82 FR at 4744.

appropriate to use the value of U.S. currency in the United States as the focal point. Although some commenters claim that in many source countries, the contribution amount has gone up since 1990 when their own currencies, adjusted for inflation, are referenced, DHS believes it is more reasonable to focus on the U.S. economy rather than take into account currency value fluctuations from certain source countries, or currency values worldwide. DHS notes that the statute set specific minimum investment amounts that are meant to apply to all investors.

DHS also disagrees with calculating the adjustment from a later year than 1990. Commenters who recommend using a later year rely on a supply and demand rationale, arguing that the investment amounts–or ''price'' of the program–only started to match demand around 2008 or 2011, depending on the commenter. As stated earlier, DHS disagrees that prior lower utilization of the program was due primarily to the investment amounts being set too high. Both the CIS Ombudsman and the GAO pointed out programmatic problems that contributed to the lower utilization of the program. Therefore, DHS does not believe it is reasonable to assume that supply and demand reached equilibrium simply due to the ''cost'' having dropped in present-day values; rather, multiple factors contributed to the program's lower utilization in the early years and its later oversubscription. DHS believes that calculating the increase to account for inflation from 1990 will ensure the program requirements reflect the present-day dollar value of the investment amount established by Congress in that year.

Regarding commenters' concern that the increased investment amounts will shrink demand for the EB–5 visa to levels experienced in the 1990s and early 2000s, DHS believes these suppositions fail to fully account for the range of factors that contribute to demand (or lack thereof) for the program. As discussed in the sections in the NPRM detailing potential benefits and costs, and now updated for this Final Rule, DHS appreciates that the minimum investment amount is one key factor that could affect utilization of the program, and the increase in the minimum investment amount might deter some investors, or otherwise make an investment under the EB–5 program no longer affordable for some potential investors. DHS does not anticipate, however, that the demand for the EB–5 visa will likely revert to 1990 levels, or even fall to levels that fail to fully account for the 9,940 visas available a year, solely because of the increase in the minimum investment amount, due to the numerous other factors involved, including those that have led to higher utilization of the program since 2008. Notably, no commenters provided concrete evidence to support the speculation that demand would decrease so dramatically.

Finally, with respect to the commenter's suggestion that an analysis of the price elasticity of demand for the EB–5 visa would offer valuable information regarding investor demand for the EB–5 visa and their price sensitivity, DHS observes that the commenter erroneously assumes DHS has access to certain data and can control certain variables. Since the inception of the program in 1990, the required minimum investment amounts, for a standard investment or an investment in a TEA, have never changed. Calculating a price elasticity of demand for the EB–5 visa would require that DHS know the ratio of the percent change in EB–5 visa demand to the percent change in the investment amount. However, there are likely numerous factors that have influenced the growth of EB–5 investor applications over the past several decades. DHS cannot develop a model that controls for all of the specific variables nor predicts future unforeseeable events. DHS could not accurately measure the influence of the two investment levels on demand for past and future EB–5 investment applications.

3. Adjustments Every Five Years Tied to CPI–U

Comments: Some commenters supported increasing the minimum investment amounts every five years. One commenter agreed with the general concept of periodically increasing the minimum investment amount to prevent past practice from repeating. One commenter stated that applying the overall inflation in the U.S. economy to the minimum investment amount every 5 years would compound the damaging impact of raising the minimum investment amount to $1.8 million now. Another commenter suggested developing a different model that would allow the minimum investment amount to increase or decrease based on overall demand for EB–5 immigrant visas and differences in demand between TEA and non-TEA investments (though this commenter acknowledged that the statute does not allow for decreases in the minimum investment amount below the statutory minimum). Two other commenters suggested that an increase should not be automatic every five years, but instead DHS should evaluate whether an increase is appropriate at that time and how the increase would affect investment and job creation.

Response: DHS agrees with the commenters who stated that it is important to include a periodic inflation-adjustment mechanism to avoid a recurrence of the current situation, where the minimum investment amount remains unchanged for a lengthy period and is eroded by inflation, and thus provides for adjustment based on the change in the cumulative annual percentage change in CPI–U. DHS disagrees with basing the amount on the overall demand of the program, as the statute does not specify that demand be the primary (or even a necessary) factor in making a determination to increase the minimum investment amount. Moreover, demand could fluctuate for a variety of reasons outside of the minimum investment amount and thus does not provide a reliable, consistent metric that would permit USCIS and stakeholders to anticipate adjustments (if any) to the minimum investment amount for purposes of consistent adjudication and investment structuring. Further, because the minimum investment amount has not been adjusted since the program's inception, DHS does not have adequate data to propose adjustment of the minimum investment amount based on the impact of such adjustments on overall demand of the program.

DHS also disagrees with the suggestion to evaluate how an increase would affect investment and job creation prior to making future adjustments, rather than utilizing an automatic increase. First, Congress did not explicitly tie the statutory investment amount to the aggregate level of investors, investment, or job creation. The statute contains only individualized requirements for each investor to invest the specified minimum amount of capital and create at least 10 jobs. It is therefore reasonable for adjustments to the individual investment amount to keep pace with inflation, as discussed elsewhere in this rule, rather than be tied to total investors, investment, or job creation.

Moreover, DHS believes that an automatic adjustment based on CPI–U affords greater certainty for investment decisions because stakeholders can predict the level of adjustment on the readily available CPI–U. As noted by the Organization for Economic Co-operation and Development (OECD):

> The aim of policies for attracting foreign direct investment must necessarily be to

provide investors with an environment in which they can conduct their business profitably and without incurring unnecessary risk. Experience shows that some of the most important factors considered by investors as they decide on investment location are: A predictable and non-discriminatory regulatory environment and an absence of undue administrative impediments to business more generally.[50]

Given that uncertainty and perceived risk affect investment decisions, DHS believes that an automatic adjustment of the minimum investment amount that occurs every five years provides predictability and consistency to stakeholders so they can tailor business plans accordingly, without needing to wait for DHS' determination.

This rule also makes a technical correction to the inflation adjustment formula for the standard minimum investment amount and the high employment area investment amount, such that future inflation adjustments will be based on the initial investment amount set by Congress in 1990, rather than on the most recent inflation adjustment. Thus, for instance, the next inflation adjustment will be based on the initial minimum investment amount of $1,000,000 in 1990, rather than this rule's minimum investment amount of $1,800,000, which is a rounded figure. This change better implements the intent of the proposed rule; it ensures that future inflation adjustments more accurately track inflation since 1990, rather than being based on rounded figures.

4. Implementation of the Increase in Investment Amount

Comments: Multiple commenters provided suggestions on how to implement the increase in the minimum investment amounts, with most of these commenters advocating a phased-in approach. One commenter suggested a transition period to ensure the minimum investment amount catches up to the ideal minimum investment amount without drying up access to capital. Other commenters recommended an incremental approach because the market responds better to smaller increases over time rather than a single increase, and it would also minimize disruptions in EB–5 program activity. Several commenters encouraged DHS to implement a reasonable, stepped increase over the next 5 years.

Response: DHS considered phasing in the minimum investment amount over the next five years, including increasing the amount every year or every other year. However, DHS believes constantly changing amounts would present challenges to the EB–5 market, in that continual, frequent increases would commonly require different investment amounts for different petitioners within the same investment project over a period of time. Such differences would require frequent adjustments to offering documents that could overly complicate adjudications and place burdens on the EB–5 market, including EB–5 petitioners. Most importantly, a phased-in approach or transition period means the minimum investment amount would not fully account for the change in inflation for another five years. DHS believes it is important to take steps to revise the program by making the adjustment now rather than continuing to delay the impact of the inflation-adjusted increase.

5. Increase to the TEA Minimum Investment Amount

Comments: Some commenters expressed support for the proposed increase to the TEA minimum investment amount from $500,000 to $1.35 million. A commenter stated that the demand for EB–5 visas is high and the program is oversubscribed, and a higher minimum investment per visa will ''increase the overall funding flow and relieve some of the pressure/challenge'' to create 10 jobs per visa.

Many commenters stated that the proposed TEA investment amount was too high. Many of these commenters argued that the proposed increase would be detrimental to the future viability of the EB–5 program, especially in light of the fact that the vast majority of historical investments have been made in TEA investments. Many commenters made similar arguments against the proposal to increase the TEA minimum investment amount as they made against the proposal to increase the standard minimum investment amount, such as: The proposed increase would make the EB–5 program less competitive with the immigration investment programs of other countries; the proposed increase would result in minimum investment amounts far exceeding those under consideration by Congress; the proposed increase would have the unintended consequence of severely limiting the participation of many successful mid-career professionals and entrepreneurs; and the proposed increase would especially burden investors from China due to currency control restrictions. Another commenter recommended that the TEA investment amount not be increased in light of a recent GAO study, which found that rural America only accounted for 3 percent of the projects under the EB–5 program. Some commenters said that an increased TEA investment amount provides a disincentive for the type of projects in areas of high unemployment and rural areas that the program should encourage, and would disproportionately and negatively affect areas needing investment the most.

Commenters proposed several alternative increases to the TEA minimum investment amount. A commenter suggested investment levels ''somewhat less than'' the levels proposed in recent legislation (*e.g.,* H.R. 5992, the American Job Creation and Investment Promotion Reform Act, which proposed a TEA minimum investment amount of $800,000) because such levels would not shock the investor market, would maintain the competitiveness of the U.S. program relative to the costs of entry for similar investment-related immigration programs in other nations, and could ''be reasonably supported by data comparable to that cited by'' another commenter. The commenter did not identify which of the other commenter's data it found most relevant, and how data comparable to the other commenter's data would be used to support an $800,000 minimum investment amount.

One commenter suggested setting the TEA investment amount at $650,000 now and gradually increasing the amount to adjust for inflation. This commenter stated that the EB–5 market would not withstand an increase as dramatic as the one proposed; according to the commenter, because the majority of investments are currently made at the $500,000 level, increasing the amount to $1.35 million will significantly reduce the investor pool and make the EB–5 program an unattractive investment when compared with other countries. Other commenters suggested TEA minimum investment amounts ranging from $600,000 to $1 million, similarly arguing that the proposed investment amounts are too high.

One commenter argued for applying an inflation-based increase to the TEA minimum investment amount, rather than the standard investment amount, so that the TEA minimum investment amount would be $900,000. The commenter argued that if a further policy goal is to reduce the TEA versus non-TEA differential to 25 percent instead of the current 50 percent, then

[50] Christiansen, Hans, *Checklist for Foreign Direct Investment Incentive Policies,* Investment and Services Division, OECD Committee on International Investment and Multinational Enterprises (CIME) OECD, 2003, *available at https://www.oecd.org/daf/inv/investment-policy/2506900.pdf.*

the minimum for non-TEA investment amount would become $1.2 million.

Response: DHS considered the comments received on this proposed change and, for the reasons explained in the *Investment Level Differential Between Standard Investment Amount and TEA Investment Amount* section below, it will retain the 50 percent differential between TEA and non-TEA investment amounts.

DHS agrees with commenters who supported the proposed increase to $1.35 million in that DHS also believes a higher minimum investment per visa would ''increase the overall funding flow and relieve some of the pressure/challenge'' to create 10 jobs per visa. DHS notes that an increase from $500,000 to $900,000, though not as high as $1.35 million, will have a similar benefit.

Many commenters, however, asserted that the proposed minimum investment amount for TEAs was too high, or higher than Congress has considered in recent legislation. The proposed increase in the minimum investment amount for TEAs was intended in part to remedy the imbalance referred to in comments, where the vast majority of investments are currently in entities in TEAs, contrary to the balance Congress appears to have expected.[51] While DHS continues to have some concern about the imbalance, the reforms to the designation process for high unemployment TEAs finalized in this rule will better ensure that, even if some imbalance remains, it is benefiting truly deserving communities, as Congress intended. Also, it should be kept in mind that Congress set aside thousands of EB–5 visas a year for those investors (and their immediate family members) investing in TEAs. In fact, while no less than 3,000 visas must be so set aside each year, Congress left DHS with the discretionary ability to set aside even more.[52] Congress did not reserve visas for investors investing in non-TEA projects. These features of the program provide additional indication that Congress considered the goal of incentivizing investments in rural and high-unemployment areas of crucial importance. This set-aside, along with the provision authorizing DHS to institute a substantial investment differential between the TEA and non-TEA investments, are the primary tools that Congress gave the administering agency to achieve this goal.[53] Ultimately, DHS believes in a meaningful incentive to invest in rural areas and areas of true high-unemployment, and thus, upon careful consideration of the comments related to this issue, DHS opted to retain the differential between TEA and non-TEA investments at 50 percent.

With regard to commenters' suggestions that the current utilization and oversubscription of the program are mainly a result of the fact that presently a significant number of investors can afford to invest at the TEA level amount of $500,000, DHS believes that minimum investment levels represent only one of a range of factors that likely influence demand for the program, including as compared to other countries' investor visa programs. Commenters did not discuss other factors, referenced earlier in this preamble, that likely account for the program's current and past utilization.

DHS considered commenters' other objections that repeated those expressed regarding the increase to the standard minimum investment (the increase will make the EB–5 program less competitive against the immigration investment programs of other countries; the increase represents amounts far exceeding those under consideration by Congress; the increase would have the unintended consequence of severely limiting the participation of many successful mid-career professionals and entrepreneurs; and the increase would especially burden investors from China due to currency control restrictions). DHS disagrees with these commenters for the same reasons stated earlier in this preamble.[54] DHS likewise disagrees with the commenter suggesting that the TEA minimum investment should be implemented gradually for the same reasons described earlier in this preamble related to phasing-in the standard minimum investment amount.

DHS agrees with commenters who assert that not enough EB–5 investment has gone to rural areas and areas of truly high unemployment, but disagrees that this rule will discourage investment in such areas. On the contrary, DHS believes that the changes made in this rule to the TEA investment amounts and the TEA designation process will increase total investment in rural and high unemployment areas. As discussed in greater detail below, the changes to the TEA designation process made by this final rule will help ensure that areas eligible for the lesser investment amounts as areas of high unemployment are actually areas of high unemployment. DHS also maintains the 50 percent investment level differential between the TEA minimum investment amount and the standard minimum investment amount—rather than reducing it to 25 percent as proposed—in order to continue to incentivize investments in TEAs. DHS believes that the increase in the minimum investment amount in TEAs, while less than proposed, and the reforms to the TEA designation process will result in more overall infusion of capital into rural and high unemployment areas.

DHS considered the alternatives proposed by commenters for the level of the TEA minimum investment amount, such as setting the amount at a number ranging from $600,000 to $1 million. However, having determined to increase the standard minimum investment to $1.8 million based on the CPI–U inflation rate for reasons explained elsewhere in this preamble, investments in TEAs below $900,000 are not permissible under the controlling statute.

DHS also disagrees with the proposal to first adjust the TEA minimum investment amount for inflation, and then determine the standard minimum investment amount based on that. In the statute, Congress set the standard minimum investment amount and gave DHS the authority to increase it. With respect to targeted employment areas, Congress authorized DHS to specify a minimum investment amount that is less than, but no less than half of, the standard amount. Consistent with the mechanism for determining TEA minimum investments under the authorizing statute, in this final rule DHS initially sets the standard amount and then establishes a lesser minimum investment amount for targeted employment areas. INA section 203(b)(5)(C), 8 U.S.C. 1153(b)(5)(C). In addition, if the minimum investment amount for TEAs were adjusted for inflation first and the 25 percent differential were maintained, as the commenter suggests, the differential between the two investment tiers would have been only $300,000, which is

[51] *See* 136 Cong. Rec. S36,615 (Oct. 26, 1990) (statement of Sen. Simon). Senator Simon stated: ''The general rule-and the vast majority of the investor immigrants will fit in this category-is that the investor must invest $1 million and create 10 U.S. jobs,'' but he was also ''mindful'' of the need to target investments in rural areas and noted that the higher the differential, the more encouragement there would be to invest in TEAs).

[52] Section 203(b)(5)(B)(i) of the INA.

[53] Congress also gave DHS the ability to set the minimum investment amount in non-rural areas with very low unemployment rates at up to three times the standard minimum investment amount (or up to $5,400,000 under the revised initial minimum investment amounts under this rule). Section 203(b)(5)(C)(iii) of the INA. This tool has never been utilized, but would be an option to explore in the future.

[54] DHS also received comments on the investment level differential between the standard minimum investment amount and minimum investment amount for TEAs, which will be addressed in the following section.

appreciably smaller than the differential initially proposed ($450,000). As discussed further below, the $300,000 differential could reduce the incentive to invest in TEAs. Therefore, the final rule applies the CPI–U-based increase to the standard minimum investment first. *Id.*

While DHS disagrees with some of the commenters' bases for setting the minimum investment amount for a TEA, DHS will ultimately set the amount lower than proposed for the reasons discussed below. The final rule does not reduce the differential between the standard minimum investment amount and the TEA minimum investment amount from 50 percent to 25 percent as proposed. Rather, this final rule sets the TEA minimum investment amount at $900,000, making the difference between the two investment tiers $900,000.

6. Investment Level Differential Between Standard Investment Amount and TEA Investment Amount

Comments: Some commenters expressed support for the proposed investment level differential, reasoning that it will maintain a meaningful incentive for foreign investors to invest in a TEA. One commenter stated that the adjustment to a TEA minimum investment amount that is 75 percent of the standard minimum investment amount will continue to attract investors to investments in TEAs since the relative proportion of EB–5 investments that are made in TEAs is already very high. Multiple commenters stated that the differential between the standard minimum investment amount and the minimum investment amount for TEAs should be decreased to encourage non-TEA investments. Referencing anecdotal evidence, a commenter recommended a differential no greater than $200,000 to create an active market for non-TEA investments and demand at both price points. Another commenter recommended that the percentage discount for TEAs should be no more than 20 percent as the only way to make a non-TEA investment feasible. One commenter recommended that the minimum investment amount for a TEA investment should be two-thirds of the standard minimum investment amount, but did not supply any data to support this differential.

Another commenter recommended a more gradual decrease in the relative difference between the standard minimum investment amount and the TEA minimum investment amount to ''reduce the severity of the shift of capital'' between TEA and non-TEA investments.

Other commenters recommended that the current 50 percent differential should be maintained. One of these commenters argued that a substantial differential is essential as an effective incentive to make investments in TEAs, and that a substantial differential reflects congressional intent. Another commenter stated that the rule should maintain the 50 percent differential between TEA and non-TEA minimum investment amounts, or at the very least maintain the $500,000 differential by raising the minimum investments amounts to $750,000 in a TEA and $1.25 million outside of a TEA (which would represent a 40 percent differential). Several commenters felt that revisions to the designation of a high unemployment TEA would be effective in directing funds to rural and high unemployment areas without changing the differential between the two minimum investment amount levels.

One commenter agreed with DHS that the 50 percent differential between the standard investment amount and the TEA investment amount has not struck the balance that Congress intended, but believes DHS's proposed solution to this problem would substitute one static differential for another, which is not nearly as market driven as what the commenter would propose to be implemented—a changeable differential (the commenter acknowledged that such a differential would require congressional action). This commenter also encouraged DHS to support legislative resolution of this issue, contending that such solutions would be much more effective in improving the program's reputation and operability.

Response: After reviewing the comments, DHS decided that the final rule should maintain the 50 percent minimum investment amount differential between TEAs and non-TEAs. In order to address the imbalance between TEA and non-TEA investments, DHS had originally proposed reducing the differential between the investment amounts to 25 percent in addition to changing the way certain high unemployment TEAs are designated. DHS was concerned that maintaining the current differential of 50 percent, a reduction of $900,000 from the increased standard investment amount, might not adequately correct the current imbalance between TEA and non-TEA investments where the vast majority of investments are in TEAs, many of which have been criticized as gerrymandered as discussed below.[55] DHS was also concerned that maintaining the 50 percent differential may result in too large of a dollar difference that may create unintended distortions in investment decisions, and that maintaining the differential at a dollar amount similar to the one that previously existed ($500,000 to $450,000) could soften the impact of the multiple changes that will impact TEA investments. Thus, DHS settled on a midpoint between the maximum discount allowed by Congress of 50 percent, and no discount at all.

DHS continues to recognize that addressing the imbalance between TEA and non-TEA investments is worthwhile; however, it must balance that concern with a continued interest in providing a strong incentive to attract investments to rural areas and areas of true high unemployment under the modified TEA designation standards, in order to promote those congressional aims. As noted by one of the commenters, the NPRM quoted Senator Rudolph Boschwitz and Senator Paul Simon, both of whom expressed in 1990 the importance of attracting investment to rural locations and areas with particularly high unemployment.[56] Notably, Senator Simon stated that the lower the investment level for TEAs, the more encouragement there would be for investments in those areas.[57] The same commenter quotes an April 6, 2017 letter from Senator Charles Grassley and other lawmakers to Senator Mitch McConnell and others identifying rural and distressed urban areas as ''the very communities this program was originally intended to benefit.'' [58] DHS finds the comment that a substantial differential is essential as an effective incentive to make investments in TEAs, and that a substantial differential is consistent with congressional intent, to be persuasive. DHS also feels that

[55] *Cf.* 136 Cong. Rec. S35,615 (Oct. 26, 1990) (statement of Sen. Simon) (''The general rule—and the vast majority of the investor immigrants will fit in this category—is that the investor must invest $1 million and create 10 U.S. jobs.'').

[56] *See* 135 Cong. Rec. S7858–02 (July 13, 1989) (statement of Sen. Boschwitz that the amendment's purpose was to ''attract significant investments to rural America.''); 136 Cong. Rec. S35,615 (Oct. 26, 1990) (statement of Sen. Simon: ''[W]e are mindful of the need to target investments to rural America and areas with particularly high unemployment—areas that can use the job creation the most . . . America's urban core and rural areas have special job creation needs.'')

[57] *Id.*

[58] Letter from Senator Grassley, Senator Leahy, Senator Feinstein, Representative Goodlatte, and Representative Conyers to Senator McConnell, Speaker Ryan, Senator Schumer, and Representative Pelosi (Apr. 6, 2017), *available at https://d2xxqpo46qfujt.cloudfront.net/downloads/letter-to-leadership.pdf.*

maintaining the 50% differential is responsive to commenters who suggested lower differentials and discounts, as well as commenters who suggested gradual implementation of the differential change, since the differential will no longer be changing over time. Further, DHS is satisfied that the reform to TEA designations and the move away from deferring to state TEA designations will address the concerns about gerrymandering that contribute to the imbalance between TEA and non-TEA investments: That investors may choose TEA investments because the designated areas are affluent, due to gerrymandering. It is possible that the percentage of petitioning investors seeking to invest in projects in TEAs will decrease simply because they no longer will have the ability to invest in projects in affluent areas and at the same time reap the benefits of investing in TEA areas. The GAO found that of a random sample of petitioning investors (filing petitions in the fourth quarter of fiscal year 2015) investing in high-unemployment TEAs, 90% were investing in projects that relied on combining census tracts or census block groups.[59] GAO also found that, for those petitioners that elected to invest in a high unemployment TEA, the unemployment rate in the census tract(s) where the projects were physically located was:

- 0–2% in 7% of EB–5 petitioners,
- greater than 2–4% in 29% of EB–5 petitioners,
- greater than 4–6% in 41% of EB–5 petitioners,
- greater than 6–8% in 12% of EB–5 petitioners,
- greater than 8–10% in 3% of EB–5 petitioners,
- greater than 10–12% in 3% of EB–5 petitioners, and
- greater than 12% in 6% of EB–5 petitioners.[60]

Joint commenters noted that GAO's findings indicate that only 12 percent of EB–5 petitioners that qualified for the lower investment amount based on being in high-unemployment TEAs were actually investing in projects physically located in census tracts with unemployment rates of greater than 8 percent. However, the national unemployment rate in the fourth quarter of 2015 averaged 5.15 percent. The commenters stated that given that, under section 203(b)(5)(B)(ii) of the INA, ''high unemployment'' means ''at least 150 percent of the national average rate,'' these projects would have had to show an unemployment rate of in the neighborhood of 7.725 percent.[61] Accordingly, if DHS had looked at the actual physical location of the projects, few would have qualified as being in high unemployment areas.

Congress authorized DHS to create a multi-leveled investment framework with different minimum investment amounts for investments in TEAs. This final rule retains the current 50 percent differential between TEA and non-TEA investment amounts. DHS believes it is reasonable to conclude, as a matter of common sense, that the revisions to the high unemployment TEA designation standards and process finalized in this rule will likely ameliorate the current imbalance between TEA and non-TEA investments, although some investors may continue to favor investments in more affluent urban areas. Even if the imbalance remains, keeping the current 50 percent differential for TEA investments will benefit the areas intended by Congress by preserving the incentive for investments in rural and high unemployment areas. DHS acknowledges the commenter's concern that a static differential is not market driven. DHS also notes that this final rule in no way affects Congress's ability to pursue a legislative change, for which the commenter advocated.

D. Revisions to the Targeted Employment Area (TEA) Designation Process

1. Standards Applicable to the Designation of a TEA

1.1. Proposal To Allow Designation of a City or Town With High Unemployment and a Population of 20,000 or More

Comments: Several commenters discussed the proposal to allow cities and towns with a population of 20,000 or more to be independently designated as a TEA if the average unemployment rate for the city or town is at least 150 percent above the national average. Most of these commenters supported the proposal. Two commenters stated this was a logical extension of the current policy. One commenter said that setting clear guidelines will help clear up discrepancies and inconsistencies in the EB–5 immigration process. One commenter stated that the addition of municipalities will lead to robust economic growth and opportunities for communities that need it most. One commenter opposed to the proposal contended that the proposal limits areas that can independently qualify as TEAs by removing the TEA possibility for all cities and towns with populations less than 20,000 that can currently qualify through state designation. The commenter further added that the proposal mistakenly confused the population criteria for TEAs because the 20,000 population requirement pertains to cities and towns residing in counties outside of MSAs that do not meet the requirements for rural TEA status. The commenter stated the population criteria should be 25,000 and not 20,000 because BLS data is only published for cities and towns with populations of 25,000 or more.

Response: DHS disagrees with the commenter opposing this proposal but recognizes that the proposal was inadvertently over-inclusive, because DHS intended the proposal to provide additional options for non-rural cities and towns outside of MSAs to qualify as a TEA. DHS did not intend to create an additional option for cities and towns within MSAs. And DHS did not intend to create an artificial distinction between cities and towns within MSAs that have a population of 20,000 or more, on the one hand, and cities and towns within MSAs that have a population under 20,000, on the other. The current regulations do not contain such a distinction.

Accordingly, the final rule only finalizes a portion of the proposal. The final rule allows designation of cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that may qualify as a TEA based on high unemployment. *See* final 8 CFR 204.6(j)(6)(ii)(A). DHS is not finalizing the aspect of the proposal that allowed such designation for cities and towns with a population of 20,000 or more within an MSA. The statute expressly excludes cities and towns with populations of 20,000 or more as well as MSAs from qualifying as ''rural'' TEAs and existing regulations have permitted MSAs to independently qualify as TEAs based on high unemployment, but non-rural cities and towns with a population of 20,000 or more outside of MSAs have had only one expressly identified means to qualify as TEAs, *i.e.,* based on the unemployment levels of the county in which they are located.[62] In order to

[59] GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas,* GAO–16–749R, at 7 (figure 2) (Sept. 19, 2016).

[60] *Id.* at 8 (table 1).

[61] *Id.*

[62] Under the current regulatory framework, cities and towns with a population of 20,000 or more inside an MSA can qualify as a high unemployment area through either their county or their MSA. However, cities and towns with a population of 20,000 or more outside an MSA can qualify as a high unemployment area only through their county. Under the final rule, cities and towns with a population of 20,000 or more will each have two options to qualify as a high unemployment—through the county or MSA if inside an MSA or through the city/town or county if outside an MSA.

address this lack of parity with respect to TEA options available to NCEs principally doing business in non-rural areas outside of MSAs, DHS is finalizing the rule to expressly include cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that could independently qualify as a TEA if the average unemployment rate is at least 150 percent of the national average. *See* final 8 CFR 204.6(j)(6)(ii)(A).

Under the EB–5 statute, cities and towns with a population of 20,000 or more cannot qualify as ''rural'' TEAs, INA section 203(b)(5)(B)(iii), 8 U.S.C. 1153(b)(5)(B)(iii), and DHS believes that maintaining the population criterion at 20,000 for cities and towns outside of MSAs to qualify as a high unemployment area TEA comports with the overall statutory framework. Additionally, while DHS appreciates the comment regarding data availability from the Bureau of Labor Statistics, DHS further notes that publicly available unemployment data for those cities or towns with a population between 20,000 and 25,000 can be found within other government sources of unemployment data, such as the U.S. Census Bureau's American Community Survey (ACS).[63]

Lastly, DHS notes that other geographic areas with high unemployment that are not specifically mentioned above and in the final rule can pursue TEA designation through the census tract approach.

1.2. Definition of Rural Area

Some commenters commented on DHS's proposed amendment to the definition of ''rural area'' clarifying that qualification as a rural area is based on data from the most recent decennial census of the United States. One commenter supported the proposed clarification on the definition of ''rural area.''

Comments: Some commenters stated that there has been a larger legislative discussion about the definition of what qualifies as ''rural'' for purposes of a TEA, and accordingly, that ''regulatory discussion should be held'' until a legislative resolution is enacted. Another commenter said proposed 8 CFR 204.6(j)(6)(i) must be revised for consistency with the definition of ''rural area'' that appears in both Section 203 of the INA and the substantive definition of ''rural area'' at 8 CFR 204.6(e), as well as an Office of Management and Budget (OMB) directive that states that many counties included in an MSA ''contain both urban and rural territory and populations.'' [64] The commenter suggested replacement text for 8 CFR 204.6(j)(6)(i).

Response: DHS disagrees with the commenters. The agency is bound by the statutory framework established by Congress in 1990 when it defined a ''rural area'' for TEA designation purposes as ''any area *other than an area within a metropolitan statistical area* or within the outer boundary of any city or town having a population of 20,000 or more''. 8 U.S.C. 1153(b)(5)(B)(iii); INA 203(b)(5)(B)(iii). Although, arguably, MSAs may include rural territory and populations, for purposes of the EB–5 program and this regulation, DHS will continue to mirror the statutory language. The final rule revises the existing regulatory text to conform with that statutory framework as interpreted by the agency. *See* final 8 CFR 204.6(e). Further, this final rule in no way adversely affects Congress's ability to enact relevant legislation. With respect to consistency between the definition of ''rural area'' at 8 CFR 204.6(e) and (j)(6)(i), the final rule revises the definition of ''rural area'' at 8 CFR 204.6(e) to be consistent with both the existing and revised regulations at 8 CFR 204.6(j)(6)(i). DHS appreciates the commenter's proposed changes to 8 CFR 204.6(j)(6)(i), but believes the revisions to the definition of ''rural area'' at 8 CFR 204.6(e) achieves consistency between applicable regulatory requirements without disturbing the existing agency interpretation as found in both the current and revised regulatory requirements at 8 CFR 204.6(j)(6)(i).

1.3. Alternative Proposals for How To Designate a TEA

Several commenters offered alternative proposals for TEA definitions for purposes of designation.

Comments: A couple of commenters indicated that public infrastructure projects, where the borrower and beneficiary of the EB–5 capital is solely a governmental body, should be automatically included in the definition of a TEA. These commenters were concerned that without expressly designating public infrastructure projects as TEAs, use of the EB–5 program by public infrastructure projects could be hampered because the project necessarily spans multiple census tracts, counties, and state boundaries. One commenter said the TEA definition should be expanded to include an area that is within the boundaries of a state or federally defined economic development incentive program, as each of these designations is based on a multi-variable formula. Another commenter asserted that some states have rural cities with populations as low as a few hundred residents each, but that these cities fail to qualify for the rural TEA designation because they sit on the outskirts of a county that falls within a large MSA. The commenter suggested that the rule discriminates against rural cities that happen to be in bigger states, and argued that ''a rural city should be a rural city'' no matter where it is located. One commenter stated that TEA opportunities could be expanded by granting rural TEA status to all census tracts not within an urbanized area with a population of 50,000 or more, as defined by the most recent decennial census data, if the individual census tract meets a predetermined minimum size and maximum population density criteria, such as greater than 100 square miles and population density of fewer than 25 people per square mile. Another commenter suggested the definition could be broadened to include regions with high level of rent burden or provide flexibility on the job creation requirement if the investor provides affordable housing in the development. Another commenter stated that TEA status should only be given to rural and high poverty areas in the urban MSAs. Some of these commenters opposed the entire idea of a TEA. These commenters suggested that the non-TEA investment amount has never been competitive and that visa set-asides would provide the necessary incentives for rural and distressed urban areas.

Response: DHS is bound by the statutory definition of a TEA and rural area at section 203(b)(5)(B) of the INA and DHS cannot redefine a TEA in a manner that is inconsistent with these statutory parameters. The statute defines a TEA as a ''rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate)'' and, in turn, defines rural area as ''any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).'' While several comments suggested areas that may be in need of investment, Congress set the parameters within

[63] *Available at https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html.*

[64] OMB, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas, OMB Bulletin No. 15–01 (July 15, 2015), *available at https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2015/15-01.pdf.*

which DHS may define a TEA; the final rule fits within the statutory framework. Each of the different alternative criteria suggested are not reasonable interpretations of the statute because they either (1) are not limited to areas as defined by the statute (public infrastructure projects focus on activities rather than areas), (2) are contrary to the existing statutory definitions (smaller cities and towns in outlying areas of a county within an MSA are still within an MSA and thus cannot be rural), or (3) contain criteria that go beyond those mandated by the statute (high rent burden, high poverty (or low income) areas and population density are not based on unemployment or absolute population and areas with a population of 50,000 or more exceeds the population criterion of 20,000 or more set by statute). For USCIS to base TEAs on economic indicators other than unemployment data or to allow local designations based on such indicators would require a statutory change. Finally, while DHS has the discretion to adjust the minimum investment amount for investments within TEAs, the statute nonetheless reserves 3,000 visas for investment into TEAs and, therefore, DHS may not eliminate TEAs entirely. *See* INA sec. 203(b)(5)(B)(i), 8 U.S.C. 1153(b)(5)(B)(i).

1.4. Other Comments on the Proposed Standards for Designating TEAs

Comment: One commenter stated that the proposal aims to tighten the TEA definition, but hobbles the TEA incentive by decreasing the monetary differential between TEA and non-TEA investment amounts. The commenter stated that industry studies indicate that tightening the TEA definition could, by itself, have the effect of making a majority of EB–5 projects subject to the standard investment level. The commenter mentioned one study that notes that over 80 percent of EB–5 projects in the study's database of large-scale EB–5 projects would not qualify as a TEA by solely changing the TEA standard for special designations of high unemployment areas.

Response: DHS agrees with the commenter that decreasing the monetary differential between TEA and non-TEA investment amounts undermines the incentive to invest in TEAs. As discussed above, Senator Rudolph Boschwitz and Senator Paul Simon both expressed in 1990 the importance of attracting investment to rural locations and areas with particularly high unemployment. Notably, Senator Simon stated that the lower the investment level for TEAs, the more encouragement there would be for investments in those areas.[65]

The commenter cites to a publication by Jeanne Calderon and Gary Friedland of New York University's Stern School of Business, who state that

> [T]he two essential ingredients to a meaningful TEA incentive are (1) a narrowly defined area that limits the number of projects that may qualify for the TEA discount, and (2) a sufficiently wide TEA spread between the minimum amount required for a TEA project location and other location.[66]

DHS agrees with the commenter that although the reforms to high unemployment TEA designation and process address the first ingredient, reducing the differential undermines the second ingredient. Thus, in the final rule, DHS maintains a 50 percent differential between the TEA investment amount and non-TEA investment amount in order to encourage development outside of affluent areas and increase investment in TEAs.

Additionally, many TEAs have been criticized as being ''gerrymandered'' to qualify for the reduced threshold amount.[67] DHS believes the best solution to deter ''gerrymandered'' TEAs and to more effectively utilize the congressionally mandated TEA incentive is to reform both the TEA definitions and designation process while maintaining the 50 percent differential. DHS believes these changes will more optimally incentivize targeted investment into areas of need that Congress sought when establishing the TEA provisions of the EB–5 program.

2. Proposal To Eliminate State Designation of TEAs

Multiple commenters discussed the proposed shift of TEA designation from the states to DHS. Of those, most but not all opposed the proposal to shift all TEA designation from the states to USCIS.

Comments: Several commenters provided support for the proposal to shift the TEA designation authority from the states to DHS as written. Several of these commenters supported the proposal because it would standardize and streamline the TEA designation process, provide much needed transparency, and align the TEA designations process with congressional intent. One commenter noted that most TEA projects are not actually located in rural or economically distressed areas because states have had such a high degree of flexibility to designate a TEA. Many commenters argued that the states have the most expertise with local employment and unemployment data, as well as knowledge of local demographics and economies to make TEA designation determinations. In addition, some commenters indicated their appreciation of working with local officials and that such coordination has mutual benefits for the project and the local economic development agencies, which they felt would be lost if states were removed from the designation process. One commenter stated that a state-based perspective is more likely to capture an accurate reality of unemployment and the rural conditions of Indian tribes.

Response: DHS recognizes that states may possess expertise in local demographics and economies and that states may play an important role in facilitating EB–5 projects. However, DHS must weigh such expertise against transparency in TEA designations and a state's natural self-interest in promoting economic development.[68] This self-interest has resulted in the application of inconsistent rules for designation of high unemployment areas by the states. This inconsistency results in acceptance of TEAs that are criticized as ''gerrymandered.''[69] TEA designations made by states under the existing system thus do not reliably fulfill the congressional intent of the program to

[65] *See* 136 Cong. Rec. S35,615 (Oct. 26, 1990) (statement of Sen. Simon).

[66] Gary Friedland and Jeanne Calderon, *EB–5 Prescription for Reform: Legislation or Regulation?,* NYU Stern School of Business, June 19, 2017, page 11 *available at http://www.stern.nyu.edu/sites/default/files/assets/documents/EB-5%20Prescription%20for%20Reform%20-%20Legislation%20or%20Regulation%206.19.2017%20draft.pdf.*

[67] For instance, one industry participant expressed a belief that a clear majority of EB–5 capital was going to projects relying on ''some form of gerrymandering'' to qualify for the reduced minimum investment requirement. Eliot Brown, ''How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings; Program Meant to Spur Jobs in Poor Areas Largely Finances Developments in Affluent Neighborhoods,'' *Wall St. J.,* Sept. 9, 2015, *available at https://www.wsj.com/articles/how-immigrants-cash-funds-luxury-towers-in-the-u-s-1441848965* (last visited Dec. 17, 2018) (citing Michael Gibson, managing director, *USAdvisors.org*).

[68] *The Distortion of EB–5 Targeted Employment Areas: Time to End the Abuse: Hearing Before the S. Comm. On the Judiciary,* 114th Cong. 12 (2016) (statement by Gary Friedland, Scholar-in-Residence, N.Y. Univ., Stern School of Bus.) (''Compounding the problem, often the state agency that is charged with making the TEA determination is the same agency that promotes local economic development.'') .

[69] *See, e.g.,* ''Eliot Brown, Swanky New York Condo Project Exploits Aid Program,'' *Wall St. Journal,* Oct. 13, 2015, *http://www.wsj.com/articles/posh-tower-proposed-for-struggling-new-york-neighborhood-central-park-south-1444728781;* Patrick McGeehan and Kirk Semple, ''Rules Stretched as Green Cards Go to Investors,'' *New York Times,* Dec. 18 2011, *available at https://nyti.ms/2FgZoQq.*

incentivize the investment of EB–5 capital in actual high unemployment areas. To better adhere to this congressional intent, DHS believes the EB–5 program is best served by shifting the designation of high unemployment areas from the states to DHS.

DHS also rejects the commenter's assertion that states are better positioned to determine the unemployment of Indian tribal areas. The commenter failed to provide any data to support the claim that a state-based perspective is more likely to capture an accurate reality of unemployment in and the rural conditions of Indian tribal areas. The U.S. Census Bureau conducts outreach to Indian tribes to collect information, including unemployment rates, from Indian tribes.[70]

Comment: One commenter stated that because USCIS adjudications of TEA designations are not within the agency's area of immigration-law expertise, such adjudications would not receive deference under *Chevron USA* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), if challenged in federal court. The commenter suggested that the possibility of litigation over such adjudications was ''another reason to give serious consideration to allowing the states to retain the authority to make [TEA] determination[s].''

Response: DHS disagrees with the commenter's interpretation of the case law, but in any case has elected to move forward with its proposal for the reasons expressed elsewhere in this preamble.

Comments: Some commenters expressed concerns about the impact of the proposal on processing times. Some commenters argued that states have the resources and capacity to process high unemployment designation letters relatively quickly, whereas shifting the high unemployment designation authority to DHS would exacerbate processing backlogs and delay investments and project progress. Some commenters explained that DHS must be committed to a speedy TEA designation process, as the TEA designation must be secured early in the process of analyzing whether a particular project is suitable for EB–5 investment. One commenter stated that currently, almost all states are able to provide a TEA designation in two weeks or less. The commenter questioned DHS's ability to process TEA requests in under 30 days, which the commenter claimed is what would be required to make the system viable. One commenter noted that developers often seek multiple TEA designation letters from states as part of their due diligence, further compounding the adjudication demands on DHS. One commenter expressed concern about resources at USCIS being moved from Form I–526 and Form I–829 adjudications to TEA designation determinations, which would further increase petition backlogs for all EB–5 forms. Two commenters said it is unclear whether there will be any ability for TEA designations to be made prior to adjudication of the Form I–526 petition or Form I–924 application. The commenters stated that TEA designations should be available to projects prior to filing of the Form I–526 or Form I–924. One commenter stated that DHS should allow the filing of Forms I–924 and Forms I–526 while a TEA designation is pending, arguing that if the DHS process is uniform and predictable, investors and market participants can proceed on an efficient parallel track to expedite projects.

Response: The framework detailed in the NPRM and finalized in this rule should not add a significant additional burden to petitioners or to DHS in the adjudication process. DHS is committed to providing timely TEA designation decisions as part of the adjudication process. DHS does not foresee an increase in petition backlogs based on handling high unemployment area designations as the agency already reviews state designation evidence provided by petitioners As in the current process, EB–5 petitioners will be required to provide evidence to demonstrate the area in which the new commercial enterprise into which they are investing is principally doing business is a TEA. The new framework, while implementing a new methodology, still requires petitioners to demonstrate that the area specified in the regulations in which the NCE is principally doing business has the requisite unemployment level. DHS will still review this data as it currently reviews high unemployment area designation letters from states, by reviewing the area for which TEA designation is sought to confirm it complies with the new methodology for including census tracts. As DHS has now set the parameters for the size of a TEA, something states previously did, there is no longer a role for the states. The new methodology allows petitioners to determine on their own whether the proposed location is a TEA by reviewing the census tract and, if necessary, the adjoining tracts.

This rule does not establish a separate application or process for obtaining TEA designation from USCIS prior to filing the EB–5 immigrant petition and USCIS will not issue separate TEA designation letters for areas of high unemployment. DHS will make the determination as part of the existing adjudication process and does not anticipate an impact to the overall timing of the adjudication process.

DHS recognizes that this final rule represents a shift from the current process by which designations of certain high unemployment areas may be obtained from states in advance of filing. If a regional center prefers to seek TEA determination in advance of investor petition filings, the regional center may file an exemplar application as part of a Form I–924 adjudication. If the exemplar application is approved, the approval (including the TEA determination) will receive deference in individual investor petition filings associated with that exemplar in accordance with existing USCIS policy (for example, absent a material change in facts affecting the underlying favorable determination or its applicability to eligibility for the individual investor). For non-regional center investors, unemployment data is readily available by which they can determine if an investment in a particular area satisfies applicable TEA designation requirements. As a result of the clearer, more objective designation standards under this final rule, this rule should provide sufficient certainty regarding the amount and timing of an investment to establish eligibility when filing their petitions.

DHS notes that this change harmonizes the process for all types of TEAs—including rural areas, for which no preliminary determination process exists. In any event, if necessary, DHS could raise associated fees to bring on board additional adjudicators.

Comments: Some commenters said it is clear from the **Federal Register** and the Adjudicator's Field Manual that congressional intent was to allow states to have the right to issue high unemployment area designations. These commenters referenced the issuance of the EB–5 regulations in 1991 where legacy INS previously decided to delegate the TEA designation process to the states and further cited the now-superseded Adjudicator's Field Manual that explained how the agency provided deference to decisions made by the states, emphasizing that USCIS has no

[70] *See Tribal Consultation Handbook: Background Materials for Tribal Consultations on the 2020 Census,* Fall 2015, U.S. Department of Commerce, U.S. Census Bureau, *available at https://www.census.gov/content/dam/Census/library/publications/2015/dec/2020_tribal_consultation_handbook.pdf. See also* My Tribal Area, a collection of American Community Survey data for tribal areas, *available at https://www.census.gov/tribal/.*

role in the determination process. One commenter said that DHS assuming the role of high unemployment area designation overturns two decades of allowing the formulation of high unemployment areas to be determined by states. One commenter stated that the proposal is directly contrary to the government's asserted priority to transfer authority from the Federal Government to the states, while another commenter expressed concern that the shift would ''politicize'' the designation process.

Response: DHS disagrees with the assertion that the congressional intent of the EB–5 program was to allow states to designate high unemployment areas. Commenters referenced no statutory text or legislative history to this effect. Regulations promulgated by the legacy Immigration and Naturalization Service (INS), the predecessor to USCIS, and not INA section 203(b)(5), authorized the role of states in the TEA designation process. It is clear that the congressional intent of the TEA provision was to incentivize EB–5 investment in areas of actual high unemployment. Currently, as a result of each state's interest in promoting investment with its borders, the states' role in designating high unemployment areas for purposes of the EB–5 program has resulted in instances when high unemployment area designations include areas far outside of actual distressed areas that many have called ''gerrymandered.'' [71] For these reasons, DHS has determined that it is necessary to shift the high unemployment area designation from the states to DHS.

DHS recognizes that eliminating the state role in high unemployment area designation represents a significant change from the existing regulations.[72] However, as pointed out in the NPRM, allowing states to make high unemployment area designations has resulted in the application of inconsistent rules by various states in order to facilitate EB–5 funding to increase economic development within those states.[73] The result is that 97 percent of all EB–5 petitions filed in 2015 were within state-designated high unemployment areas, and according to the GAO's analysis of I–526 petitions from the fourth quarter of fiscal year 2015, the vast majority of EB–5 petitioners who purported to invest in areas of high unemployment had invested in projects physically located in a census tract or tracts with unemployment levels below the 150% of the national unemployment rate threshold for high unemployment.[74] DHS believes that this is inconsistent with clear congressional aims in enacting the EB–5 program and therefore warrants a change in policy mandating high unemployment area designations by DHS rather than by the states.

DHS disagrees with the proposition that removing states from the high unemployment area designation process will ''politicize'' the designation process. DHS has proposed a clear and objective high unemployment area designation framework allowing high unemployment areas consisting of a census tract, or contiguous census tracts, in which the new commercial enterprise is principally doing business, if the weighted average of the unemployment rate for the tract or tracts is at least 150 percent above the national average. Such determinations will not be based on subjective or political factors. DHS will make high unemployment designation determinations based solely on publicly available data. DHS believes this final rule makes the process more transparent and uniform and less subject to political whims by eliminating the current political pressures within each state associated with the current process.

Comments: One commenter said shifting designation responsibility to the Federal Government will invariably make it harder for direct investments (*i.e.,* non-regional center investments) to compete with larger, better funded regional centers. Another commenter suggested issuance of TEA designation by DHS would be appropriate for regional center projects because these projects can cross state lines and the size allows for more financial resources to pay for independent economic studies. The commenter stated that, on the other hand, TEA designation by DHS is not appropriate for direct investment projects because the projects tend to be smaller and in the same state, and because coordinating with the local government provides the project with valuable economic and demographic data.

Response: DHS rejects the notion that its administration of the TEA designation process will make it harder for direct investment projects. This final rule lays out a TEA designation process easily navigated by any petitioner—whether associated with a regional center or not—for little or no cost. The data necessary for the TEA designation determination is publicly available from the Bureau of Labor Statistics or U.S. Census Bureau. A TEA designation request alternatively can be supported with other data, public or private, provided that DHS can validate that data. The TEA designation process will not require additional costly studies, or steps beyond what is already required as part of the Form I–526 petition, that would make TEA designation unviable for direct investment projects. More importantly, whereas DHS has laid out a transparent process for all new commercial enterprises to use, each state has a different high unemployment area designation process that petitioners must satisfy. Investigating and complying with a particular state's requirements beyond those specified in the regulations, or with multiple states' different requirements for direct investments that are either not location-specific or located in multiple jurisdictions, is likely to require more financial resources than adhering to a single, uniform set of standards and processes through DHS. DHS thus is not persuaded that changes made by this rule will be detrimental to or disproportionately affect direct investment projects. Nothing in this rule would inhibit their ability to coordinate with units of local government.

Comments: Several commenters suggested that DHS clearly communicate to the states a program-wide set of well-defined, technically sound, and transparent guidelines, standards, and rules, such as providing a limit of census tracts, or particular data the state must use for the designation. This would allow the states

[71] *See, e.g.,* Eliot Brown, ''Swanky New York Condo Project Exploits Aid Program,'' *Wall St. Journal,* Oct. 13, 2015, *http://www.wsj.com/articles/posh-tower-proposed-for-struggling-new-york-neighborhood-central-park-south-1444728781*; Patrick McGeehan and Kirk Semple, ''Rules Stretched as Green Cards Go to Investors,'' *New York Times,* Dec. 18 2011, *https://nyti.ms/2FgZoQq.*

[72] DHS notes that no comments on this change from any state government were submitted.

[73] *Is the Investor Visa Program an Underperforming Asset?: Hearing Before the H. Comm. on the Judiciary,* 114th Cong. 62 (2016) (statement of Matt Gordon, Chief Exec. Officer, E3 Inv. Group) (''Generally, States quickly learned to be as permissive as possible in an attempt to attract ever greater amounts of EB–5 capital.''); *see also The Distortion of EB–5 Targeted Employment Areas: Time to End the Abuse: Hearing Before the S. Comm. on the Judiciary,* 114th Cong. 12 (2016) (statement of Gary Friedland, Scholar-in-Residence, N.Y. Univ., Stern School of Bus.) (''USCIS' continued delegation to the states of the TEA authority without guidelines results in the application of inconsistent rules by the various states. More important, each state has the obvious self-interest to promote economic development within its own borders. Delegation presents an opportunity for the states to establish lenient rules to enable project locations to qualify as a TEA. Compounding the problem, often the state agency that is charged with making the TEA determination is the same agency that promotes local economic development. As a consequence, virtually every EB–5 project location qualifies as a TEA.'').

[74] *See* GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas,* GAO–17–487T, at 8 (Mar. 8, 2017).

to continue to be the designators of high unemployment areas, but would require the states to operate in a more streamlined manner.

Response: DHS rejects the proposal. While the changes in this rule to the definition of a high unemployment area that qualifies as a TEA could provide the rules for state designators, DHS would still need to make individual determinations on each state designation as to whether it complies with those rules. DHS believes it would be duplicative and wasteful, administratively burdensome, and more difficult to evaluate the individualized determinations of the various states than to implement and administer a nationwide standard on its own.

3. Proposal To Change Special Designation of a High Unemployment Area

Some commenters supported the proposed changes to the special designation of a high unemployment area. Several commenters said the changes align with congressional intent to provide an incentive for projects located in a truly high unemployment area and reduce TEA gerrymandering and manipulation. Other commenters emphasized that TEA gerrymandering and manipulation has been well documented and criticized by Congress, the media, scholars, and industry insiders. Other commenters appreciated the proposal as a reasonable ''compromise'' to the possible definitions of the geographic area that could constitute a TEA.

3.1 Alternatives—Use of Census Tracts vs. Block Groups

Comments: Multiple commenters suggested the use of block groups, which are the smallest geographic configuration for which employment and unemployment data is available, instead of, or in addition to, census tracts. Commenters listed several benefits to using block groups instead of census tracts. One commenter indicated block groups allow TEAs to better reflect true high unemployment areas that using larger areas will not allow (*e.g.,* in smaller pockets of high unemployment inner city areas). Another commenter noted that, in urban areas, block group high unemployment areas are more equitable because resident demographics can change drastically from one city block to the next. Commenters indicated that more than 15 states currently use census block groups as allowable sub-municipal building blocks in the design of areas for high unemployment area approval, and many other states have indicated a willingness to consider a census block approach for defining high unemployment area TEAs. In proposing the use of census blocks, commenters generally suggested a limitation regarding the number of census block groups that could be used to define a high unemployment area, as long as the limitation reflected the fact that census block groups are a significantly smaller area. Commenters offered examples, such as San Antonio's limitation to 24 block groups and Houston's 60-block-group limitation.

Response: DHS disagrees with commenters supporting the use of census block groups in lieu of or in addition to census tracts. While data is available for both census block groups and census tracts in 5-year estimates,[75] census tract boundaries are delineated with the intention of being maintained over a long period of time so that statistical comparisons can be made from census to census.[76] While census tracts are occasionally split due to population growth or merged as a result of substantial population decline, such changes are generally reflected in census tract numbering to preserve continuity for comparison purposes. Census block groups do not offer the same longevity analysis and census blocks are not delineated based on population. In fact, many census blocks are unpopulated.[77] Thus, census tract data is ultimately more reliable for purposes of designating areas of high unemployment, as census tracts, unlike census blocks, generally contain certain levels of population at any given time, which strengthens the reliability of the unemployment data collected for that population.[78] As DHS reviews areas to determine whether they qualify for high unemployment area designation at the time of investment or at the time of filing the EB–5 petition, as appropriate, DHS believes the use of census tracts provides both petitioners and the industry with an overall more statistically reliable area for high unemployment area designation.

Commenters indicated some states are currently utilizing census block groups in their high unemployment area designations and suggested that numerical limitations could be placed on the number of census blocks that may be utilized, yet neither the use by states nor numerical limitations address the issues presented by census blocks relative to census tracts discussed above. The final rule contains a consistent and clear adjudication framework to reduce these issues.

Comments: Some commenters stated that limiting high unemployment area configurations to census tracts would negatively affect the many states that currently utilize both block groups and census tracts. These commenters stated that the exclusion of census block groups would particularly affect states in the western United States, where less densely populated areas can result in census tracts that are several tens of square miles, even hundreds of square miles, in size.

Response: While DHS appreciates the concerns raised, DHS disagrees with the commenters' concerns about the impact to the western United States and believes that because the final rule will eliminate the states' role in the high unemployment area designation process, it will result in uniform application across the United States. As discussed elsewhere, census tracts are drawn based on the total population within the area. Tracts that are hundreds of square miles in size often would not require a high unemployment area designation based on the census tract, but would instead qualify as a rural area, and thereby be eligible for TEA designation even if ineligible under the high unemployment area criteria. Further, even if such a large tract was not rural, any concentrated urban area within that tract that is a city or town of sufficient population size could independently qualify on that basis. Finally, because the census tract is based on population size, the size of the area of the tract is ultimately irrelevant. No matter the tract size, the methodology for determining whether the tract (or combination of tracts) constitutes a TEA is the same, based on the unemployment rate, with the calculation being unaffected by the size of the tract.

3.2. Alternative—Commuter Patterns

Comments: Numerous commenters stated that the designation of a high unemployment TEA should include a ''commuter pattern'' analysis that would

[75] *See* U.S. Census Bureau, *American Community Survey (ACS): When to Use 1-year, 3-year, or 5-year Estimates, available at https://www.census.gov/programs-surveys/acs/guidance/estimates.html* (last accessed June 27, 2018).

[76] *See* U.S. Census Bureau, *Geographic Terms and Concepts—Census Tract, available at https://www.census.gov/geo/reference/gtc/gtc_ct.html* (last accessed June 27, 2018).

[77] *See* U.S. Census Bureau, *Census Blogs: What are Census Blocks?* Available at *https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html* (last accessed June 27, 2018).

[78] *See* U.S. Census Bureau, *Geographic Terms and Concepts—Census Tract, available at https://www.census.gov/geo/reference/gtc/gtc_ct.html* (last accessed June 27, 2018); U.S. Census Bureau, *Geographic Terms and Concepts—Block Groups, https://www.census.gov/geo/reference/gtc/gtc_bg.html* (last accessed June 27, 2018).

focus on defining a high unemployment area as encompassing the area in which workers may live and be commuting from, rather than just where the investment is made and where the NCE is principally doing business.

Multiple commenters stated that the rule should recognize the relationship between job locations and where workers live and that urban centers where the jobs are located are not necessarily a measure of where unemployed residents reside. These commenters stated that limiting TEA designation to the project's census tracts and any immediately adjacent tracts (sometimes called ''spooled tracts'' or ''donuts'') is unnecessarily restrictive, fails to take into account the linear economic development of cities following a block-by-block path and/or transit lines, and would make many large job-creating projects in highly concentrated urban areas ineligible because the non-contiguous worker-supplying areas (where significant job benefits would accrue) would be excluded from the TEA designation calculations. Two commenters said the rule inappropriately ignores that EB–5 investment projects benefit U.S. workers outside the specific project location who use regional mass transit to commute to urban centers of employment. One of these commenters asserted that, if the proposed TEA definitions are implemented, many large-scale urban projects that meet current requirements and have benefited from significant foreign investment would no longer qualify for EB–5 investment. Similarly, some individuals wrote that the proposal to limit TEAs in urban cores to a single census track or cluster of ''spooled'' census tracts would unfairly disadvantage ''the most economically viable urban projects''—described by the commenters as those that create jobs for workers commuting from the greater metropolitan area.

Commenters offered various suggestions to implement a commuter-based approach. Two commenters recommended employing the contiguous model approach with a state-defined limit of census tracts, which would limit the area that could be utilized, but still provide a wide enough perimeter to allow for commuting pattern approach. Two commenters recommended that the rule include high unemployment, non-contiguous census tracts (or block groups, as discussed above) in the TEA designation. One commenter recommended a statistically driven, replicable commuter-based methodology for urban ''high unemployment areas'' that would combine ACS unemployment data with the census's best available commuting data (which the commenter noted is already used for current high unemployment designations) and also merge ACS unemployment data with the Federal Highway Administration's online Census Transportation Planning Products (CTPP). The commenter said its proposed ''9-step'' approach was consistent with statutory text, but encouraged closer analysis and refinement of the proposed approach by industry and government experts.

Response: DHS disagrees with these commenters. The statutory language regarding TEA designations provides that the targeted employment area (*i.e.,* the area experiencing high unemployment or rural area) must be the area in which the new commercial enterprise will create jobs.[79] The proposals put forth by the commenters were either the same approach previously analyzed by DHS and already deemed inappropriate or similar approaches that nonetheless presented the same unresolved issues. While DHS appreciates the arguments made by commenters regarding economic development and commuting patterns, DHS believes that the commuter-based approaches presented do not adequately address the issue of selectively choosing among high unemployment commuting areas rather than more comprehensively including all areas to and from which an individual may commute (including areas of low unemployment), which may ultimately result in merely a different form of the same type of ''gerrymandering'' that DHS seeks to address with this regulation. Moreover, DHS believes that the statutory incentive for the reduced investment amount in a targeted employment area is best effectuated by restricting its application to investments in new commercial enterprises that create jobs in the actual area experiencing high unemployment or rural area—not in non-rural areas without high unemployment that are physically distant or otherwise disconnected from selected outlying areas with high unemployment from which prospective workers may commute. Moreover, as discussed in the NPRM, the commuter pattern approach previously considered by DHS was deemed too operationally burdensome to implement as it posed challenges in establishing standards to determine the relevant commuting area that would fairly account for variances across the country.[80] In addition, DHS could not identify a commuting-pattern standard that would appropriately limit the geographic scope of a TEA designation consistent with the statute and the policy goals of this regulation to address ''gerrymandering'' concerns and more closely link the locus of investment and job-creation with areas actually experiencing high unemployment.

Assuming that a commuting patterns model might result in jobs being created for workers residing in high-unemployment areas, the only way to demonstrate that this is the case would be to require that petitioners provide W–2s or other evidence demonstrating where the workers lived. Even where such evidence could be provided, it would be too complex and operationally burdensome to determine which cases would be impacted and to review such evidence and link each worker to a separate area of high unemployment for each petitioner.

In any event, commuter pattern analysis would unduly limit the effects of TEA investments on the areas that Congress most intended to benefit. For instance, the Leadership Conference on Civil and Human Rights has argued that ''it is imperative that Investor Visa funds go directly into building infrastructure in communities in West

[79] INA 203(b)(5)(B)(i) states: ''No less than 3,000 of the visas made available under this paragraph for each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) *which will create employment in a targeted employment area*'' (emphasis added).

[80] DHS reviewed a proposed commuter pattern analysis incorporating the data table from the Federal Highway Administration, ''CTPP 2006–2010 Census Tract Flows,'' *available at http://www.fhwa.dot.gov/planning/census_issues/ctpp/data_products/2006-2010_tract_flows/* (last updated Mar. 25, 2014). DHS also reviewed the CTTP updated status report (January 2018) entitled ''Small and Custom Geography Policy Change Announcement CTPP Oversight Board is Discontinuing Census TAZ for Small Geography Data Reporting and Urging the Transportation Planning Community to Engage in 2020 Census Participant Statistical Areas Program (PSAP),'' which is available at: *https://www.fhwa.dot.gov/planning/census_issues/ctpp/status_report/sr0118/fhwahep18046.pdf,* which will phase in slight methodological changes over the next year. DHS found the required steps to properly manipulate the Census Transportation Planning Product (CTPP) database might prove overly burdensome for petitioners with insufficient economic and statistical analysis backgrounds. Further, upon contacting the agency responsible to manage the CTPP data, DHS was informed that the 2006–2010 CTPP data is unlikely to be updated prior to FY2018 to incorporate proposed changes to the data table. U.S. Census is currently reviewing the CTPP proposed changes. As an alternative methodology for TEA commuter patter analysis, DHS reviewed data from the U.S. Census Tool, On the Map, *available at http://onthemap.ces.census.gov,* which is tied to the U.S. Census Bureau's American Community Survey. Although the interface appeared to be more user-friendly overall, using this data would be operationally burdensome, potentially requiring hours of review to obtain the appropriate unemployment rates for the commuting area.

Baltimore and the South Bronx and the like. Projects in neighboring areas will leave these communities of concentrated poverty no better off in terms of development and infrastructure after their conclusion.'' [81] In comments to the proposed rule, the Leadership Conference similarly suggested that a commuter pattern analysis would be misused to continue the practice of cobbling together census tracts in order to get the TEA discount for an area that is not in fact a high poverty area.

DHS considers a variety of officially recognized areas (*e.g.,* metropolitan statistical areas and counties) for determining whether a given area has experienced high unemployment. Under both the final rule and existing regulations, petitioners may demonstrate that the metropolitan statistical area in which their new commercial enterprise is principally doing business has the requisite unemployment; MSA designation is based in part on commuting ties among related counties.[82] Thus, petitioners are not entirely without options to achieve TEA designation in non-rural areas that account for commuter patterns and that does not present the same issues as the other approaches discussed above.

Comments: Several commenters stated that it would be inconsistent for DHS to dismiss a commuter-based TEA option in the urban context because ''rural'' TEAs rely on key OMB and Census Bureau definitions that depend on commuting ties. These commenters point to the U.S. Census Bureau's definition of a core based statistical area (CBSA) as defined by the U.S. Census Bureau:

> A statistical geographic entity defined by the U.S. Office of Management and Budget (OMB), consisting of the county or counties associated with at least one core (urban area) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and micropolitan statistical areas are the two types of CBSAs.[83]

Response: DHS is bound by the statutory framework defining what constitutes a TEA. As explained above, the statute specifically defines what constitutes a rural area and the final rule conforms to the statutory definition. With respect to areas experiencing high unemployment, petitioners may demonstrate that the metropolitan statistical area in which their new commercial enterprise is principally doing business has the requisite unemployment. Because metropolitan statistical areas themselves are defined by reference to commuting patterns, petitioners have a TEA option for non-rural areas that is reasonably commuter-based.

3.3. Alternative—Tract/Block Limitation

Comments: Multiple commenters stated that the proposed TEA definition should be limited to a single census tract, the tract in which the project is located. The commenters stated that this would reduce the chance that the TEA status of a project location might be based on the economic condition of a remote tract that does not reflect the characteristics of the project tract. However, these commenters also suggested that if DHS is determined to allow contiguous/adjacent census tracts to be included, all contiguous/adjacent tracts should be taken into account rather than allowing the applicant to ''pick and choose'' any single contiguous/adjacent tract that, taken together with the project tract, would meet the high unemployment test.

Response: DHS appreciates the concerns raised by the commenters. While DHS believes that a single-tract approach would be operationally efficient to implement, DHS appreciates the concerns held by many other commenters regarding the changes to the TEA designation process. Allowing petitioners the flexibility to incorporate those tracts adjacent to the tract(s) in which the new commercial enterprise is principally doing business helps meet the policy goals of reducing inconsistencies and inequities in adjudications while also recognizing that a single-tract approach may itself be inequitable to particular businesses with close connections to adjacent areas that may cross census tract boundaries. DHS believes the compromise to allow for the inclusion, as needed, of adjacent census tracts will provide for some flexibility in business and economic development while still providing significant incentive to invest in a high unemployment area as Congress intended.

Comment: While supporting some sort of tract limitation to prevent gerrymandering, several commenters argued that there should be unlimited configurations of census blocks, block groups, or other political subdivisions if the high unemployment area is located entirely within either an MSA or county. To further prevent attempts to gerrymander TEAs for projects close to the border of MSA regions, some commenters said the rule could include a limit to the number of sub-municipal areas (*e.g.,* a limit of 12 or 15 sub-municipal areas) if the TEA were to cross an MSA or county boundary.

Response: DHS disagrees with these commenters. The final rule continues the existing policy of allowing an entire MSA or county to be designated as a TEA. Further, the final rule clarifies that a city or town with a population of 20,000 or more outside of an MSA can be designated entirely as a TEA if otherwise eligible. Where a new commercial enterprise is principally doing business in a non-rural area that cannot qualify at the MSA, county, or city/town outside of an MSA level, the final rule offers the smaller geographic area of a census tract(s) and the adjacent census tracts to qualify as a TEA. As previously explained, DHS believes the census tract is the most appropriate and smallest geographic area from which relevant, reliable data can be obtained regarding unemployment statistics. DHS rejects the use of census blocks, block groups, or other smaller sub-municipal areas for the reasons stated above. Allowing unlimited census tracts within an MSA or county would wholly or substantially continue the existing practice of certain states along with the attendant concerns regarding high unemployment area designation inconsistencies and inequities that the final rule eliminates.

3.4. Alternative—California Approach

Comments: Several commenters supported the approach implemented by California, which limits the geographic or political subdivision to 12 contiguous census tracts. One commenter said all gerrymandering concerns can be fully addressed by limiting the number of combined areas to 12, or to some other agreed-upon number when a TEA crosses MSA (or county) boundaries. One commenter said the stated goal of uniformity can be attained by imposing a single federal standard for TEA determinations, such as California's rule which has a limit of no more than 12 contiguous census tracts. The commenter also said that the concerns about gerrymandering can be adequately addressed by requiring the responsible state agency to articulate a reasonable basis for its determination that investment at the project site will have a beneficial job-creating impact across the entire area of the TEA. One commenter supported the California

[81] Nancy Zirkin, Executive Vice President, Leadership Conference on Civil and Human Rights, ''Is the Investor Program an Underperforming Asset?'' U.S. House of Representatives, 3–4, (Feb. 11, 2016), *available at https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-20160211-SD004.pdf.*

[82] 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice, 75 FR 37246 (June 28, 2010).

[83] 76 FR 53042.

approach, but suggested a limit of 15 contiguous census tracts.

Response: DHS disagrees with the commenters that gerrymandering concerns would be fully addressed by limiting the number of combined areas when a high unemployment area crosses MSA or county lines. DHS expressed concerns in the NPRM that the use of a limitation approach, such as the one espoused by the California Governor's Office of Economic and Business Development, would not be appropriate for nationwide application. In particular, given the disparity in the size and shape among potentially includable tracts across various regions in the United States, DHS continues to believe that the type of limitations on the number of tracts used as suggested by the commenters would still result in projects in certain regions being much farther removed from each of its constituent tracts than in other regions, ultimately undermining the very purpose of reforming the high unemployment area designation process. The final rule does not adopt a numerical limitation on the number of tracts used to ensure that the analysis is focused specifically on the area in which job creation is occurring, taking into account both the population density and geographic area.

3.5. Alternative—New Markets Tax Credit Program and Other Suggestions

Comments: Several commenters stated that a better approach to defining TEAs would be to utilize the criteria established under another proven federal economic development program called the New Markets Tax Credit (NMTC) program, rather than a single criterion (unemployment rate). A commenter stated that NMTCs may be applied based on three criteria,[84] but because they do not focus solely on unemployment rates, Congress would have to act in order to recognize the NMTC criteria for determining a non-rural area as a TEA. One commenter asserted that the use of single-variable definition (unemployment rate) is contrary to economic development principles practiced elsewhere in the Federal Government, such as measures used by HUD to establish beneficial geographies for the NMTC Program. Another commenter provided potential guidelines and definitions within the NMTC framework that could be adopted in the TEA designation context, suggested allowing use of an unlimited amount of census tracts or block groups, and suggested the incorporation of the ''urban cluster.'' Another commenter suggested use of the NMTC criteria as an alternative to the proposed rule's limited geographic area for high unemployment area designation, together with use of a single dataset to determine the unemployment rate. One commenter requested that DHS allow a Gateway City[85] TEA designation.

Response: While DHS appreciates these suggestions, the statutory definitions of a TEA includes rural areas and areas experiencing high unemployment (of at least 150 percent of the national average rate). DHS believes the statute is best interpreted as limiting consideration to these two factors.

4. Other Comments on Proposal To Change to Special Designation of High Unemployment Area

Approximately 45 commenters provided other input on the proposed special designation process for high unemployment areas.

Comments: One commenter stated that in the preamble to the proposed rule, DHS incorrectly defined how the weighted average of the unemployment rate is calculated, noting that all official unemployment rate calculations derived by BLS and individual states utilize the civilian labor force concept, not the total/full labor force (which includes military personnel). Another commenter stated that the rule presents an oddly complicated manner of calculating a weighted average, asserting that the calculation for a TEA's unemployment is simple: Sum the number of unemployed people across all of the tracts, sum the number of people in the Civilian Labor Force across all of the tracts, and divide the number of unemployed by the Civilian Labor Force.

Response: DHS appreciates these technical comments regarding the unemployment data calculations. While the commenter references BLS unemployment rate figures, BLS does not make unemployment data publicly available for geographic areas with populations less than 25,000.

DHS mistakenly indicated in the NPRM that it would consider labor force to be ''civilians ages 16 and older who are employed or employed, plus active duty military'', thus appearing to rely solely on total labor force. *See* 82 FR at 4748 n.41. Elsewhere, DHS referenced the U.S. Census Bureau's American Community Survey (ACS) data as an example in the NPRM because the survey provides publicly available unemployment data at smaller geographic area levels such as the census-tract level, *see* 82 FR at 4749; ACS's unemployment data is based on its calculation of the civilian labor force. Thus, the NPRM was not intended to require the use of total labor force. Similarly, the final rule does not provide one specific set of data from which petitioners can draw to demonstrate their investment is being made in a TEA. Rather, the burden is on the petitioner to provide DHS with evidence documenting that the area in which the petitioner has invested is a high unemployment area, and such evidence should be reliable and verifiable. DHS believes that the unemployment data provided to the public by both ACS and BLS qualify as reliable and verifiable data for petitioners to reference in order to carry their evidentiary burden.

Regardless of which reliable and verifiable data petitioners choose to present to DHS, the data should be internally consistent. For example, DHS notes that although both BLS and the Census Bureau rely on the concept of the civilian labor force in their unemployment rate calculations, they employ different methodologies. If petitioners rely on ACS data to determine the unemployment rate for the requested TEA, they should also rely on ACS data to determine the national unemployment area to which the TEA is compared.

Finally, DHS opted to use the methodology in the final rule to ensure proper weight is given to the more heavily populated tracts. The method suggested by the commenter reduces the effect that a more densely populated area may have on the average.

Comment: Several commenters suggested that USCIS should publish a single dataset covering the entire country that practitioners must use for TEA unemployment calculations to standardize the process and enhance predictability in designations.

Response: DHS disagrees with these commenters, as DHS believes there is already data available to the public to use in calculating the unemployment rate for particular areas, such as the data provided by the U.S. Census Bureau in the American Community Survey. To invest at the reduced amount, petitioners will be required to demonstrate that their investment is within a TEA using reliable and verifiable data such as data from ACS or

[84] The criteria used to determine low income communities for the purposes of the NMTC are (1) median income levels of either the urban distressed area or rural area; (2) poverty rate of the area; or (3) unemployment rate of the area.

[85] As an example of what the commenter means by Gateway City, see an explanation of the Massachusetts Gateway City Initiative *available at http://www.worcestermass.org/city-initiatives/gateway-cities-initiative.*

BLS to qualify under the requirements of a high unemployment area.

Comments: One commenter stated that the methodology presented for deriving the unemployment rate uses ACS data that is insufficiently current for EB–5 purposes, and asserted that all states properly use ACS data in conjunction with the latest available official county estimates in order to best reflect current economic status. One commenter stated that the proposed rule did not specify which dataset should be used for TEA calculations, recommending that USCIS follow the guidance given by the BLS Local Area Unemployment Statistics (LAUS) branch in their Technical Memo S–10–20. Another commenter presumed that USCIS would utilize the most current unemployment datasets and the census-share methodology—ACS and BLS—to create a mapping system that would enable the user to readily determine whether a project location qualifies as a TEA. A commenter urged the selection of a single dataset from which the unemployment statistics are obtained, recommending the ACS 5-year estimates.

Response: DHS appreciates these suggestions. DHS recognizes that ACS data for census tracts is currently provided in five-year estimates and that states may have more recent data at the census tract level. However, given that—as the commenter acknowledged—states utilize different methodologies than ACS and BLS, petitioners may not be able to compare the state census tract data to a national unemployment rate that utilizes the same methodology. Although DHS recognizes that there are benefits to limiting the unemployment statistics to a single dataset, the final rule does not provide one specific set of data from which petitioners can draw to demonstrate their investment is being made into a TEA because currently no one dataset is perfect for every scenario. Thus, the burden is on the petitioner to provide DHS with evidence documenting that the area in which the petitioner has invested is a high unemployment area, and such evidence should be reliable and verifiable. DHS believes that the unemployment data provided to the public by the U.S. Census Bureau's American Community Survey as well as data available from the Bureau of Labor Statistics qualify as reliable and verifiable data for petitioners to reference in order to carry their evidentiary burden, though, as noted above, the data relied upon should be internally consistent. For instance, if petitioners rely on ACS data to determine the unemployment rate for the requested TEA, they should also rely on ACS data to determine the national unemployment area to which the TEA is compared.

Comments: Some commenters asserted that there is limited or no evidence that even the most egregious gerrymanders have done anything less than create needed jobs for high unemployment regions. One commenter wrote that ''Manhattan for instance, a big area of controversy for TEA critics, has in fact had projects with gerrymandered TEAs. Even the most luxurious developments in Manhattan that boast condos with no less than $3 million price tag per unit, have created much needed jobs for construction workers in the Bronx, Queens, Brooklyn, Harlem, and Long Island. If the agency can find any research out there that shows otherwise, please provide that research before any final rule on the TEA issue.''

Response: DHS appreciates these comments regarding gerrymandering concerns. In addition to the DHS data analysis detailed in the NPRM, the Government Accountability Office (GAO) completed an audit of EB–5 TEA data in 2016.[86] GAO's review determined that approximately 90 percent of petitioners from the fourth quarter of FY 2015 who elected to invest in a high unemployment TEA did so in an area not consisting of a single census tract, census block group, or county. Of those petitioners, 38 percent combined 11 or more tracts in order to demonstrate the project was in a high unemployment area, with 12 percent utilizing more than 100 census tracts. DHS believes the high percentage of petitioners utilizing so many census tracts gives rise to a significant concern that congressional intent relating to TEA investments is too often not being met. DHS believes this is because the percentages likely reflect efforts to artificially construct areas that meet the unemployment threshold requirement to qualify for the reduced investment amount incentive rather than an intention to locate the investment in the area actually experiencing high unemployment. DHS recognizes that many investment projects regardless of location will create jobs, some of which might even be filled by individuals from outlying areas experiencing high unemployment (though verifying whether jobs are being created for such individuals would be a significant challenge). Still, DHS continues to believe that congressional intent for the reduced investment amount incentive is best served by locating investment into areas actually experiencing high unemployment rather than other locations strung together to such areas and to which individuals from such areas could potentially commute for employment. In order to best assist in the revitalization of those areas, the actual development must be located there. The final rule provides clear criteria for the designation and eliminates state involvement to ensure that the TEA incentive is not afforded to gerrymandered areas where high unemployment may not truly exist.

Comments: A few commenters said the proposed revisions to the method of determining a high unemployment area would disproportionately favor rural areas over urban areas and even further disadvantage the more densely populated urban areas. One commenter stated that the approach in the rule skews in favor of certain American towns and cities while disfavoring other urban markets simply because they vary in population density, arguing that population density does not provide a rational basis to prefer certain urban TEAs to the detriment of others.

Another commenter cited Census Tract 99 in New York County—a tract that is the site of some EB–5 projects—to illustrate some of the commenter's key concerns about DHS's TEA proposal in the NPRM. The commenter argued that BLS and ACS data, as well as data made available through the U.S. Census Bureau's Longitudinal Employer-Household Dynamics (LEHD) tool, show that high unemployment tracts within New York County are well within standard commuting distances to Census Tract 99. The commenter stated that ''[a]ccording to the NYC MTA, a person could board the subway at the north end of Manhattan Island and travel to a subway station in the middle of Census Tract 99 in 30–50 minutes for $2.75 or less one-way. The DHS proposal should recognize that an unemployed person is unlikely to object to that kind of commute.'' The commenter also pointed out that a focus on unemployment rates in a particular area, rather than total numbers of unemployed persons, potentially obscures the impact that DHS's proposal could have on economically distressed urban areas. The commenter stated that in 2014, New York County had on average 55,387 unemployed workers, as compared to 75,259 unemployed workers statewide for Iowa, and 14,302 for Vermont. The commenter concluded that any proposal should not seek to ''fix'' the lack of rural and highly

[86] GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas,* GAO–16–749R, Published Sept. 19, 2016, *available at http://www.gao.gov/products/GAO-16-749R.*

distressed urban project deal flow in the EB–5 program by establishing rules that discourage investment in some urban areas. Rather, TEA designations should encourage new investment and new job creation under the EB–5 program in a fair and predictable way, with positive inducements for projects to locate in rural or distressed urban areas. The commenter ultimately supported the ''New Markets Tax Credit''-like approach that DHS has addressed elsewhere in this preamble.

Another commenter stated that DHS should strive to ensure that both urban and rural projects have ''equal opportunity'' to improve their respective communities.

Response: DHS believes the final rule does ensure that both urban and rural projects have equal opportunity to improve their respective communities. Petitioners have overwhelmingly obtained TEA designation in urban (*i.e.,* non-rural) areas in recent years.[87] Although projects in more affluent urban areas may have created employment for employees living in high unemployment areas within a reasonable commuting distance, DHS notes that it is challenging to verify this, and would require the provision of W–2 forms or other sufficient documentation for direct jobs. In addition, allowing such areas to qualify as a TEA may have deterred direct EB–5 funding in areas truly experiencing high unemployment and in dire need of revitalization. Also, developers of projects in affluent urban areas may be able to market the projects to potential EB–5 investors as more likely to (1) result in the investors receiving green cards because the projects are less likely to fail, (2) result in the investors seeing their capital returned because they are less likely to fail, and (3) deliver a higher rate of return on the investors' investments.[88] These factors could more than compensate for the higher required investment amount. In fact, to the extent that a higher rate of return and more safety for invested capital are expected, foreign investors might actually prefer to increase the amount of capital they invest in these projects above the minimums required. Foreign investors may also see investments in projects in affluent urban areas to be more prestigious. In addition, to the extent that projects in affluent areas that can no longer attract EB–5 capital still proceed with other sources of capital, while more projects in poor or rural areas receive EB–5 capital without which they could not proceed, overall investment in the U.S. economy may increase.

The final rule clarifies the requirements for TEA designation in high unemployment areas and also eliminates state involvement in the high unemployment area designation process to better ensure consistent, equitable adjudications across the country. DHS is bound by the statutory framework defining rural areas and areas of high unemployment (based on unemployment rate greater than 150 percent of the national average rather than total number of unemployed individuals). By utilizing the census tract (and/or adjacent tract(s)) in which the new commercial enterprise is principally doing business, DHS is regulating consistent with the statutory framework to ensure that the area most directly affected by the investment and in which jobs are created is the focus regardless of population size or density.

5. Other Comments on the TEA Designation Process

Multiple commenters provided other input on the TEA designation process.

Comments: Numerous commenters recommended grandfathering the existing TEA methodology, including suggestions to allow for a ''meaningful'' transition period, or at least allow petitioners who properly filed prior to the change to continue to qualify. Several of these commenters asserted that the rule should include a transition or phase-in period or delayed effective date to enable projects that are presently in the market to make the necessary changes in their operations going forward. One commenter expressed uncertainty in how the revised TEA designation process would be implemented, particularly with respect to its effect on current projects and conditional permanent residents, pending Form I–526 and Form I–829 petitions, and exemplars approved by DHS prior to the effective date of the rule.

Response: DHS believes that an extension to the transition period is appropriate, given the potential impacts of the TEA designation changes on current projects and investors. DHS is therefore is providing for an effective date that is 120 days after publication of this rule, *i.e.,* 90 days beyond the minimum implementation period required by 5 U.S.C. 553(d), and 60 days beyond the minimum implementation period required for major rules under 5 U.S.C. 801(a)(3). The implementation period is intended to provide additional time for EB–5 petitioners and the EB–5 market to adjust investment plans. Even those commenters that requested specific implementation periods longer than 120 days (*e.g.,* six months or one year) did not provide clear, actionable data underlying such recommendations. An implementation period longer than 120 days would likely place an additional burden on agency operations and potential petitioners, because it would likely result in an influx of new petitions prior to the effective date that could lengthen adjudication delays and visa backlogs. Such an influx would generally be consistent with past experience during times when petitioners anticipate significant changes to the program.

DHS has detailed how it will implement the rule in Sections I.E and I.F of this preamble, and elsewhere in this rule. As explained elsewhere, the changes in this rule will apply to all Form I–526 petitions filed on or after the effective date of the final rule. Petitions filed before the effective date will be adjudicated under the regulations in place at the time of filing. DHS disagrees with the commenter's request that TEA designations be available prior to Form I–924 and Form I–526 filings. In accordance with the statutory framework, under which TEA designation must be determined ''at the time of the investment,'' INA section 203(b)(5)(B)(ii), 8 U.S.C. 1153(b)(5)(B)(ii), and consistent with longstanding policy, a TEA determination is made at the time the Form I–526 petitioner makes his or her investment or at the time the Form I–526 petition is filed for petitioners who are actively in the process of investing. As with the existing process, DHS will review the TEA designation evidence with the Form I–526 petitioner's filing to determine eligibility at that time. For petitioners who have a pending or approved Form I–526, already received conditional permanent resident status, or a pending Form I–829 petition based on a previously approved Form I–526, a TEA determination will have already been made or will be made based on the regulations in place at the time of filing of those Form I–526 petitions.

Comments: A few commenters said the final rule should clarify that the TEA designation is honored from when the funds are actually invested, not

[87] *See* GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas,* GAO–16–749R, Published Sept. 19, 2016, *available at http://www.gao.gov/products/GAO-16-749R* (showing that approximately 97% of petitioners from the fourth quarter of fiscal year 2015 were estimated to have invested into a high unemployment TEA).

[88] ''Foreign investors see glitzy projects in gateway cities as more secure investments, both for getting their money back and for getting their green cards.'' Jeff Collins, ''Need a Fast Track to Citizenship? Invest in These Orange County Luxury Hotels,'' *Orange County Register,* (Oct. 13, 2015) (quoting Pat Hogan, president of CMB Regional Centers).

when the funds are placed in escrow, because a location's TEA designation is subject to change based on changed circumstances.

Response: DHS disagrees with the commenters. Section 203(b)(5)(B)(ii) of the INA provides that the area must qualify as a TEA at the time of investment. However, section 203(b)(5)(A)(i) of the INA also provides that to be eligible for an EB–5 visa, a petitioner may either have invested or be actively in the process of investing capital into an NCE. Applicable administrative precedent decisions have further clarified that petitioners must demonstrate that the NCE into which they have invested or are actively in the process of investing is principally doing business in a TEA at the time of filing the petition.[89] To make the TEA determination in a manner consistent with the statutory provisions and the precedent decisions, and promote predictability in the capital investment process, DHS has implemented a policy of making the TEA determination as follows:

- If the petitioner has invested capital into the NCE, and the capital has been made available to the job-creating entity (JCE) in the case of investment through a regional center, prior to the filing of the Form I–526 petition, then the TEA analysis focuses on whether the NCE, or JCE in the case of an investment through a regional center, is principally doing business in a TEA at the time of investment.
- If, at the time of filing the Form I–526 petition, the petitioner is actively in the process of investing capital into the NCE but the capital has not been made available to the JCE in the case of investment through a regional center, then the TEA analysis focuses on whether the NCE, or JCE in the case of investment through a regional center, is principally doing business in a TEA at the time of filing the Form I–526 petition.[90]

The final rule does not change this policy. DHS believes that this policy is consistent with the relevant statutory provisions and precedent decisions and is the most fair to individual investors because it provides predictability for the capital investment process. If the commenters' suggestion was followed, it would be unclear at what point the area in which the NCE is principally doing business needs to qualify as a TEA. The moment at which the investor who was actively in the process of investing at time of filing has completed that process can vary depending on a number of factors—including at some point after the adjudication of the Form I–526 petition. In other words, because investments need to be structured prior to filing the Form I–526 petition but may continue after the adjudication of the Form I–526 petition, the commenters' proposed policy would lead to circumstances where it could not be known whether the area would qualify as a TEA until after the Form I–526 petition has been adjudicated. This would create an untenable degree of uncertainty in the capital investment process. Furthermore, DHS would have no basis for determining TEA eligibility at either the time of filing or at the time of adjudication because the petitioner would have no basis to demonstrate TEA eligibility at such times. DHS recognizes the commenters' concern that it is possible that some project tracts that qualify as a TEA at the time of filing of the petition might not qualify as a TEA when a petitioner who was actively in the process of investing at time of filing has completed that process. The change in policy suggested by the commenters would create uncertainty and unpredictability in the capital investment process; and would render DHS incapable of determining TEA eligibility in cases where the petitioner is actively in the process of investing at the time of filing the petition.

Comments: Some commenters said the TEA process should be eliminated, along with the increased minimum investment at the two-tier level, and instead should be replaced by a set-aside of visas for the desired targets (rural, high unemployment, infrastructure, and manufacturing). One commenter suggested that DHS incentivize the creation of direct jobs by allowing projects that do so to be exempt from the necessity of being in a TEA to be subject to the lower minimum investment amount.

Response: DHS declines to adopt the commenters' suggestions regarding TEAs. DHS lacks the authority to make some of the changes requested by these commenters given the current statutory framework of the EB–5 program. DHS cannot completely eliminate TEA designations because 3,000 visas are statutorily set aside for investment in TEAs (rural and high unemployment areas).

DHS could eliminate the differential between the standard minimum investment amount and the TEA minimum investment amount, thereby eliminating the two-tier investment amount system currently in place, leaving the visa set aside as the only incentive for investment in TEAs. However, DHS declines to do so and has decided to maintain the 50 percent differential to continue to incentivize investment in rural and high unemployment areas. Removing the differential and leaving in place only the visa set aside as an incentive would not leave a sufficient incentive in place for investment in TEAs. Congress permitted DHS to offer a two-tier investment system, with reduced minimum investment amounts in TEAs relative to outside of TEAs. DHS is addressing the current imbalance in which almost all investments are made in potentially gerrymandered TEAs by revising the designation of areas of high unemployment that may qualify as a TEA. This change, in combination with maintaining the 50 percent differential, will maintain a sufficient incentive for investment in TEAs while ensuring that the TEAs benefiting from the incentives align with congressional intent.

Finally, DHS does not have the statutory authority to reduce the minimum investment amount for investments in a new commercial enterprise that creates direct jobs. The statute only authorizes a lower minimum investment amount for investments made in a TEA.

E. Technical Changes

1. Separate Filings for Derivatives

Comments: Many commenters supported the proposal that derivatives file their own separate Form I–829 petitions if not included in the principal's Form I–829 petition for reasons other than the death of the principal. The commenters stated this would protect derivatives against termination of their conditional permanent residence when the principal investor's conditional permanent residence is abandoned. One commenter disagreed with the proposal, recommending that USCIS retain what the commenter believed to be the current practice of allowing the spouse's or child's biographical documents to be ''interfiled'' when a family member is not included in the investor's Form I–829 petition. The commenter stated that because the filings would be identical to the investor's filing, USCIS would not need to review project documents filed

[89] *See Matter of Soffici,* 22 I&N Dec. 158, 159 (Assoc. Comm. 1998) (''A petitioner has the burden to establish that his enterprise does business in an area that is considered 'targeted' as of the date he files his petition.''); *see also Matter of Izummi,* 22 I&N Dec. 169, 173 n. 3 (Assoc. Comm. 1998) (''A petitioner must establish that certain areas are targeted employment areas as of the date he files his petition; just because a particular area used to be rural many years ago, for example, does not mean that it still is.'').

[90] USCIS Policy Manual, 6 USCIS–PM G, Chapter 2.

with the spouse or child's petition and USCIS should not charge a filing fee since it will not be re-adjudicating the I–829 project documents.

Response: DHS believes the commenter who disagreed with the proposal misunderstands the proposed change. DHS did not propose to change the current process, under which derivatives may still request to be added to a principal's pending Form I–829 if they pay the biometric fee, and are otherwise eligible to be classified as the principal's derivatives. Such derivatives may be added to the pending Form I–829 even in case of divorce during the conditional residence period. Instead, DHS proposed to standardize the process for those derivatives who file an individual Form I–829 petition and cannot be included on the principal's Form I–829, generally because the principal fails or refuses to file a Form I–829. Under these circumstances, the final rule clarifies the current DHS practice of requiring all derivatives connected to a single principal investor to file separately. Thus, for example, if there are two derivatives (either a spouse and child, or two children) and the principal refuses to file a Form I–829 petition, each derivative is required to file a separate Form I–829 petition. This final rule only allows derivatives to apply together on a single Form I–829 petition when the principal is deceased, because INA 204(l) directs DHS to adjudicate ''notwithstanding the death of the qualifying relative.'' Because the principal would have had the option to file a single Form I–829 on behalf of the whole family, the option remains even though the principal is deceased. This rule does not change the current DHS practice, and DHS is simply clarifying the language in 8 CFR 216.6(a)(1) to avoid a situation where derivatives filing separately do so incorrectly, causing their petition to be rejected.

2. Equity Holders

Comment: DHS received one comment on the proposal to consider equity holders in a new commercial enterprise as sufficiently engaged in policymaking if the equity holder is provided with the rights, duties, and powers normally provided to equity holders in those types of entities. This commenter indicated there is a difference between equity holders that manage the company and third party managers that manage the company, which should be clarified in the rule. The commenter asserted that this clarification is important in the context of limited liability companies (LLCs), which, unlike limited partnerships, do not have a General Partner and Limited Partners; or a corporation, which has officers and directors. The commenter stated that an LLC will either be member managed or manager managed.

Response: DHS believes the language in the rule at final 8 CFR 204.6(j)(5)(iii) is broad enough to encompass a variety of different possible ownership and management structures, including members of both member-managed LLCs and manager-managed LLCs because each of those types of LLCs normally provide their respective members (equity holders) with different rights, duties, and powers. In the future, DHS may consider issuing policy guidance to provide additional clarification if deemed necessary.

F. Other Comments on the Rule

1. Processing Times

Comments: Multiple commenters discussed current USCIS processing times or the impact the proposed rule would have on processing times. Many commenters expressed frustration with USCIS processing times, stating that current wait times are harming investors. Commenters recommended electronic submissions and premium processing to decrease delays.

Response: DHS appreciates the concerns raised by these comments regarding USCIS processing times. DHS is considering ways to improve the EB–5 program to decrease processing times. However, DHS does not believe that the changes made by this rule will have an adverse effect on processing times. With respect to Form I–526 petitions, this rule only raises the investment amounts and provides more specific requirements for petitioners investing in targeted employment areas. These changes should not increase adjudication times. With respect to Form I–829 petitions, this rule clarifies when derivative family members must file their own petition and seeks to improve the adjudication process by providing flexibility in interview locations. DHS does not anticipate this will adversely affect Form I–829 processing times because the adjudication standards remain the same. The recommendation regarding electronic submissions and premium processing to decrease delays is outside the scope of this rulemaking.

Comments: Numerous commenters expressed concerns about processing times in TEA designations as DHS takes over the designation process from the states.

Response: DHS is committed to providing timely TEA decisions as part of the adjudication process. DHS does not foresee an increase in petition backlogs based on handling TEA designations, because the agency currently reviews the TEA designation evidence provided by petitioners to determine TEA statutory eligibility. The framework detailed in the NPRM and finalized in this rule should not increase the burden to petitioners or to DHS in the adjudication process. As in the current process, EB–5 petitioners will be required to provide evidence to demonstrate the area in which the new commercial enterprise into which they are investing is principally doing business is a TEA. The new framework requires petitioners to identify the census tract(s) in which the NCE is doing business and provide population and unemployment statistics for that tract and any other adjacent tracts that are relevant to the determination. USCIS will review this data in a manner similar to how USCIS currently reviews high unemployment area designation letters from states; it will review the proposed area to confirm it is the area in which the NCE is principally doing business and review the underlying data and methodology associated with the statistics provided.[91] In fact, the use of a uniform methodology for all TEA designations could improve the efficiency of these determinations as adjudicators will be more familiar with the new framework. As such, DHS does not anticipate a negative impact to the overall timing of the adjudication process.

2. Visa Backlogs

Comments: Many commenters discussed visa backlogs in the EB–5 program. Multiple commenters stated that the current visa backlog was negatively affecting participation in the EB–5 program. Several commenters argued that if DHS intends to increase the minimum investment amount, it should focus on fixing the visa backlog first or at the same time.

Response: Congress, not DHS, has set the annual visa allocation for the EB–5 program. These concerns should more properly be addressed to Congress.

3. Timing of the Rule

Comments: Most commenters were concerned about the implementation and timing of the rule and its impact on previously filed EB–5 petitions and current projects. Many commenters argued that the proposed rule, if finalized, should not apply retroactively, and USCIS should grandfather currently approved and pending petitions and applications, or

[91] USCIS Policy Manual, 6 USCIS–PM G, Chapter 2.

grandfather in entire projects such that future EB–5 petitioners in grandfathered projects would only need to invest at the lowered investment thresholds in place prior to the effective date. Several commenters requested a transition period before the rule's effective date to provide a grace period for the change and prevent a chilling effect on the EB–5 investment market, and one commenter suggested twelve months to allow certain projects additional time to complete fundraising. Some commenters requested clarification on how the rule would affect current projects. One commenter stated that the petitions filed up to the date of promulgation of the rule should only be subject to the new requirements if they are denied by USCIS because of project discrepancies, when adjudicated after the date of enactment. Conversely, another commenter stated that due to the current visa backlog, DHS should apply the rule to pending EB–5 applications because otherwise changes would not affect the EB–5 program for several years.

Response: This final rule will become effective 120 days after publication, as outlined earlier in this preamble. Specifically, the provisions of this final rule will apply to Form I–526 petitions filed on or after that effective date. Form I–526 petitions filed prior to the effective date of the rule will be allowed to demonstrate eligibility based on the regulatory requirements in place at the time of filing of the petition.

With respect to the commenter suggesting this rule be applied only to denied petitions that fail to remedy project discrepancies prior to the effective date of the rule, any petition filed on or after the date of this implementation will be required to establish eligibility under the new rules. This seems to reflect the commenter's suggested approach.

DHS disagrees with the comments suggesting grandfathering approved projects under the current rules. Grandfathering of approved projects would result in unequal treatment of petitions filed after the rule is in effect and would be overly burdensome operationally. Further, grandfathering approved projects would have the effect of delaying the application of this rule for a substantial number of petitioners, which would tend to undermine the immediate effectiveness of the policy aims of this rule. It would grant existing projects in affluent urban areas that have been marketed as TEAs an unfair competitive advantage against new projects in such areas, which will need to attract investors at the higher minimum investment amount. It would also thwart congressional intent by allowing such projects to continue to attract investors using the incentives that Congress intended for high unemployment and rural areas only, potentially reducing the amount of EB–5 capital going to those areas. While DHS appreciates the comment suggesting that pending petitions be subject to this rule due to the current backlog, implementation would be difficult because petitioners for each pending petition would have to make material changes to their petitions to meet the new standards, including by investing additional amounts that they did not anticipate. DHS believes this would unfairly harm investors that filed based on the eligibility requirements in place at that time and invested in projects that had been planned and initiated with the investment amounts in place at the time. For example, in addition to the fact that resulting project changes would likely be considered material changes, requiring pending petitions to increase their investment could provide a project with too much capital, and in turn potentially precipitate a misappropriation of excess funds. DHS believes applying the new rules to petitions filed on or after the effective date is the best way to implement this rule. As such, and as mentioned above, DHS will apply the regulatory scheme in place at the time of filing when adjudicating Form I–526 petitions, which means that this final rule will apply to Form I–526 petitions filed on or after the effective date.

While DHS is declining commenters' suggestion to grandfather approved projects, DHS has considered how pending petitions associated with existing projects could be affected and is making one revision to the regulations in this final rule to address a problem that could affect some pending petitions as a result of this regulatory change. DHS is adding one regulatory text clarification at 8 CFR 204.6(n) regarding how this rule will be implemented with respect to petitioners with pending or approved petitions who filed prior to the effective date of the final rule. Investment offering documents are typically associated with a particular number of investors investing a specific dollar amount. Projects that are still accepting new investors after the effective date of this rule may have to change their offering documents to account for the new minimum investment amounts, or to maintain compliance with other securities regulations. The change in offering documents also could provide existing investors with pending petitions with an option to withdraw their investment as a result of applicable securities laws. Accordingly, the offering documents associated with a Form I–526 petition filed before the effective date of this rule may be affected, and such modifications normally would likely result in a denial of the petition based on a material change. The regulatory text at final 8 CFR 204.6(n) provides that amendments or supplements to offerings made to maintain compliance with applicable securities laws, based solely upon this rule's effectiveness, will not independently result in ineligibility of petitioners with pending or approved Form I–526 petitions who filed prior to this rule's effective date and who remain invested, or who are actively in the process of investing, and who have no right to withdraw or rescind their investment or commitment to invest into such offering when their petition is adjudicated. This addition clarifies that petitioners will not be adversely affected by a change to offering documents, necessitated by this final rule's changes, so long as the petitioner's investment remains at risk through adjudication and the petitioner continues to meet program requirements. Additionally, the provision that changes to offering documents should not include a right to withdraw or rescind at the time of adjudication allows petitioners to remove or reject such provisions because of changes necessitated by this regulation without penalty, in accordance with the existing material change policy.

4. Material Change

Comment: One commenter recommended expanding the NPRM to incorporate the material change portion of the policy memorandum (PM–602–0083) issued May 30, 2013, to avoid confusion and codify the material change policy. The commenter asserted that this change would make clear that an investor who obtained conditional LPR status may proceed with the I–829 petition, and provide evidence that the requirements for the removal of conditions have been satisfied, without the need to file a new Form I–526 petition if there have been changes to the business plan since the Form I–526 was filed. The same commenter suggested that DHS expand its material change policy to allow those with approved Form I–526 petitioners to remain eligible for adjustment of status even if material changes occur in the interim.

Response: DHS believes existing policy guidance on material change is sufficiently clear, specifically that

USCIS does not deny Form I–829 petitions based solely on the failure to adhere to the business plan contained in the Form I–526 petition,[92] and thus will not codify the policy into regulation at this time. DHS also does not intend to change its material change policy through this final rule, but did solicit public feedback on potential changes to the policy in the EB–5 Immigrant Investor Regional Center Program ANPRM.[93]

5. Comments Outside the Scope of This Rulemaking

DHS received many comments outside the scope of this rulemaking. For instance, some comments suggested potential ways to improve the EB–5 program as a whole or sought guidance regarding existing requirements that would have been unaffected by the proposed rule. Because these comments are outside the scope of this rulemaking, DHS is not providing responses to these comments. To the extent that the suggestions for program improvements do not require congressional action to change the statutory authority governing the EB–5 program, DHS may consider these suggestions when developing the proposed rule that DHS plans to issue following the ANPRM or in future guidance materials. With respect to comments requesting guidance on current requirements, DHS may consider including clarifications in future guidance materials.

Comments from the public outside the scope of this rulemaking concerned the following issues:

- Allowing stand-alone program petitioners to count indirect jobs, as indirect jobs relate to the impact of the investment on the community where the project is located;
- Creating a more balanced and fair approach to counting direct job creation for stand-alone projects;
- Encouraging more stand-alone EB–5 investment projects ''where actual, full-time, permanent jobs are more likely to be created,'' rather than regional center construction projects which frequently depend on indirect jobs to satisfy the job creation requirement;
- Requiring that investors show that jobs established through indirect modeling methodologies are full-time jobs and that the investors have actually created the requisite number of jobs;
- Eliminating projects that rely solely on ''tenant occupancy'' to fulfill the job creation requirements in which regional center funding is used to construct or renovate office or retail space;
- Placing meaningful limits on the number of jobs created by non-EB–5 capital that can be attributed to EB–5 investors;
- Setting different differentials for regional center petitioners investing in TEAs, and non-regional center investors investing in TEAs;
- Clarifying which indirect jobs may count towards the job creation requirement;
- Clarifying how the adjudications backlog affects the job creation requirement. The commenter stated that many construction jobs are temporary and disappear prior to the investor establishing conditional residency, putting many investors at risk of having their petitions denied for failing to create 10 jobs;
- Revamping or completely eliminating the job-creating entity process in favor of making qualified investments in individual state-approved infrastructure projects;
- Amending the regulations to clearly state that the I–924 amendments are not necessary to amend the geography of a previously filed I–924, or that a Form I–526 petition may be filed subject to the expansion of a previously filed and pending Form I–924;[94]
- Allowing Forms I–924 to be perfected after filing because, the commenter states, the critical point for demonstrating full eligibility is at time of adjudication;
- Authorizing expedited processing for Form I–526 petitions and Form I–924 applications;
- Allowing parole for all investors who have already invested and filed a Form I–526 petition;
- Allowing concurrent filing of the Form I–526 petition and the Form I–485, Application to Register Permanent Residence or Adjust Status;
- Requiring practitioners who prepare source of funds documents to file an attestation with the Form I–526 petition stating that they performed certain due diligence checks;
- Making regional center exemplar filings mandatory and prohibiting an investor from filing a Form I–526 petition in connection with a regional center until an exemplar is provisionally approved;[95]
- Encouraging more public infrastructure projects to participate in the EB–5 program to facilitate the flow of much-needed capital to public infrastructure projects nationally, in order to save taxpayer dollars and fuel improvement initiatives that might otherwise be delayed by funding challenges;
- Prohibiting the use of publicly tradeable securities, such as municipal bonds, to qualify as an eligible use of EB–5 capital;
- Allowing only investors who come from countries that enforce similar labor and financial laws as the United States;
- Precluding roll-over of the required 3,000 visas set aside for TEAs into the regular EB–5 visa pool and instead requiring the set-aside to remain available only for investments in rural and depressed areas;
- Precluding reauthorization of the Regional Center Program because of its potential for fraud;
- Expanding the Regional Center Program to help spur the private market;
- Changing requirements to allow a petitioner to remain eligible despite regional center termination;
- Creating a mandatory administrative appeals process for the EB–5 program, requiring investors to exhaust their administrative remedies prior to going to the judicial system;[96]
- To ensure transparency, requiring third-party administration of the investment funds that are being used in the EB–5 projects to show the investor that there is compliance with the business plan;
- Prioritizing non-Chinese petitions because there is a low likelihood that any visas for Chinese investors will be available in the near future;
- Removing conditions on residence for investors with a visa backlog of more than two years;
- Modifying 8 CFR 204.6(j) to provide that the list of evidence of property transferred from abroad for use in a U.S. enterprise is a list of possible, but not required, evidence;
- Not counting 2,000 EB–5 cases that the commenter indicated were processed late due to USCIS oversight toward the visa quota because it would

[92] USCIS Policy Manual, 6 USCIS–PM G (Aug. 23, 2017).

[93] 82 FR 3211 (Jan. 11, 2017).

[94] Please refer to existing DHS policy guidance addressing these commenters' concerns. *See* Form I–924 Instructions, available at *http://www.uscis.gov/I-924; see also* Update to March 3, 2017 Stakeholder Engagement Remarks, *available at https://www.uscis.gov/sites/default/files/USCIS/Working%20in%20the%20US/alert2017_march.pdf.*

[95] DHS solicited public comment on the issue of mandatory exemplar filings in the January 11, 2017 ANPRM (82 FR 3211).

[96] Note that EB–5 petitioners can appeal decisions related to their Form I–526 petitions to the Administrative Appeals Office (AAO) within USCIS. USCIS, When to Use Form I–290B, Notice of Appeal or Motion, *available at https://www.uscis.gov/i-290b/jurisdiction* (last visited June 22, 2018).

unfairly penalize investors for USCIS's error;

- Modifying Department of State's Visa Bulletin;
- Reducing visa wait times for Chinese nationals;
- Increasing the number of EB–5 visas to 30,000 or 50,000, or modifying the number of visas through administrative remedies or legislation;
- Adjusting the EB–5 visa limit from 10,000 individuals to 10,000 petitions, 30,000 individuals, or 10,000 families (excluding EB–5 derivatives from the EB–5 visa quota);
- Increasing the number of visas allocated to TEAs;
- Allocating 10,000 EB–5 visas for rural areas, high unemployment urban areas, and manufacturing and infrastructure projects;
- Increasing administration fees;
- Allocating visas from other visa categories; and
- Recapturing unused visas in any given year.

Approximately 20 commenters discussed fraud and integrity measures in the EB–5 program. Most of the commenters supported the proposed rule, but many urged USCIS to go further to prevent fraud in the program. Several commenters generally encouraged USCIS to take action to address fraud in the EB–5 program. Example areas of fraud identified by commenters include the following:

- Document fraud and money laundering;
- EB–5 applicants applying for federal public benefits; and
- Evasion of U.S. taxes through failure to disclose fully business profits earned overseas.

Several commenters recommended additional measures USCIS could implement to address fraud in the EB–5 program, including the following:

- Audits and site visits not only for regional center projects, but for standalone projects as well; [97]
- Securities and Exchange Commission oversight and regulation of broker/dealers and agent activities anywhere investors are being sought;
- Prohibit the sale or rental of regional centers;
- Mandatory interviews of immigrant investors within 90 days of filing their Form I–829;
- Disclosure and accounting of commissions paid by developers to raise capital on annual Form I–924A filings;
- Monitor and regulate regional centers; and
- Offer defrauded investors remedies, such as parole in place, employment authorization, and age-out protections for minors.

DHS appreciates these proposals to improve program integrity and combat fraud. DHS, however, did not address these issues in the proposed rule, and therefore these suggestions fall outside of the scope of this rulemaking. As such, DHS will not address these suggestions in this final rule. DHS, however, is committed to strengthening the security and integrity of the immigration system through efficient and consistent adjudications of benefits and fraud detection.

G. Public Comments and Responses on Statutory and Regulatory Requirements [98]

1. Data, Estimates, and Assumptions Used (Executive Orders 12866 and 13563)

Comments: Multiple commenters discussed the data, estimates, and assumptions utilized by USCIS to ascertain the costs of the rule. A commenter stated that stakeholders require additional time to provide data-based estimates regarding economic impacts of the new investment amounts and impacts on jobs. Some commenters suggested that until additional data collection and analysis is conducted, the rulemaking should not move forward. Likewise, several commenters recommended that DHS withdraw the proposed rule so that the impacts of the rule can be more thoroughly studied, including how the proposed rule might hinder the job benefits estimated by a study conducted by the Commerce Department. A commenter suggested that DHS did not calculate an expected cost to stakeholders or the EB–5 program goals based on the proposed investment level and TEA definition. The commenter concluded that, given enough time, it was willing to work with its members to quantify the impacts of the new investment levels on ongoing and proposed projects and associated projects.

Response: DHS disagrees with commenters suggesting that either more time for comments is required or that it should withdraw the entire rule to allow further study of the effects of the rule. DHS recognizes that EB–5 investment structures are complex and typically involve multiple layers of investment, finance, development, and legal business entities. Further, DHS acknowledges that data limitations preclude a detailed analysis of the potential quantitative costs of this rule. However, DHS does not see how extending the timeline for implementing the rule would be beneficial. Additional time would not allow DHS to estimate with accuracy how many investors or projects might be affected by the proposal. When the NPRM was published, DHS invited public participation, in the form of comments, data, and other information, from EB–5 stakeholders. DHS specifically sought comments on all aspects of the NPRM, including the economic analysis included in the NPRM. DHS believes the 90-day comment period was an adequate amount of time during which stakeholders could have submitted data-based estimates and information on any or all proposals of the NPRM, as exemplified by the fact that some commenters submitted data-based comments. All stakeholders, however, had the same opportunity and nearly three months to provide data-based estimates of the potential effects of the rule. DHS notes that Section 6 of E.O. 12866 recommends that, in most cases, the comment period be not less than 60 days. In this case, DHS provided the public with approximately 30 more days than recommended, and more time than it has in recent years for other rules. Because DHS believes the changes to the EB–5 program made by this final rule are valuable for the reasons described above, it will not delay further the effectiveness of the rule in response to commenters' requests. DHS appreciates all stakeholder feedback it received on the NPRM.

2. Costs (Executive Orders 12866 and 13563)

2.1. General Economic Costs of the Rule

Comments: Many commenters submitted comments concerning the economic costs of the rule, including loss of jobs and adverse economic impacts. Some commenters believed the rule's proposals would have a negative impact on industry, generally impairing the flow of EB–5 capital to projects in the U.S. and hindering job creation and economic growth. A commenter anticipated the proposal would adversely affect current and future EB–5 projects, while other commenters generally lamented the potential loss of U.S. jobs. One commenter cited the

[97] DHS notes that site visits are currently conducted on both regional center and standalone projects.

[98] As noted above, numerous commenters expressed concerns that the proposed investment amount increase and TEA reform would disrupt the program and reduce the number of projects and investments under the program. DHS has addressed these claims in the appropriate portions of the preamble above. DHS also addresses some of these comments in the following discussion, because the claims made by the commenters specifically allege potential economic impacts, such as effects on investment and job creation.

Commerce Department study that analyzed the job-creating impact of the investor visa program,[99] noting the study found 11,000 immigrant investors provided $5.8 billion in capital for the FY 2012 and FY 2013, supporting an estimated 174,039 jobs in the United States. The commenter stated that these positive economic impacts of the EB–5 program are threatened by the rule's proposal to increase the minimum investment amounts, because such increases would ''discourage investment in American job markets that need it most. Investors will have the option of going to Australia, or Canada—high income countries with lower visa monetary requirements.'' The commenter stated that ''USCIS has been unable to determine the possible impact of the new rules.'' One commenter stated that the proposed increase to the minimum investment amount was too high and would effectively stop the flow of $2.5 billion in foreign direct investments to the United States.

Response: DHS believes it is reasonable to increase the minimum investment amount to account for inflation to ensure the required minimum investment amounts reflect the present-day dollar value of the investment amounts established by Congress. Given that the minimum investment amounts have not been increased since the program's inception, and multiple factors have contributed to increased or decreased utilization of the program in the past, DHS cannot accurately predict how the increase to the minimum investment amounts will affect demand on the program. DHS acknowledges that it is reasonable to assume some number of investors will be unwilling or unable to invest at the increased investment amount. However, their capital contributions may very well be more than replaced by other investors investing at the higher minimum investment levels. In addition, given the oversubscription of the program—as long as a sufficient number of investors file petitions each year to account for the allotment of visas provided by Congress, the program's overall contribution of capital to the U.S. economy will increase. However, commenters who claim that the increases to investment amounts will have a significant negative impact (*e.g.,* the claim that the investment increase would stop $2.5 billion in foreign direct investments into the U.S.) provided no objective data to support those claims. Like DHS, commenters can only speculate as to precisely how the increases will affect the EB–5 market. DHS believes factors other than the investment amount significantly contribute to the program's utilization. Though the precise impact of the increases on the EB–5 market is unknowable, DHS believes it is reasonable to increase the investment amounts based on the CPI–U to reflect the present-day value of the amounts set by Congress in 1990 for the reasons discussed earlier in this preamble.

In addition, DHS acknowledges the Commerce Department study cited by one commenter that analyzed the job-creating impact of the investor visa program. The study did estimate that for FY 2012 and FY 2013, 11,000 immigrant investors provided $5.8 billion in capital that was ''*expected to create* an estimated 174,039 jobs,'' [100] but the study was based on forecasts made in economic impact analyses provided by petitioners, and not verification of jobs actually created.[101] DHS notes that the majority of EB–5 investments have been made through regional centers (approximately 92 percent, as discussed below). Regional center investments use methodologies that rely on indirect job creation. Such indirect job creation estimates accrue to numerous downstream industries, and therefore, it is not possible to verify exactly how many new jobs could be attributed to a specific EB–5 investment once it is made (it is also possible that indirect job forecasts may overstate actual job creation linked to any specific investment). The study also includes jobs associated with non-EB–5 investor sources of capital, which is allowed under current regulations.[102] Relatedly, the GAO's audit of EB–5 TEA data in 2016 revealed that in the GAO's sampling from the fourth quarter of fiscal year 2015, the median percentage of total potential EB–5 investment in petitioner projects was only 29 percent of the total estimated project cost, and the estimated mean percentage was 40 percent.[103] Because jobs created by non-EB–5 funding can be credited to EB–5 investors, and many projects could still be viable without EB–5 funding given that such funding makes up only a portion of overall funding, DHS does not believe it is reasonable to assume that a certain loss of EB–5 investment necessarily translates to a commensurate loss of jobs. Notably, the Commerce Study does not conclude that the predicted number of jobs expected to be created through EB–5 funding would not be created but for the EB–5 funding. Thus, the Commerce Department study was not helpful in evaluating the impacts of the final rule.

2.2. Costs to Investors, Regional Centers and New Commercial Enterprises

Comments: Multiple commenters discussed costs to investors, regional centers, and NCEs, generally expressing concern regarding the impacts the proposed changes would have on various aspects of the EB–5 program and ability of investors to participate in the program. A commenter warned that the proposed changes to the minimum investment amounts would create an influx of investment at the current lower minimum investment level (in the hope of filing prior to the effective date of the increase). The commenter asserted that this rush to invest at the current minimum investment levels would be costly to investors, giving them less time to evaluate projects and trapping the investors in underperforming projects. Relatedly, some commenters expressed concern that changes to the program would increase both the petition processing times and the financial burden of obtaining visas, which will further discourage investment in American job markets as investors look to other options.

Response: DHS appreciates the comments, but notes that it is an individual investor's decision as to the appropriate timing for his or her investment and the individual's responsibility to evaluate and decide whether to invest in specific projects. No provision in this rule requires investors to make anything less than fully considered and informed investment decisions based on individual circumstances at the time of the investment. DHS also disagrees that the provisions in this rule will increase processing times. USCIS works diligently to adjudicate and process EB–5 petitions in a timely manner and will continue to do so following the changes made in this final rule. In addition, USCIS has considered its staffing needs following the promulgation this rule, and will remain attentive to such needs in the course of implementation of this rule.[104] Finally, as mentioned in several

[99] *Estimating the Investment and Job Creation Impact of the EB–5 Program,* Economics & Statistics Administration, Office of the Chief Economist, U.S. Department of Commerce (2017), *available at https://www.commerce.gov/sites/commerce.gov/files/migrated/reports/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf.*

[100] *Id.* at 1–2.

[101] *Id.* at 7.

[102] 8 CFR 204.6(g)(2).

[103] GAO, *Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas,* GAO–16–749R, Published Sept. 19, 2016, *available at http://www.gao.gov/products/GAO-16-749R.*

[104] *See* USCIS, EB–5 National Stakeholder Engagement Talking Points by IPO Acting Chief Julia Harrison (hereinafter ''Harrison Talking Points'') (Nov. 7, 2017), *available at http://ilw.com/*

earlier instances, DHS believes the increase in the investment amount is appropriate and that the EB–5 program will remain competitive relative to other countries' immigrant investor programs.

Comments: Several commenters stated that they anticipated that a reduction in investors caused by the increased investment amount would ultimately put several of the regional centers out of business, noting that one of the costs laid out by DHS in the NPRM is that some investors may not be able or willing to invest at the proposed higher investment level. Similarly, one commenter suggested that raising the investment amount increases an investor's perception of risk in the investment, which would reduce interest in the program, therefore forcing regional centers out of business. However, the commenters did not provide verifiable evidence or data to support the claims.

Response: In the NPRM, DHS discussed the difficulties of quantifying the impacts of the rule's provisions on EB–5 entities due to the absence of data, such as data on regional center operating revenues. DHS wrote that it is reasonable to assume that the changes in the investment amounts may affect some regional centers, but that it was not possible to predict the extent of those impacts. In the Final Regulatory Flexibility Analysis (FRFA) accompanying this final rule, DHS again discusses the rule's potential impacts on regional centers, albeit mainly in the context of whether or not regional centers can be classified as small entities. That discussion, however, is relevant to the commenter's concerns. In that section, DHS recognizes that the increase in the investment amount could deter some investors, but asserts that it cannot determine with accuracy the quantitative effects of the rule, because it is not possible to know exactly how many potential investors may be deterred from the program due to the rule's provisions or how regional centers may respond if some investors may be unable or unwilling to invest at the higher minimum investment amounts.

2.3. Costs of Increasing the Investment Amounts

Comments: Many commenters discussed the costs of increasing the investment amounts. Overall, the majority of commenters suggested that changing the investment amounts would result in a contraction of the EB–5 program and lead to job loss, with commenters writing that the future marketability of the program is in jeopardy. A commenter noted that raising minimum investment amounts could possibly result in lower investment levels in absolute terms depending on how much demand is reduced by raising the minimum investment amount. The same commenter noted giving the largest price hike to investors in targeted employment areas may not be wise from an economic perspective, as those are likely to be the more price-sensitive investors.

Response: DHS recognizes that it is possible that the absolute amount of investment could decrease if the proportionate decline in investments outweighs the proportionate increase from the higher investment amount. Of course, it could also increase. For example, there were an average of 9,238 approved Form I–526 petitions annually from 2015–2017. If the 80 percent higher levels of required investment do not lead to a reduction in the number of EB–5 investments, the absolute amount of investment would increase by 80 percent.[105] As is described in the preamble above, DHS considered the public comments and as a result, this final rule will retain the 50 percent differential between the general and reduced investment amount and set the latter at $900,000. In response to the comment, a general analysis conducted by DHS reveals that it would take a substantial reduction in the number of investors in order for TEA investment to decline taken in total. Adjusting the 9,238 investments total from above for the TEA portion of all investments, 96 percent (discussed below), yields 8,868 annual TEA investments amounting to $4.43 billion in investment. At the TEA investment amount of $900,000 in this final rule, this same level of total TEA investment would be achieved with 4,927 investors, which represents 44 percent fewer investors. Furthermore, small and even moderate reductions in investors actually stand to generate growth in total investment. For example, investor declines of 10, 20, and 30 percent would grow aggregate TEA investment 62, 44, and 26 percent, respectively. Investor declines would however result in reductions in the total numbers of jobs required to be created. We emphasize that this analysis does not reflect DHS predictions about what will happen to investment levels or job creation, but is intended to convey, generally, that based on the number of investors alone, it would take a substantial reduction to actually reduce TEA total investment from recent levels.

Thus, while DHS believes it is possible that some investors may be deterred from investing at the higher amount, evidence or data has not been provided by commenters to suggest that the decrease in demand would be as significant as claimed. In the absence of data indicating whether the final rule will lead to a decrease in overall investment, and by how much, DHS believes it is reasonable to raise the minimum investment amounts, which have remained unchanged for decades, for the reasons already addressed.

Finally, as it pertains to the reduced investment amount of $1.35 million in the proposed rule and the $900,000 amount contained in this final rule, DHS does not have enough information or data to predict the likely difference in aggregate investment as a result of DHS's determination to use the $900,000 amount. Total TEA investment at the $900,000 level this rule finalizes could be greater or smaller than at the initially proposed $1.35 million.

Comments: One commenter cites to a specific report, the *2016 World Wealth Report,* and stated that 90 percent of high net worth individuals globally have a net worth of $5 million or less. The commenter further stated that such individuals will allocate up to 25

immigrationdaily/news/20171206.pdf (''[w]e had just created a division of Adjudicators and Economists who would focus on the I–829 adjudications and customer service inquiries. I am happy to share that this restructuring has paid off. The collaboration and cross training of the Adjudications Officer and Economist have contributed to a reduction in the I–829 processing time. It's just one month so far but I expect that trend to continue in FY2018 . . . A year ago it took us on average 20 days to resolve a customer inquiry. Now it takes us about 5 days to respond to inquiries, some of which are resolved within that time frame . . . Building on the success of the I–829/Customer Service team, during the last half of FY2017, IPO launched a multidisciplinary team made up of Economists and Adjudications Officers to focus on the Form I–526 adjudication . . . Some of the near term benefits gained from the new team include: The potential for an increase in staffing capacity and knowledge gained through training and the expansion of current employees' skill sets. This will allow IPO to better meet our mission.'').

[105] This calculation assumes that the proportion of TEA and non-TEA investments will be the same going forward. Based on an average of 9,238 annual investments, with 96 percent in TEAs and 4 percent not in TEAs yields 8,868 investments made at $500,000 and 370 made at $1,000,000, for a total of $4.80 billion. Taking these same numbers of investments made at the new amounts, 900,0000 and 1,800,000, respectively, yields a new amount of $8.65 billion in investment, which is an 80 percent increase (calculation: (8.65/4.80) − 1). There could be variation to these amounts. If, for example, a higher percentage of investments were in non-TEA projects (since fewer projects would qualify for TEA status under the new standard), the increase in total investment would be even higher. If, due to this rule or other circumstances, a higher proportion of investments are made into TEAs, then total investment could decline, although more investment would flow to targeted areas. Since DHS cannot accurately forecast the ultimate effects on projects or their composition in terms of targeted areas, both possibilities exist.

percent of their net worth to ''long term, low yield'' investment. The commenter recognized that EB–5 investors do not necessarily have the same investment preferences (*e.g.,* EB–5 investors ''may well commit a significantly higher amount just to reach their goal of U.S. permanent residence''). The commenter estimated based on the above, and practical experience, that investors with a net worth as low as $1.5 million have been willing to commit $500,000 in support of their immigration goals. The commenter suggested that if DHS increases the minimum investment amounts as proposed, ''most in this category will not be willing to participate in the program.''

Response: DHS disagrees that the commenter's assumptions about the willingness of investors to invest at the increased investment amounts is sufficiently supported by the source cited. The comment relies on the report for the finding that 90 percent of high net-worth individuals have a net worth of $5 million or less, and states, without support, that the majority of EB–5 investors fall into this category. The commenter also relies on either the report or unnamed studies for the assertion that such investors will allocate up to 25 percent of their net worth to ''this type of investment (long-term, low-yield)'', and states, without accompanying citations or other support, that EB–5 investors would be willing to invest up to one-third of their total net worth. DHS believes the commenter's assumptions are inadequately supported. In addition, the commenter does not explain why EB–5 investments can be accurately described as long-term [106] and low yield or how EB–5 investments are comparable to other types of investments, and also fails to quantify the other factors that may motivate an EB–5 investment based on objective data. Thus, the comment does not establish a clear relationship between the report cited and the quantitative estimates provided in the comment.

Comments: Some commenters contended that DHS's proposed increases to the minimum investment amounts would cause the number of EB–5 investors interested in participating in the program to return to the levels from the 1990s. These commenters pointed to low utilization of the program during that time and stated that even the reduced minimum investment amount of $500,000 was too high for investors. Based on those assumptions, the commenters estimated that the number of petitions would drop by 88 percent when compared to the number of petitions filed in 2011 and 97 percent when compared to the number of petitions filed in 2016. The commenters concluded that the reduced interest would be damaging to the U.S. economy and reduce the number of jobs created by the EB–5 program.

In addition, one commenter stated that it had asked ''many potential investors and others about the impact of [the proposed] investment amounts on their interest and/or ability to invest in the [United States].'' The commenter reported that ''[t]he proposed increase would drastically reduce potential investors' interest and ability to invest.'' DHS notes that the commenter referenced the specific proposed investment level of $1.35 million, but our response is not different in the context of finalizing the reduced investment level of $900,000.

Response: DHS disagrees with the commenters' basic premise that lower utilization of the program in the 1990s was solely because even the reduced minimum investment amount was too high for investors. Rather, as discussed in previous sections, DHS has reason to believe use of the program over time has been affected by a range of factors, including administration of the program, stakeholder confidence, and changes in the U.S. economy. For example, the CIS Ombudsman concluded in 2009 that the lower utilization level was ''principally caused by significant regulatory and administrative obstacles, as well as uncertainties that undermine investor and stakeholder confidence.'' [107] In addition, Congress never chose to decrease the minimum required investment amounts during the years in which the program was undersubscribed for any reason, including in order to specifically encourage more utilization of the program. And as the minimum investment amounts have not changed since the program's inception, DHS cannot predict with certainty what the impacts of the changes will be, with respect to both the number of investors willing to participate in the program and any changes in potential job creation. DHS acknowledges that the higher investment amounts could deter some portion of investors. However, commenters do not support their assertions that demand would fall to a specific historical level based on price alone with a valid methodological approach.

Similarly, a commenter reported that, based on an informal survey of potential investors, the proposed increases would reduce investors' ability and willingness to participate in the program. Although the commenter does not provide substantive data or analysis to support their claim, DHS recognizes that many potential EB–5 investors may prefer to have as small a required investment amount as possible, but may be prepared to invest more if necessitated by law. DHS also acknowledges that there could be a decline in investors. However, in the absence of objective evidence on the impacts of the proposed increases on demand, DHS believes that it is reasonable to increase the minimum investment amounts to account for inflation for the reasons stated elsewhere, and to make future inflation adjustments based on the initial amount set by Congress in 1990.

2.4. Costs of Shifting the TEA Designation Responsibility From States to USCIS

Comment: One commenter suggested that the proposal to eliminate state involvement in the TEA designations has the potential to reduce costs for the industry. The same commenter, however, wrote that USCIS should consider some process for local involvement in unusual circumstances.

Response: DHS agrees that the change in the process for TEA designation has the potential to reduce costs for the industry. DHS, however, rejects the commenter's suggestion that there should continue to be local involvement in TEA designation. As discussed in earlier comment responses, congressional intent of the TEA provision was to incentivize EB–5 investment in areas of *actual* high unemployment. Currently, the states' dual role in both TEA designation and promoting investment within their borders incentivizes states to secure TEA designations through ''gerrymandering'' without due regard for whether the designated area truly is experiencing high unemployment. For these reasons, DHS has determined that it is necessary to shift the TEA designation mechanism from the states to DHS.

2.5. Costs to USCIS

Comments: A few commenters provided input on potential costs to USCIS. One commenter noted that the rulemaking would extend processing times, requiring an increase in USCIS

[106] In fact, to be eligible for removal of conditions on their permanent residence status, EB–5 investors need only sustain their investment for the two-year period of conditional residence beginning on the date they obtain that status.

[107] CIS Ombudsman, *Employment Creation Immigrant Visa (EB–5) Program Recommendations,* March 18, 2009, at *17, *available at https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf.*

adjudicator staffing. Similarly, another commenter wrote the rule would add TEA designation to an already overwhelmed and short-staffed adjudications team. Conversely, a few commenters suggested that the increased investment amounts will drastically reduce the number of investors, which would in turn reduce the workload for USCIS adjudicators. Regarding the proposal to eliminate state involvement in the designation of high unemployment areas, a commenter suggested DHS consider the increase in USCIS workload that would result. The commenter stated that USCIS should publish a ''census tract-based depiction of the entire U.S, so regional centers and developers can begin planning for the implementation of the new regulation.'' The commenter suggested that USCIS should consider the resources required to produce such a publication.

Response: DHS appreciates commenters' concerns over USCIS staffing issues, but conveys to the public that at a very broad level, staffing and adjudication time were considered when the rule was proposed. Additionally, USCIS conducts a fee study on a biennial basis which takes into consideration volume projections of forms and staffing levels, among other things.[108] USCIS staffing level plans are, in part, based on these studies in conjunction with anticipated regulatory changes. Further, as noted above, USCIS' Immigrant Investor Program Office (IPO) has restructured into multidisciplinary teams, which reduced Form I–829 adjudication times, and launched a similar initiative for Form I–526 adjudications in late 2017.[109] Finally, DHS rejects the commenter's suggestion that USCIS create and publish a census tract-based depiction of the entire United States. Foremost, census tract maps and unemployment data are otherwise publicly available, and it will be up to the petitioner to submit reliable and verifiable evidence to demonstrate that his or her investment is within a TEA. *See* final 8 CFR 204.6(j)(6)(ii)(B). In addition, the commenter raises concerns over the increased workload to DHS involved in taking over TEA designations from states, but does not say how publishing a map would increase or decrease the workload. DHS therefore believes the operational burden for USCIS to create and publish a census tract-based map of the United States would be prohibitive and redundant given that this type of data is publicly available to use in calculating the unemployment rate for a particular area.

3. Other Impacts (Executive Orders 12866 and 13563)

3.1. Impacts on the Number of Projects Receiving EB–5 Capital

Comments: Some commenters discussed impacts the proposed regulation would have on the number of projects receiving EB–5 capital. Commenters, including regional centers and individuals, expressed general concern that the increase in minimum investment amount would adversely affect current and future EB–5 projects by decreasing capital available to the EB–5 program participants. A couple of other commenters expressed concern that the lack of EB–5 investors would prevent projects from moving forward due to the lack of needed capital.

Response: As mentioned in the NPRM, due to the absence of data, DHS is unable to determine the number of current or future projects that may be negatively affected by the rule's provisions. This is in large part because DHS does not have data to estimate how this rulemaking or other factors may influence potential future investors' behavior. In the NPRM, DHS acknowledges that it is reasonable to suggest that some individuals may be deterred from investing at the increased investment amounts, and therefore some projects may be affected. DHS notes, however, that at the increased investment amounts projects will have to recruit fewer EB–5 investors to meet the same capital funding needs. DHS also notes that, even where a project may not be able to obtain the full amount of EB–5 capital originally contemplated, there may be other sources of potential capital that could be drawn upon to satisfy a given project's capital needs (for example, bank financing, non-EB–5 equity investment, etc.), although the financing from other sources could be costlier in terms of interest and other fees. One of the prime advantages of EB–5 capital for developers is that it can entail a low cost of capital. ''Many of such projects could easily have been financed on the private market, according to [New York University Stern School of Business scholar-in-residence] Gary Friedland. . . . 'It's a profit enhancement. . . .' ''[110] EB–5 capital has also been characterized as ''lower-cost capital with favorable terms.''[111] Further, DHS has no way to estimate when and how such other sources of capital may be used to offset any potential loss of EB–5 capital investment. DHS further believes the increases in the investment amount will bring the investment amounts from 1990 in line with their real values today and EB–5 capital will continue to be an important source of investment for projects.

3.2. Impacts on Particular Sectors of the Economy and Geographic Areas

Comments: Some commenters discussed sectors of the economy and geographic areas that may be disproportionately affected by the proposed rule. One commenter worried that certain industries, such as transportation and non-profit industries, ''where conventional capital is almost impossible,'' have utilized EB–5 capital in order to survive and create jobs. Some commenters expressed concern that the proposed rulemaking (specifically, removing the ability for states to designate TEAs) would negatively affect job growth and wellbeing of areas that need economic development the most, notably rural areas and high unemployment areas. Another commenter suggested that the proposed increase for TEA projects would unfairly affect the ability of rural projects to compete with projects in wealthy census blocks of the U.S. cities, as well as other countries, and proposed that the TEA investment amount increase to no more than $800,000, and be maintained at 50% of the standard investment amount.

Response: Business plans and economic analyses submitted to DHS associated with EB–5 petitions involve many industries and project types, and DHS does not dispute the commenter's claim that conventional financing may be difficult to obtain in some sectors. However, the commenter submitted no credible information or data to support the claim that the proposed changes to the program would cause a significant reduction in investment and job creation to a particular industry or the economy overall. DHS reiterates that the popularity and growth of the EB–5 program has likely been driven by

[108] In accordance with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901–03, (CFO Act), and Office of Management and Budget (OMB) Circular A–25, USCIS reviews the fees deposited into the Immigration Examinations Fee Account (IEFA) biennially.

[109] *See* Harrison Talking Points, *available at http://ilw.com/immigrationdaily/news/20171206.pdf.*

[110] Eliot Brown, ''How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings; Program Meant to Spur Jobs in Poor Areas Largely Financed Developments in Affluent Neighborhoods,'' *Wall St. J.,* Sept. 9, 2015, *available at https://www.wsj.com/articles/how-immigrants-cash-funds-luxury-towers-in-the-u-s-1441848965* (last visited Dec. 17, 2018).

[111] *Id.*

numerous factors, including but not limited to, its sourcing of capital funding for projects across U.S. industries. GAO's analysis—taken from a random sample of 200 of the 6,652 petitions submitted by petitioners to participate in the EB–5 program in the fourth quarter of fiscal year 2015—estimated that of the 99% of EB–5 petitioners who elected to invest in a TEA, about 3% chose to invest in rural areas and about 97% chose to invest in a high unemployment area (GAO noted that the percentages do not add up to 99 due to rounding), and of the EB–5 petitioners who elected to invest in high unemployment areas, only 12% invested in projects actually located in census tracts where the unemployment rate was over 8%.[112] Thus, given that only a small minority of investments are currently being made in either a rural area or a project located in census tracts with an unemployment rate of over 8%, even though over 30% of visas (3,000 out of 9,940) are statutorily reserved for investments in TEAs, it is very possible that the reforms contained in this rule will increase the percentage of EB–5 capital going towards rural areas and areas of true high unemployment.

Additionally, and as discussed in earlier comment responses, DHS agrees that not enough EB–5 investment has gone to rural areas and areas of truly high unemployment. The changes made in this rule to the TEA designation process, and DHS's decision to maintain the differential between the investment tiers at 50% (as one commenter suggested), or $900,000, were intended to better reflect Congressional intent with respect to incentivizing investments in these areas.. In addition, the higher minimum investment amount will mean that more capital per investor is being infused into those areas, and with the changes to the TEA designation process, DHS expects that more capital overall will be infused in areas of truly high unemployment.

3.3. Impacts of Change in the TEA Designation Standard

Comments: Several commenters addressed impacts of the proposed changes to the TEA designation standard. A commenter stated that the proposed TEA requirement would arbitrarily exclude lower unemployment areas that would otherwise attract a significant number, if not the majority, of their workers from nearby higher unemployment areas. The commenter stated that the proposed designation requirements lacked a sound economic or labor market rationale or basis, and would result in loss of economic projects, investment, and potential job creation opportunities. Some commenters stated that the increased investments and designation for TEAs would ''destroy'' the EB–5 program. Another commenter proposed that the TEA designation requirements should ensure that urban and rural projects are provided equal opportunity to improve their communities through job creation.

Response: DHS disagrees with the commenter that the new TEA requirements are arbitrary or would randomly exclude high unemployment areas. On the contrary, DHS believes the new high unemployment area designation standard brings clarity and consistency to a process that lacked uniformity nationwide. In developing the proposed high unemployment area standard, DHS sought to ensure the designation is made in a transparent and objectively defined manner, and not one in which the rules are subject to shifting applications by the states or other interested entities based on economic, political, or other rationales, some of which may be unrelated to incentivizing EB–5 investment in areas of true high unemployment. DHS disagrees that the new TEA designation standard, as it applies to either or both the TEA geography reform or the TEA investment amount increase, will destroy the EB–5 program, and notes that the commenter provides no credible evidence or information to support their assertion. As noted in other instances in the preamble, we believe there will continue to be sufficient interest in the EB–5 program notwithstanding the changes. Additionally, DHS adopts the new requirements to better align TEA designation requirements with Congressional intent and to ensure both urban and rural areas are provided appropriate opportunity to be designated as TEAs (and qualify for the reduced minimum investment amount incentive) in order to attract EB–5 capital funding.

3.4. Other Comments on Impacts

Comments: One commenter stated that increasing the investment amounts would negatively affect the ability of mid-career professionals and entrepreneurs to participate in the EB–5 program and this impact would deprive the economy of potential contributions of these younger investors. The commenter presented anecdotal evidence to support the claim that investors would be less interested and less able to invest at the higher investment amounts.

Response: As noted above, Congress enacted the investor visa program to attract entrepreneurs and job-creators into the U.S. economy [113] and infuse new capital into the country.[114] Congress did not specify any particular type of investor it was seeking.[115] As discussed previously, DHS believes that the increase to the minimum investment amount is appropriate because inflation has eroded the present-day value of the minimum investment required to participate in the EB–5 program since Congress set the initial investment amounts in 1990, and this final rule is an effort at remedying that erosion. In addition, DHS believes the increased amount will attract the same type of investment levels that Congress intended to attract in 1990.

DHS recognizes that many EB–5 petitioners do not necessarily take an entrepreneurial role in the operations of their new commercial enterprise; however, the EB–5 program has been and may continue to be used by petitioners who do take an entrepreneurial role in the operations of their new commercial enterprise. Moreover, under the current regulatory and statutory regime, the EB–5 program contains no specific entrepreneurship requirements. DHS does not differentiate between and collects no data on petitioners who take an entrepreneurial role in the operations of their new commercial enterprise relative to those who do not. Accordingly, DHS has no data to support and there is no persuasive reason to believe that raising the minimum investment amount would disproportionately decrease the number of petitioners who take an entrepreneurial role in their new commercial enterprise relative to those who do not.

4. Other Comments on the Regulatory Impact Analysis (Executive Orders 12866 and 13563)

Comments: Approximately 10 commenters provided other input on the Regulatory Impact Analysis. One commenter asserted that DHS has not fulfilled its obligation, under Executive Orders 12866 and 13563, to share how it weighed the option to pursue regulatory action as opposed to not taking action while Congress works to pursue partial reforms using the legislative process. According to the commenter, it is counterproductive to revise vital components of the program while Congress is debating possible program reforms. Another commenter

[112] GAO, Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas, GAO–17–487T, at 4–5, 8 (table 1) (Mar. 8, 2017).

[113] 136 Cong. Rec. 35,615 (Oct. 26, 1990).

[114] S. Rept. 101–55, p. 21 (1989).

[115] 136 Cong. Rec. 35,615.

said the impact analysis should be rejected as being an incomplete and not fully-considered analysis of the implications of the proposed increases in the proposed minimum investment amounts.

Response: The commenters appear to misunderstand the requirements of the Executive Orders. Executive Order 12866 is an exercise of the President's authority to manage the Executive Branch of the United States under Article II of the Constitution. The implementation of the Executive Orders and OMB Circulars, and other internal guidance, is a matter of Executive Branch consideration and discretion.

The fact that preparation of a regulatory impact analysis (RIA) under Executive Order 12866 is a matter of Executive Branch discretion is underscored by the terms of Executive Order 12866, section 10, which provides that nothing in the Executive order shall affect any otherwise available judicial review of agency action. The Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The internal, managerial nature of this and other similarly worded Executive Orders has been recognized by the courts, and actions taken by an agency to comply with the Executive Order are not subject to judicial review. *Cal-Almond, Inc.* v. *USDA,* 14F.3d 429, 445 (9th Cir. 1993) (citing *Michigan* v. *Thomas,* 805 F.2d 176,187 (6th Cir. 1986)).

DHS made a good faith effort to analyze the impacts of this rule. DHS reviewed numerous studies and requested comment from the public but received no credible data or information that would provide a more accurate estimate of the impacts.

DHS also disagrees that the current rulemaking is counterproductive when legislative reforms are under consideration. As mentioned in an earlier comment response, some members of Congress, commenting on this rule, requested that DHS take this regulatory action in part because of Congress' inability to enact legislative reforms over the 114th and 115th Congresses. In fact, the Chairs of the House and Senate Judiciary Committees noted that ''Congress has failed to reform'' the EB–5 program.[116] DHS is finalizing this NPRM to implement needed reforms in a timely manner. Promulgation of these regulatory change does not preclude legislative changes by Congress.

5. Comment on Unfunded Mandates Reform Act (UMRA)

Comment: One commenter disagreed with DHS that no unfunded mandates exist in the proposed rule. According to the commenter, states have developed systems to track and review portions of the EB–5 program as it relates to their state. The commenter provided background regarding the State of California's process for analyzing regional center information and determining census tracts that would qualify as areas of high unemployment. The commenter suggested that the proposed federalization of the designation of high unemployment areas would eliminate the state-based processes. The commenter urged DHS to consult with California and other states with unique regulatory frameworks prior to transitioning, and suggested governors and mayors also be consulted to determine the needs of their respective states and cities.

Response: DHS disagrees with the commenter that unfunded mandates are imposed by this final rule. The UMRA's written statement requirements apply when a Federal mandate is likely to 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 1 year. 2 U.S.C. 1532(a). A federal intergovernmental mandate means any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments (except certain conditions of Federal assistance or duties arising from participation in a voluntary Federal programs). 2 U.S.C. 658(5)(A). While one state might have voluntarily developed a system to track and review portions of the EB–5 program, this rule does not create any enforceable duties. *See id.;* 2 U.S.C. 1555. Furthermore, by eliminating state designation of high unemployment areas, DHS is assuming the administrative burden (and relieving states of the burden) of determining which areas qualify as TEAs, rather than relying on state designations.

Additionally, for the purposes of the UMRA of 1995, this rule does not impose costs exceeding the threshold of $100 million (or the inflation-adjusted value equivalent of $100 million in 1995 dollars).

IV. Statutory and Regulatory Requirements

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs.

This rule has been designated a ''significant regulatory action''—although not an economically significant regulatory action—under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. This rule is a regulatory action under Executive Order 13771.

(1) Summary

This final rule changes certain aspects of the EB–5 program that are in need of reform and updates the regulations to reflect statutory changes and codify existing policies. This final rule makes five major categories of revisions to the existing EB–5 program regulations. Three of these categories, which involve (i) priority date retention; (ii) increasing the investment amounts; and (iii) reforming the TEA designations, are substantive. The two other major categories focused on (iv) procedures for removal of conditions on lawful permanent residence; and (v) miscellaneous changes, involve generally technical adjustments to the EB–5 program. Details concerning these three major substantive and two major technical categories of changes are provided in above sections, and in Table 2 in terms of benefit-cost considerations.

Within the five major categories of revisions to existing regulations, this

[116] U.S. Senator Charles Grassley, U.S. Representative Bob Goodlatte, *Press Release: Grassley, Goodlatte Call on DHS to Finalize EB–5 Regulations, End Unacceptable Status Quo,* (March 22, 2018) available at *https://judiciary.house.gov/press-release/goodlatte-grassley-call-dhs-finalize-eb-5-regulations-end-unacceptable-status-quo/.* Senator Grassley had noted a few days earlier that members of Congress had been working on reform aggressively for years, but to no avail. *See* 164 Cong. Rec. S1778 (March 19, 2018).

final rule also makes some changes from the NPRM. Most importantly, the reduced investment amount for TEAs will be raised to $900,000 instead of the proposed $1.35 million, in order that the 50 percent differential between investment tiers be maintained. The other nonsubstantive changes between this final rule and the NPRM are listed here:

- Clarification that the priority date of a petition for classification as an investor is the date the petition is properly filed;
- Clarification that a petitioner with multiple approved immigrant petitions for classification as an investor is entitled to the earliest qualifying priority date;
- Modifying the original proposal that any city or town with a population of 20,000 or more may qualify as a TEA, to provide that only cities and towns with a population of 20,000 or more *outside* of metropolitan statistical areas (MSAs) may qualify as a TEA;
- Adding that amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon the changes in this rulemaking will not independently result in denial or revocation of a petition, provided the petition meets certain criteria; and
- Additional minor non-substantive and clarifying changes.

DHS analyzed the five major categories of revisions carefully. EB–5 investment structures are complex, and typically involve multiple layers of investment, finance, development, and legal business entities. The interconnectedness and complexity of such relationships make it very difficult to quantify and monetize the costs and benefits. Furthermore, since demand for EB–5 investments incorporate many factors related to international and U.S. specific immigration and business, DHS cannot predict with accuracy changes in demand for the program germane to the major categories of revisions that increase the investment amounts and reform the TEA designation process. DHS has no way to assess the potential increase or reduction in investments either in terms of past activity or forecasted activity, and cannot therefore quantitatively estimate any impacts concerning job creation, losses or other downstream economic impacts driven by these major provisions.

There are several costs involved in the final rule for which DHS has conducted quantitative estimates. For the technical revision that clarifies that derivative family members must file their own petitions to remove conditions on their permanent residence when they are not included in the principal investor's petition, we estimate costs to be approximately $91,023 annually for those derivatives. Familiarization costs to review the rule are estimated to be $629,758 annually.

In addition, DHS has prepared a Final Regulatory Flexibility Analysis (FRFA) under the Regulatory Flexibility Act (RFA) to discuss potential impacts to small entities. As discussed further in the FRFA, DHS cannot estimate the exact impact to small entities. DHS, however, does expect some impact to regional centers and non-regional center projects. As it relates to the FRFA, each of 1,570 business entities involved in familiarization of the rule would incur costs of about $401.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS

Current policy	Adopted change	Impact
Priority Date Retention		
Current DHS regulations do not permit investors to use the priority date of an immigrant petition approved for classification as an investor for a subsequently filed immigrant petition for the same classification.	DHS will allow an EB–5 immigrant petitioner to use the priority date of an immigrant petition approved for classification as an investor for a subsequently filed immigrant petition for the same classification for which the petitioner qualifies, unless DHS revokes the petition's approval for fraud or willful misrepresentation by the petitioner, or revokes the petition for a material error.	Benefits: • Makes visa allocation more predictable for investors with less possibility for large fluctuations in visa availability dates due to regional center termination. • Provides greater certainty and stability regarding the timing of eligibility for investors pursuing permanent residence in the U.S. and thus lessens the burden of unexpected changes in the underlying investment. • Provides more flexibility to investors to contribute to more viable investments, potentially reducing fraud and improving potential for job creation. Costs: • None anticipated.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS—Continued

Current policy	Adopted change	Impact
Increases to Investment Amounts		
The standard minimum investment amount has been $1 million since 1990 and has not kept pace with inflation—losing almost half its real value. Further, the statute authorizes a reduction in the minimum investment amount when such investment is made in a TEA by up to 50 percent of the standard minimum investment amount. Since 1991, DHS regulations have set the TEA investment threshold at 50 percent of the minimum investment amount. Similarly, DHS has not increased the minimum investment amount for investments made in a high employment area beyond the standard amount.	DHS will account for inflation in the investment amount since the inception of the program. DHS will raise the minimum investment amount to $1.8 million to account for inflation through 2015, and includes a mechanism to automatically adjust the minimum investment amount based on the unadjusted CPI–U every 5 years. DHS will retain the TEA minimum investment amount at 50 percent of the standard amount. The minimum investment amount in a TEA will initially increase to $900,000. DHS is not changing the equivalency between the standard minimum investment amount and those made in high employment areas. As such, DHS will set the minimum investment amounts in high employment areas to be $1.8 million, and follow the same mechanism for future inflationary adjustments.	Benefits: • Increases in investment amounts are necessary to keep pace with inflation and real value of investments; • Raising the investment amounts increases the amount invested by each investor and potentially increases the total amount invested under this program. • For regional centers, the higher investment amounts per investor will mean that fewer investors will have to be recruited to pool the requisite amount of capital for the project, so that searching and matching of investors to projects could be less costly. Costs: • Some investors may be unable or unwilling to invest at the higher levels of investment. • There may be fewer jobs created if fewer investors invest at the higher investment amounts. • For regional centers, the higher amounts could reduce the number of investors in the global pool and result in fewer investors, thus potentially making the search and matching of investors to projects more costly. • Potential reduced numbers of EB–5 investors could prevent certain projects from moving forward due to lack of requisite capital. • An increase in the investment amount could make foreign investor visa programs offered by other countries more attractive.
TEA Designations		
A TEA is defined by statute as a rural area or an area that has experienced high unemployment (of at least 150 percent of the national average rate). Currently, investors demonstrate that their investments are in a high unemployment area in two ways: (1) providing evidence that the Metropolitan Statistical Area (MSA), the specific county within the MSA, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business, has experienced an average unemployment rate of at least 150 percent of the national average rate; or (2) submitting a letter from an authorized body of the government of the state in which the new commercial enterprise is located, which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area.	DHS will eliminate state designation of high unemployment areas. DHS also amends the manner in which investors can demonstrate that their investments are in a high unemployment area. (1) DHS will add cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that may qualify as a TEA based on high unemployment. (2) DHS will amend its regulations so that a TEA may consist of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business if • the new commercial enterprise is located in more than one census tract; and • the weighted average of the unemployment rate for the tract or tracts is at least 150 percent of the national average. (3) DHS will also amend its regulations so that a TEA may consist of an area comprising the census tract(s) in which the new commercial enterprise is principally doing business, including any and all adjacent tracts, if the weighted average of the unemployment rate for all included tracts is at least 150 percent of the national average.	Benefits: • Rules out TEA configurations that rely on a large number of census tracts indirectly linked to the actual project tract by numerous degrees of separation. • Potential to better stimulate job growth in areas where unemployment rates are the highest, consistent with congressional intent. Costs: • This TEA provision could cause some projects and investments to no longer qualify as being in high unemployment areas. DHS presents the potential number of projects and investments that could be affected in Table 5.

TABLE 2—SUMMARY OF CHANGES AND IMPACT OF THE ADOPTED PROVISIONS—Continued

Current policy	Adopted change	Impact
Current technical issues: • The current regulation does not clearly define the process by which derivatives may file a Form I–829 petition when they are not included on the principal's petition. • Interviews for Form I–829 petitions are generally scheduled at the location of the new commercial enterprise. • The current regulations require an immigrant investor and his or her derivatives to report to a district office for processing of their permanent resident cards.	DHS will amend its regulations to include the following technical changes: • Clarify the filing process for derivatives who are filing a Form I–829 petition separately from the immigrant investor. • Provide flexibility in determining the interview location related to the Form I–829 petition. • Amend the regulation by which the immigrant investor obtains the new permanent resident card after the approval of his or her Form I–829 petition because DHS captures biometric data at the time the immigrant investor and derivatives appear at an ASC for fingerprinting. • Add 8 CFR 204.6(n) to allow certain investors to remain eligible for the EB–5 classification if a project's offering is amended or supplemented based upon the final rule's effectiveness.	Conditions of Filing: Benefits: • Adds clarity and eliminates confusion for the process of derivatives who file separately from the principal immigrant investor. Costs: • Total cost to applicants filing separately will be $91,023 annually. Conditions of Interview: Benefits: • Interviews may be scheduled at the USCIS office having jurisdiction over either the immigrant investor's commercial enterprise, the immigrant investor's residence, or the location where the Form I–829 petition is being adjudicated, thus making the interview program more effective and reducing burdens on the immigrant investor. • Some petitioners will benefit by traveling shorter distances for interviews and thus see a cost savings in travel costs and opportunity costs of time for travel and interview time. Costs: • None anticipated. Investors obtaining a permanent resident card: Benefits: • Cost and time savings for applicants for biometrics data. Costs: • None anticipated. Eligibility Following Changes to Offering: Benefits: • An amendment to a project's offering based on the final rule's provisions might not result in the denial or revocation of a petition. Costs: • None anticipated.
Miscellaneous Changes		
Current miscellaneous items: • 8 CFR 204.6(j)(2)(iii) refers to the former U.S. Customs Service. • Public Law 107–273 eliminated the requirement that alien entrepreneurs establish a new commercial enterprise from both INA section 203(b)(5) and INA section 216A. • 8 CFR 204.6(j)(5) introductory text and (j)(5)(iii) reference ''management''; • Current regulation at 8 CFR 204.6(j)(5) has the phrase ''as opposed to maintain a purely passive role in regard to the investment''; • Public Law 107–273 allows limited partnerships to serve as new commercial enterprises; • Current regulation references the former Associate Commissioner for Examinations. • 8 CFR 204.6(k) requires USCIS to specify in its Form I–526 decision whether the new commercial enterprise is principally doing business in a targeted employment area. • Sections 204.6 and 216.6 use the term ''entrepreneur'' and ''deportation.'' These sections also refer to Forms I–526 and I–829. • 8 CFR 204.6(i) and (j)(6)(ii)(B) use the phrase ''geographic or political subdivision'' in describing state designations of high unemployment areas for TEA purposes. • The priority date of a petition for classification as an investor is the date the petition is properly filed.	DHS will amend its regulations to make the following miscellaneous changes: • DHS is updating references at 8 CFR 204.6(j)(2)(iii) from U.S. Customs Service to U.S. Customs and Border Protection. • Removing references to requirements that alien entrepreneurs establish a new commercial enterprise in 8 CFR 216.6. • Removing references to ''management'' at 8 CFR 204.6(j)(5) introductory text and (j)(5)(iii); • Removing the phrase ''as opposed to maintain a purely passive role in regard to the investment'' from 8 CFR 204.6(j)(5); • Clarifies that any type of entity can serve as a new commercial enterprise; • Replacing the reference to the former Associate Commission for Examinations with a reference to the USCIS AAO. • Amending 8 CFR 204.6(k) to specify how USCIS will issue a decision. • Revising sections 8 CFR 204.6 and 216.6 to use the term ''investor'' instead of ''entrepreneur'' and to use the term ''removal'' instead of ''deportation.'' • Removing references to ''geographic or political subdivision'' in 8 CFR 204.6(i) and (j)(6)(ii)(B). • Providing clarification in 8 CFR 204.6(d) that the petitioner of multiple immigrant petitions approved for classification as an investor generally is entitled to the earliest qualifying priority date.	These provisions are technical changes and will have no impact on investors or the government.

In addition to the above, applicants will need to read and review the rule to become familiar with the final rule provisions. Familiarization costs to read and review the rule are estimated at $629,758 annually.

(2) Background and Purpose of the Final Rule

The preceding sections of the preamble review key historical aspects and goals of the program, and specific justifications for the particular provisions in the final rule. This section supplements and provides additional points of analysis that are pertinent to this regulatory impact assessment.

A person wishing to immigrate to the United States under the EB–5 program must file an Immigrant Petition by Alien Investor (Form I–526). Each individual immigrant investor files a Form I–526 petition containing information about their investment.[117] The investment must be made into either an NCE within a designated regional center in accordance with the Regional Center Program or a standalone NCE outside of the Regional Center Program (''non-regional center'' investment). The NCE may create jobs directly (required for non-regional center investments), or pool immigrant investors' funds into associated NCEs that in turn undertake job-creating activities directly or, more typically, indirectly through JCEs which receive EB–5 capital from the regional center (RC)-associated NCEs. With respect to regional center investors, once a regional center has been designated, affiliated investors can submit Form I–526 petitions in the concurrent year and in future years, provided the regional center maintains its designation. Each year, the stock of approved regional centers represents the previous year's approved total, plus new regional centers approved during the current year, minus regional centers that are terminated in the concurrent year.[118]

DHS analysis of Form I–526 filing data for FY 2014–2016 indicates that on average, 13,103 Form I–526 petitions were filed annually. Investments in regional centers accounted for an average of 12,042 such petitions annually, or 92 percent of all submitted Form I–526 petitions, while non-regional center investments accounted for an average of 1,062 Form I–526 petitions annually, or about 8 percent.

EB–5 filings grew rapidly starting in 2008, when the U.S. financial crisis reduced available U.S.-based commercial lending funds and alternative funding sources, such as the EB–5 program, were sought. Based on the type of projects that Form I–526 petitions describe, it appears that EB–5 capital has been used as a source of financing for a variety of projects, including a large number of commercial real estate development projects to develop hotels, assisted living facilities, and office buildings.

In general, DHS databases do not track the total number of investment projects associated with each individual EB–5 investment by petitioners, but rather track the NCE associated with each individual investment. Any given NCE could fund multiple projects. DHS analysis of filing data reveals that for FY 2014–2016, on average per year, 1,461 unique NCEs were referenced in the Form I–526 petitions submitted. On average 51 percent of the overall number of unique NCEs were found in petitions associated with regional centers, and 49 percent of the overall number of NCEs, were found in non-regional center-associated petitions. This suggests that on average, unique NCEs are more common in non-regional center filings, as 92 percent of individual petitioner filings are associated with regional centers.[119]

DHS obtained and analyzed a random sample of Form I–526 petitions that were submitted in FY 2016. The files in the sample were pending adjudicative review at IPO in May 2016.[120] As the results obtained from analysis of this random sample are utilized in forthcoming sections of this regulatory analysis, it henceforth will be referred to as the ''2016 NCE sample'' for brevity. A key takeaway from the review of the sample is that a majority of all NCEs (80 percent) blended program capital with capital from other sources. For regional center NCEs sourced with blended capital, the EB–5 portion comprised 40 percent of the total capital outlay, while for non-regional center NCEs sourced with blended capital, the EB–5 portion comprised 50 percent of the total capital outlay.

(3) Baseline Program Forecasts

DHS produced a baseline forecast of the total number of Form I–526 receipts, beginning in the first year the rule will take effect and extending for 10 years for the period FY 2017–2026.[121] This Form I–526 forecast includes the historical trend of Form I–526 receipts from FY 2005 to FY 2015, the filing projections from the USCIS Volume Projections Committee (VPC), and input from IPO. The VPC projects that the high rate of growth in EB–5 investment filings, which averaged 39 percent annually since FY 2008, will slow to about 3.3 percent over the next 3 years and will subsequently level off. The program grew exponentially starting in 2008 with the economic downturn. At that time, commercial lending was extremely difficult to obtain. As the U.S. economy has improved, commercial lending is now more viable, resulting in fewer overall petitions. In addition, in the past, USCIS has experienced significant spikes in filings in anticipation of the possibility that Congress would either allow the Regional Center Program to sunset or implement new legislative reforms that would increase the required minimum investment amounts, as investors sought to ''beat'' the new levels. These spikes have occurred around the program's anticipated sunset (*e.g.,* September 2015, December 2015, and September 2016). USCIS believes that the filing growth rate will level off once the program is extended for longer than one year at a time. DHS used this information to inform a forecasting model based on a logistic function that captures the past increase in receipts from a low baseline, the exponential growth that the program experienced from FY 2008–2015, and a very small rate of growth anticipated for the next 3 years leading to a leveling off of future growth. The technical details are provided in the accompanying footnote, and as can be seen in the graph, the DHS estimation technique closely fits past

[117] To be eligible at the time of the Form I–526 petition's filing, investors must demonstrate either that they have already invested their funds into the NCE or that they are actively in the process of investing. Some investors choose to demonstrate commitment of funds by placing their capital contribution in an escrow account, to be released irrevocably to the NCE upon a certain trigger date or event, such as approval of the Form I–526 petition.

[118] Between May 2008 and July 2017, 128 regional centers have been terminated. USCIS, Immigrant Investor Regional Centers, *available at http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers.*

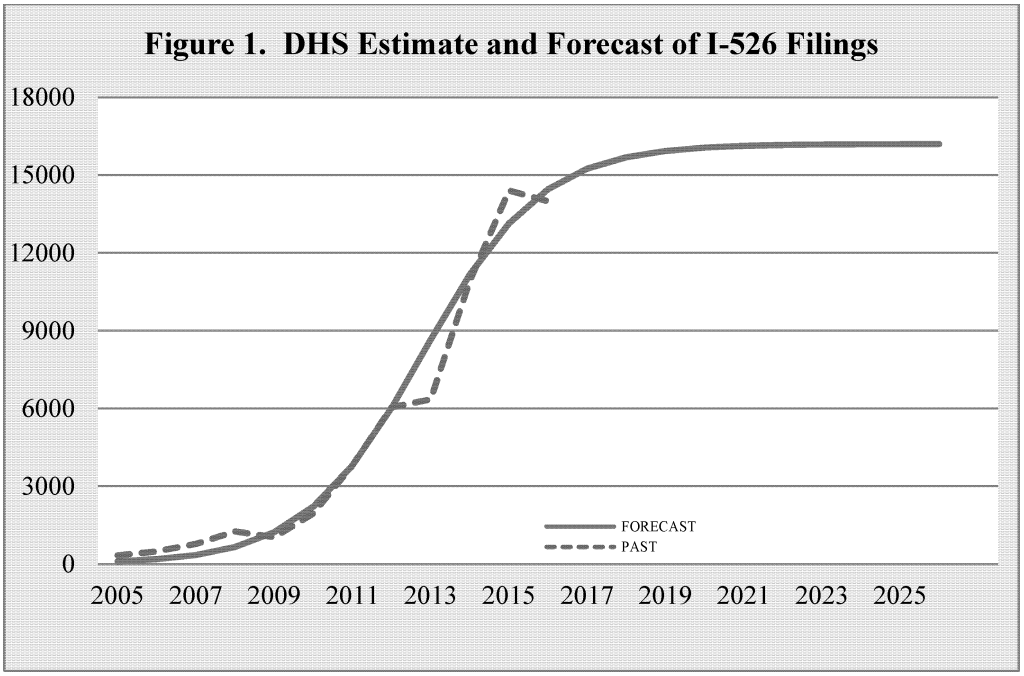
[119] IPO NCE data records indicate that the disparity in the regional center petitioner filings compared to unique NCEs—92 percent of total petitioner filings compared to 49 percent of unique NCEs—exists because regional center projects include 18 investors on average, while non-regional center investments include only 1.5 investors on average.

[120] The figures for yearly volumes of Form I–526 filings are publicly available under DHS performance data: USCIS, Number of Form I–526 Immigrant Petitions by Alien Entrepreneurs by Fiscal Year, Quarter, and Case Status 2008–2016, *available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2017_qtr2.pdf.* The NCE data were obtained from file tracking data supplied by IPO. Because the NCE file submissions contain detailed business plan and investor information, the NCE data are not captured in formal DHS databases that are provided publicly, but rather in internal program office and adjudication records.

[121] DHS did not attempt a similar forecast for Form I–924 receipts, because DHS does not have a sound basis for predicting how the rule will affect such receipts.

filings and captures the expected trends alluded to earlier.[122]

Figure 1 graphs the volume of ''past'' actual Form I–526 filings from 2005 to 2016, compared with the past receipts for the same period estimated by our forecasting function, plus the forecasts thereafter for future filings. Additionally, changes in receipts driven by this rule could cause variations in the future receipts that are not reflected in the present forecasts.



The forecast values are listed in Table 3:

TABLE 3—DHS FORECASTS FOR INVESTOR FORM I–526 RECEIPTS AND NCES

FY	Investors	NCEs
2017	15,241	1,481
2018	15,685	1,524
2019	15,925	1,547
2020	16,052	1,560
2021	16,119	1,566
2022	16,153	1,570
2023	16,171	1,571
2024	16,181	1,572
2025	16,185	1,573
2026	16,188	1,573
10-year total	159,900	15,538
Annual Average	15,990	1,554

The last column of Table 3 provides estimates of the total number of NCEs. An assumption of the NCE forecasts is that there is no change in the relationship between the number of NCEs and the number of Form I–526 filings over time.[123] The impact of these provisions on the forecasts will be described in the relevant sections of this analysis.

(4) Economic Impacts of the Major Rule Provisions

a. Retention of Priority Date

This rule will generally allow an EB–5 immigrant petitioner to use the priority date of an approved EB–5 petition for any subsequently filed EB–5 petition for which the petitioner qualifies. Provided that petitioners have not yet obtained lawful permanent residence pursuant to their approved petition and that such petition has not been revoked on certain grounds, petitioners will be able to retain their priority date and therefore retain their place in the visa queue. DHS is allowing priority date retention to: Address situations in which petitioners may become ineligible through circumstances beyond their control (*e.g.,* the termination of a regional center) as they wait for their EB–5 visa priority date to become current; and provide investors with greater flexibility to deal with changes to business conditions. For example, investors with an approved petition involved with an underperforming or failing investment project will be able to move their investment funds to a new, more promising investment project without losing their place in the visa queue.

There will be an operational benefit to the investor cohort because priority date retention will make visa allocation more predictable with less possibility for massive fluctuations due to regional center termination that could, in the case of some large regional centers, negatively affect investors who are in the line at a given time. This change will provide greater certainty and stability for investors in their pursuit of permanent residence in the United States, helping lessen the burden of situations unforeseen by the investor related to their investment. In addition,

[122] DHS utilized a logistic function of the format, $(C/(\lambda + \beta e^{-\rho t}))$ where input t is the time year code (starting with zero), e is the base of the natural logarithm, and C, λ, β, and ρ are parameters such that C/λ asymptotically approaches the maximum level of the predicted variable, the Form I–526 receipts. The parameters β and ρ jointly impact the inflection and elongation of the sigmoidal curve. DHS did not attempt an estimation procedure focused on minimizing the sum of squared errors (such as least squares regression) or other fitting technique, and instead chose the parameters to reflect the past trend of actual receipts and the expected leveling off in their growth rate. For the final forecast run, the specific calibration was C = 17,000, λ = 1.05, β = 180, and ρ = .66. The maximum expected level of receipts (equal to 17,000/1.05 which is approximately 16,200) was determined via input from EB–5 program management.

[123] In other words, the assumption is that the current number of investors per NCE holds in the future. For the NCE projections, the 2016 value is set at the 2014–2016 average of 1,404. For each year thereafter, the figure is based on the growth rate of predicted Form I–526 receipts.

by allowing priority date retention, investors obtain greater flexibility in moving their investment funds out of potentially risky projects, thereby potentially reducing fraud and improving the potential for job creation in the United States. DHS cannot quantify or monetize the net benefits of the priority date retention provision or assess how many past or future investors might be affected.

b. Investment Amount Increase

DHS will raise the standard minimum investment amount from the current $1 million to $1.8 million to account for the rate of inflation from the program's inception in 1990 until the time of the proposed rule. DHS will also raise the reduced investment amount for TEA projects to $900,000, which is 50 percent of the general investment amount.[124] DHS will further adjust the minimum investment amounts every 5 years. The standard level will be adjusted for inflation based on the 1990 level and the reduced amount will be adjusted to maintain 50 percent of the standard minimum investment amount. These increases are needed because the investment amounts have never been adjusted to keep pace with inflation, thereby eroding the real value of the investments.

DHS believes it is reasonable to assume that some prospective investors under the current rule may be unable or unwilling to invest at either of the higher levels of investment under the new rule. However, DHS is unable to estimate the potential reduction in investments either in terms of past activity or forecasted activity, and cannot therefore estimate any impacts concerning job creation, losses or other downstream economic impacts driven by the investment amount increases. DHS evaluates the source of investor funds for legitimacy but not for information on investor income, wealth, or investment preferences. DHS therefore cannot estimate how many past investors would have been unable or unwilling to have invested at the new amounts, and hence cannot make extrapolations to potential future investors and projects. However, as noted earlier, it would take a substantial reduction in investors to actually reduce total investment below current levels. If the 80 percent higher levels of required investment do not lead to a reduction in the number of EB–5 investments, the absolute amount of investment would increase by 80 percent. There is currently about $4.43 billion in annual TEA investment under the program. At the TEA investment amount of $900,000 in this final rule, this same level of total TEA investment would be achieved with 44 percent fewer investors. Furthermore, small and even moderate reductions in investors actually stand to generate growth in total investment. It is entirely possible that total investment will actually increase, even if the number of investors were to decrease.

In addition to the effect on investors, it is reasonable to assume that the changes to the investment amounts will also affect regional centers. If the higher amounts reduce the number of investors in the global pool, competition for fewer investors may make it more costly for regional centers to identify and match with investors. However, the net effect on regional center costs is not something DHS can forecast with accuracy.

DHS also believes that for both regional center and non-regional center investments, the projects and the businesses involved could be affected. A reduced number of EB–5 investors could preclude some projects from going forward due to outright lack of requisite capital. Other projects will likely see an increase in the share of non-EB–5 capital, such as capital sourced to domestic or other foreign sources. As alluded to in Section Two of this analysis, analysis of the 2016 NCE sample reveals that 80 percent of NCEs blend EB–5 capital with other sources of capital. DHS believes that the costs of capital and return to capital could be different depending on the source of the capital. As a result, a change in the composition of capital could change the overall profitability for one or more of the parties involved; however, if the project on the whole promises net profitability, taking into account risk and potential returns from other investments, it may proceed as planned. The specific impact on each party for each project will vary on a case-by-case basis, and will be dependent on, among other things, the particular financial structures and agreements between the regional center, investors, NCE, and project developer. It will also be determined by local and regional investment supply and demand, lending conditions, and general business and economic factors.

DHS also considers that an increase in the investment amount could make other countries' foreign investor visa programs more attractive and therefore there could be some substitution into such programs. The decision to invest in another country's program will depend in part on the investment and country-specific risk preferences of each investor. While DHS has no means of ascertaining such preferences, it is possible that some substitution into non-U.S. investor visa programs could occur as a result of the higher required investment amounts. However, according to DHS research, substitution into another country's immigrant investor program will likely be more costly for investors than investing in the EB–5 program even with increases in the EB–5 investment amounts. DHS has laid out some of the comparisons to other countries' immigrant investor programs earlier in the preamble.

There are numerous ancillary services and activities linked to both regional center and direct investments, such as, but not limited to, business consulting and advising, finance, legal services, and immigration services. However, DHS is not certain how the rule will affect these services. Similarly, DHS does not have information on how the revenues collected from these types of activities contribute to the overall revenue of the regional centers or direct investments.

[124] The adjustment to the standard minimum investment amount is based on the CPI–U, which, as compared to a base date of 1982–1984, was 130.7 in 1990 and 237.017 in 2015. The actual increase in prices for the period was approximately 81.34 percent, obtained as $((CPI\text{–}U_{2015}/CPI\text{–}U_{1990}) - 1)$. The $1.8 million investment amount is rounded. *See generally* Bureau of Labor Statistics, Inflation & Prices, *available at http://www.bls.gov/data/#prices.*

In summary, DHS believes that the increase in the minimum investment amount will bring the investment amounts in line with real values. DHS recognizes that some of the investment increase benefits could be offset if some investors are deterred from investing at the higher amounts. DHS does not have the data or information necessary to attempt to estimate such mitigating effects. It is possible that the higher investment amounts could deter some investors from EB–5 activity and therefore negatively affect regional center revenue in some cases, although the magnitudes and net effects of these impacts cannot be estimated. It is also possible that the higher investment amounts could attract additional capital overall and stimulate projects to get off the ground that otherwise might not. Due to the complexity of EB–5 financial arrangements and unpredictability of market conditions, DHS cannot forecast with confidence how many projects would be affected by the increased investment amounts through a change in the number of individuals investing through the EB–5 program. Some projects could be forgone while others will proceed with a higher composition of non-EB–5 capital, with resultant changes in profitability and rates of return to the parties involved. An overall decrease in investments and projects will potentially reduce some job creation and result in other downstream effects.

c. Periodic Adjustments to the Investment Amounts

In addition to initially raising the investment thresholds to account for inflation, DHS will adjust the standard investment threshold every 5 years (as compared to $1,000,000 in January 1990 at the program's inception) to account for future inflation, and to adjust the reduced investment threshold for TEAs to keep pace with the standard amount. DHS projected the effects of this methodology using a relatively low, recent inflation index (1.5 percent) and a more moderate inflation index (3.2 percent). DHS made two separate projections based on two different indexes because DHS cannot predict with certainty what the future inflation index will be. The 1.5 percent estimate is based on the average rate of inflation for the period 2009–2017, which economists generally consider to be relatively low compared to earlier periods. The 3.2 percent estimate used for the higher-end projection is based on the 3.2 percent inflation rate in 2011, which was the highest annual inflation rate observed from the 2009 to 2017 period. DHS believes it is appropriate to characterize the 3.2 percent rate as a ''moderate'' inflation baseline, because although it is higher than the average annual rate since 2009, it is not considered by economists to be high as compared to other historical periods.[125]

Table 4 lists the general minimum investment amounts and reduced investment amounts after 5 and 10 years if the amounts are raised initially as finalized in this rule. The figures are in millions of U.S. dollars and are rounded to the nearest fifty-thousandth. DHS notes that estimates are slightly different than those provided in the proposed rule due to the modification to the inflation adjustment.

TABLE 4—PROJECTED INVESTMENT AMOUNTS AT 5-YEAR REVISIONS

[Figures are in millions of $]

Provision: Initial increase	Revision (year)	Projected investment amount	
		Based on average inflation scenario, 1.5 percent	Based on moderate inflation scenario, 3.2 percent
Standard Investment Amount = $1.8 Million in 2018	5	1.95	2.12
	10	2.10	2.48
Minimum Investment Amount = $900,000 in 2018	5	.98	1.06
	10	1.05	1.24

DHS attempted to assess the costs of these changes. As described earlier, the potential cost of the higher amounts may result in a reduction in the number of investors and projects and a lower share of EB–5 capital for some projects, which could result in capital losses, fewer jobs created, and other reductions in economic activity. Or, there could be an increase in overall EB–5 capital flowing into the economy, which could result in more jobs created and increases in economic activity. DHS is not able to predict how many investors and projects will be affected, nor can we predict the impact to the capital available for projects.

d. Targeted Employment Areas

Under the current regulations, a state may designate an area in which the enterprise is principally doing business as a high unemployment TEA if that area is a geographic or political subdivision of a metropolitan statistical area (MSA) or of a city or town with a population of 20,000 or more. As is the current practice, state determinations for TEAs define the appropriate boundaries of a geographic or political subdivision that constitutes the TEA, although it is the responsibility of the petitioner to provide the supporting data and methodology involved in the state TEA determination. DHS ensures state designations comply with the statutory requirement that the proposed area designated by the state has an unemployment rate of at least 150 percent above the national average by reviewing state determinations of the unemployment rate and assessing the method or methods by which the state authority obtained the unemployment statistics.[126] Currently DHS does not

[125] Allan Meltzer, ''A Slow Recovery with Low Inflation,'' Hoover Inst., Econ. Working Paper No. 13,110 (2013), *available at http://www.hoover.org/sites/default/files/13110_-_meltzer_-_a_slow_recovery_with_low_inflation.pdf; see also* Michael T. Kiley, *Low Inflation in the United States: A Summary of Recent Research,* FEDS Notes, Board of Governors of the Federal Reserve System (Nov. 23, 2015), *available at http://www.federalreserve.gov/econresdata/notes/feds-notes/2015/low-inflation-in-the-united-states-a-summary-of-recent-research-20151123.html;* Mary C. Daly and Bart Hobijn, *Downward Nominal Wage Rigidities Bend the Phillips Curve,* Fed. Reserve Bank S.F., Working Paper No. 2013–08 (2014), *available at http://www.frbsf.org/economic-research/files/wp2013-08.pdf.* The inflation rates reflect the yearly seasonally adjusted average for the consumer price index for all urban consumers (CPI–U) and are found at: *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201808.pdf.*

[126] USCIS Policy Manual, 6 USCIS–PM G, Chapter 2.A(5).

limit the number of census tracts that a state can aggregate as part of a high unemployment TEA designation. TEA configurations that DHS has evaluated from state designations have included the census tract or tracts where the NCE is principally doing business (''project tract(s)''), one or more directly adjacent tracts, and others that are further removed, resulting in configurations resembling a chain-shape or other contorted shape. This final rule will remove states from the high unemployment area designation process; instead, investors will be required to provide sufficient evidence to DHS in order to qualify for the reduced investment threshold. Under this final rule, DHS will generally limit the number of census tracts that could be combined for this purpose.[127] Specifically, DHS will allow for a high unemployment area to consist of an area comprised of the census tract(s) in which the new commercial enterprise is principally doing business, including any and all adjacent tracts, if the weighted average of the unemployment rate for all included tracts is at least 150 percent of the national average. Additionally, DHS will allow cities and towns with a population of 20,000 or more outside of MSAs to qualify as a TEA based on high unemployment. See final 8 CFR 204.6(j)(6)(ii)(A).

In order to assess the impacts of the changes to the TEA designation requirements, DHS performed further analysis on the 2016 NCE sample. First, DHS determined, based on the sample, that 98 percent of regional center investments and 68 percent of non-regional center investments are made into TEAs. Because the 2016 sample significantly over-represents non-regional center investments, DHS also determined the percentage of investments overall that were applied to TEAs. DHS found that 96 percent of investments and 83 percent of NCEs were applied to TEAs.[128] About 9 percent of investments that were made into TEAs were made into rural TEAs. The non-regional center share of rural TEA investments was slightly higher than that of regional centers, at 9 and 11 percent, in order.

DHS then parsed the TEA filings comprising the 2016 NCE sample into specific cohorts. Specifically, DHS is interested in the number and share of projects and NCEs that would likely be affected by the rule. DHS thus split the sample of NCEs into regional center and non-regional center groups, and then broke these into two subgroups each. The first subgroup is the number of filings that comprised rural, and then high unemployment TEA filings that did not rely on state designations to qualify. The TEAs in this cohort did not require state designations because the project was located in a specific geographical unit that met the unemployment threshold.[129] These TEAs would be unaffected by the changes being finalized in this rule as they pertain to TEA reform. This first subgroup also adds the filings that relied on one or two census tracts, respectively. These too will be unaffected by the specific TEA changes proposed in this rule. Hence the first subgroup represents filings that would not be affected by the rule. The second subgroup is the remainder—those filings into high unemployment TEAs that relied on three or more census tracts. This final rule will potentially affect some of the designations in this second subgroup.

Having broken out the filings to identify the segment that would potentially be affected, DHS proceeded to estimate the shares of investments and NCEs potentially impacted, as well as the actual numbers, on an annual basis. There are two caveats to our analysis. Foremost, we emphasize that the figures presented represent potential and likely maximum impacts for the following reason. Some of the group that relied on three or more tracts may have been configured in a manner that could meet the new provision. The data that DHS analyzed only contained the number of tracts, not the raw data to evaluate the actual geographical configuration and to determine if it would meet the provision in the final rule. Second, the figures for investments and NCEs apply to petitions filed and thus not to actual approvals or investments actually made. The weighted percentages and figures applicable are summarized in the Table 5 below, noting that the amounts are based on the average of filings for FY 2014–2016; potential changes in future filing patterns are discussed later.

TABLE 5—TEA METRICS

TEA cohort	Investments		NCEs	
	Amount	Share (percent)	Amount	Share (percent)
Not affected by the rule	6,207	46	832	57
Potentially affected by the rule	7,075	54	628	43

[127] According to USCIS policy in effect at the time of issuance of this rulemaking:

A new commercial enterprise is principally doing business in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be principally doing business in the location most significantly related to the job creation.

Factors considered in determining where a new commercial enterprise is principally doing business include, but are not limited to, the location of:

- Any jobs directly created by the new commercial enterprise;
- Any expenditure of capital related to the creation of jobs;
- The new commercial enterprise's day-to-day operation; and
- The new commercial enterprise's assets used in the creation of jobs.

USCIS Policy Manual, 6 USCIS–PM G (Nov. 30, 2016).

[128] To account for the over-representation on non-regional center investments, DHS uses a weighted average approach to increase precision in the estimates. In the 2016 NCE sample non-regional center NCE investments constitute exactly half, but more broadly they account for less than a tenth (8 percent) of submitted investments. This bias is not a feature of the sampling methodology but rather an inherent feature of the population, because non-regional center investments comprise almost half, 49 percent, of all NCEs. Note that there is a slight sampling discrepancy in NCEs as well but it is very slight, at 1 percent. The weighted average for TEA investments is the sum of the regional center share of investments (.92) multiplied by the TEA share found in the sample (.98), and the non-regional share of investments (.08) multiplied by the TEA share in the sample (.68). The resulting weighting equation is .90 + .06 = .96 or 96 percent. The weighted average for TEA NCEs is the sum of the regional center share of NCEs (.51) multiplied by the TEA share found in the sample (.98), and the non-regional share of NCEs (.49) multiplied by the TEA share in the sample (.68). The resulting weighting equation is .50 + .33 = .83.

[129] For the TEA geographies that met the high unemployment threshold in the sample analyzed, 90 percent utilized MSAs and the remaining 10 percent utilized counties.

As the table reveals, just over half (54 percent) of investments, or about 7,075 annually, could potentially be affected, though we stress again that this is an upper bound estimate. In reality, some portion of the maximum cohort for projects and NCEs will have continued to qualify for TEA designation under the changes by this rule. However, currently DHS does not have reliable, statistically valid information from which DHS can more accurately estimate the share and number of projects and NCEs likely to be affected by the rule. Slightly under half, 43 percent, of NCEs could be impacted.

DHS obtained Census Bureau data on adjacent tracts that were utilized in studies unrelated to the current rulemaking provision.[130] From the population of 74,001 tracts provided in the Census dataset, DHS randomly sampled 390 tracts, which is slightly more than the 383 needed for 95 percent confidence and a 5 percent margin of error. The average number of adjacent tracts was 6.4 and the median was 6, with a maximum of 11, a minimum of 3, and a range of 8. Since ''partial'' tracts are not viable under the EB–5 program, the average was rounded to the nearest whole number and 1 tract was added to account for the primary tract for which the adjacencies were counted, to yield an average of 7 total tracts. This suggests that it may not be unusual for a TEA designation of three or more tracts to satisfy the adjacency requirements of this final rule.

The benefit of this aspect of the final rule is that it will prevent certain TEA configurations that rely on a large number of census tracts indirectly linked to the actual project tract(s) by multiple degrees of separation. As a result, some investments may be re-directed to areas where unemployment rates are truly high, according to the 150 percent threshold, and therefore may stimulate job creation where it is most needed.

DHS also considered an alternative provision, under which TEA designations would be subject to a twelve-tract limit. This limit is used by the State of California in its TEA certifications. DHS considered this limit as an alternative approach because it is the only case in which a state limits the number of census tracts to a specific number. Analysis of the NCE sample revealed that for tract configurations with two or more tracts, the average number of tracts aggregated was 16, but the median was 7. The figures are slightly higher at 17 and 8, respectively, when the cohort is isolated to three or more multiple tract configurations. The difference in the mean and median indicates that the distribution is right-skewed, characterized by a small number of very large-tract number compilations, evidenced by a sample range of 198 tracts. DHS notes that there is sufficient variation in the data to preclude state locational bias, as 21 states and the District of Columbia were represented in the 2016 NCE sample. Ultimately, DHS did not choose this alternative option because it is not necessarily appropriate for nationwide application, as the limitation to 12 census tracts may be justifiable for reasons specific to California but may not be apt on a national scale.

DHS stresses that the maximum cohorts presented in Table 5 overstate the number and shares of future investments and NCEs that will be affected by the TEA reform provision because some of the configurations that relied on multiple tracts (3 or more) may be able to meet the requirements of the rule. Furthermore, the number of affected investments and NCEs is also likely to be lower because regional centers may be able to replace forgone projects in places that will not meet the high unemployment criteria under the final rule with other projects that will in fact qualify. For example, a regional center seeking to locate a project on one city block that will no longer qualify as a TEA may opt to locate the project on another block that could qualify as a TEA under the new rule. In that sense, the final rule may provide additional incentive for investments in rural areas, because such investments will be unaffected by this rule, or in areas that are more closely associated with high unemployment. DHS believes that some regional centers will not be able to make such a substitution and that there may be costs in the forms of forgone investments and projects, and accompanying reductions in job creation and other economic activity (unless other investments and projects create compensatory or more than compensatory economic activity).

DHS has described some of the possible negative consequences of a reduced number of investors. A decrease in investments and projects may potentially reduce some job creation and have other downstream effects.

In addition to the amendments examined in the preceding analysis, DHS will allow cities and towns with a population of 20,000 or more outside of MSAs as a specific and separate area that may qualify as a TEA based on high unemployment. This is a narrower change than was introduced in the NPRM, where it was proposed to allow any city or town with a population of 20,000 to qualify as a TEA based on high unemployment. DHS cannot estimate the additional number of NCEs that will qualify as principally doing business in and creating jobs in a TEA based on this amendment. However, DHS anticipates the change will provide benefits in that additional areas may qualify as a TEA based on high unemployment, potentially offering investors more opportunities to invest in a TEA at the reduced investment amount, and encouraging job creation in more areas of high unemployment.

e. Other Provisions

DHS has also analyzed the other provisions in the rule:

Removal of Conditions Filing. DHS is revising its regulations to clarify that, except in limited circumstances, derivative family members must file their own petitions to remove conditions from their permanent residence when they are not included in a petition to remove conditions filed by the principal investor. Generally, an immigrant investor's derivatives are included in the principal immigrant investor's Form I–829 petition. However, there have been cases where the derivatives are not included in the principal's petition but instead file one or more separate Form I–829 petitions. This final rule clarifies that, except in the case of a deceased principal, derivatives not included in the principal's Form I–829 petition cannot use one petition for all the derivatives combined, but must each separately file his or her own Form I–829 petition. Based on IPO review of historical filings for this group, on average over a 3-year period about 24 cases per year involved such circumstances. Biometrics are currently required for the joint Form I–829 petition submissions, so the provision requiring separate filings will not impose any additional biometric, travel, or associated opportunity costs. The only costs expected from this specific provision in the final rule will be the separate filing fee and associated opportunity cost. DHS has attempted to quantify these new costs as follows. The filing fee for a Form I–829 petition is $3,750. DHS estimates that the form

[130] As of 2016, the Census Bureau records show 73,057 Tracts in the United States, including the District of Columbia but not counting U.S. Territories. U.S. Census Bureau, 2010 Census Tallies of Census Tracts, Block Groups and Blocks, *available at https://www.Census.gov/geo/maps-data/data/tallies/tractblock.html.* The data utilized in this analysis is currently available publicly from Brown University's (Providence, RI) American Communities Project website at *http://www.s4.brown.edu/us2010/Researcher/Pooling.htm.*

takes 4 hours to complete. DHS recognizes that many dependent spouses and children do not currently participate in the U.S. labor market, and as a result, are not represented in national average wage calculations. In order to provide a reasonable proxy of time valuation, DHS has to assume some value of time above zero and therefore uses an hourly cost burdened minimum wage rate of $10.66 to estimate the opportunity cost of time for dependent spouses. The value of $10.66 per hour represents the Federal minimum wage with an upward adjustment multiple of 1.47 for benefits.[131] Each applicant will face a time cost burden of $42.64, which when added to the filing fee, is $3,792.64. Extrapolating the past number of average annual filings of 24 going forward, total applicant costs will total $91,023.36 annually.[132]

Removal of Conditions Interview. In addition to the separate filing requirement discussed earlier, DHS is improving the adjudication process relevant to the investor's Form I–829 interview process by providing flexibility in interview scheduling and location. Section 216A(c)(1)(B) of the INA, 8 U.S.C. 1186b(c)(1)(B), generally requires Form I–829 petitioners to be interviewed prior to final adjudication of the petition, although DHS may waive the interview requirement at its discretion. *See* INA section 216A(d)(3), 8 U.S.C. 1186b(d)(3). Under this rule, DHS is giving USCIS greater flexibility to require Form I–829 interviews and determine the appropriate location for such an interview. Additionally, current DHS regulations allow for Form I–829 petitioners to be interviewed prior to final adjudication of a Form I–829 petition, but require the interview to be conducted at the USCIS District Office holding jurisdiction over the immigrant investor's new commercial enterprise. However, there is no requirement that the immigrant investor reside in the same location as the new commercial enterprise, and DHS has determined through some preliminary surveys conducted by IPO that many immigrant investors are located a considerable distance from the new commercial enterprise. Therefore, DHS clarifies that USCIS has authority to schedule an interview at the USCIS office holding jurisdiction over either the immigrant investor's commercial enterprise, the immigrant investor's residence, or the location in which the Form I–829 petition is being adjudicated. DHS cannot currently determine how many petitioners will potentially be affected by these changes. From fiscal years 2012 to 2016, DHS received an average of 2,137 Form I–829 petitions. While not all of these petitioners will require an interview or face hardship to travel for an interview, some of this maximum population may be affected.[133] Some petitioners will benefit by traveling shorter distances for interviews and thus see a cost savings in travel costs and opportunity costs of time for travel and interview time.

Process for Issuing Permanent Resident Cards. DHS also amends regulations governing the process by which immigrant investors obtain their new permanent resident cards after the approval of their Form I–829 petitions. Current regulations require the immigrant investor and his or her derivatives to report to a district office for processing of their permanent resident cards after approval of the Form I–829 petition. This process is no longer necessary in light of intervening improvements in DHS's biometric data collection program.[134] DHS now captures the required biometric data while the Form I–829 petition is pending, at the time the immigrant investor and his or her derivatives appear at an Application Support Center for fingerprinting, as required for the Form I–829 background and security checks. DHS then mails the permanent resident card directly to the immigrant investor by U.S. Postal Service registered mail after the Form I–829 petition is approved. Accordingly, there is generally no need for the immigrant investor and his or her derivatives to appear at a district office after approval of the Form I–829 petition.

DHS does not estimate any additional costs for this provision. This provision will likely benefit immigrant investors and any derivatives, including by providing savings in cost, travel, and time, since this regulation will no longer require them to report to a district office for processing of their permanent resident cards. DHS also benefits by removing a process that is no longer necessary.

Petitioner Eligibility Following a Change in a Project's Offering. DHS also modifies its regulations to indicate that amendments or supplements made to an EB–5 project's offering in order to maintain compliance with securities laws based upon the final rule's changes to 8 CFR 204.6 shall not independently result in denial or revocation of an investor's petition. DHS does not estimate any additional costs for this provision. This allowance will likely benefit certain investors whose eligibility for the EB–5 classification may have been at risk, absent this provision, because of an amendment to offering documents based on the changes made in this final rule. The petitions for this narrowly defined population of investors will not be denied or revoked under the circumstances put forth at new 8 CFR 204.6(n), provided the investors were eligible at the time of filing their petitions and remain eligible at the time of adjudication.

Miscellaneous Other Changes. DHS is also making a number of other technical changes to the EB–5 regulations. First, DHS is updating a reference to the former United States Customs Service, so that it will now refer to U.S. Customs and Border Protection. Second, DHS is conforming DHS regulations to Public Law 107–273, which eliminated the requirement that immigrant entrepreneurs establish a new commercial enterprise from both section 203(b)(5) and section 216A of the INA. Accordingly, DHS removes references to this requirement in 8 CFR 216.6. Third, DHS is further conforming DHS regulations to Public Law 107–273 by removing the references to ''management'' at 8 CFR 204.6(j)(5) introductory text and (j)(5)(iii). Fourth, DHS is removing the phrase ''as opposed to maintaining a purely passive role in regard to the investment'' from 8 CFR 204.6(j)(5). Fifth, DHS is allowing any type of entity to serve as a new commercial enterprise. Sixth, DHS is amending 8 CFR 204.6(k) to remove the requirement on USCIS to specify in the decision on the EB–5 petition whether the new commercial enterprise is principally doing business in a TEA. Finally, DHS is making revisions to otherwise unaffected sections of section 204.6 and 216.6 to replace the term ''entrepreneur'' with the term ''investor.''

Since the NPRM, DHS is making six additional miscellaneous changes to (1)

[131] *Minimum Wage,* U.S. DOL, *available at http://www.dol.gov/dol/topic/wages/minimumwage.htm* (indicating the Federal Minimum Wage is $7.25 per hour). The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour). See Economic News Release, U.S. Department of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (June 2018), *available at https://www.bls.gov/news.release/archives/ecec_06082018.pdf.*

[132] Calculation: The burdened wage of $10.66 per hour multiplied by 4 hours.

[133] USCIS, Number of I–829 Petitions by Entrepreneurs to Remove Conditions by Fiscal Year, Quarter, and Case Status 2008–2016, *available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I829_performancedata_fy2017_qtr2.pdf.*

[134] DHS already has authority to collect this information under 8 CFR part 103.

remove references to ''geographic or political subdivision'' in 8 CFR 204.6(i) and (j)(6)(ii)(B), (2) provide clarification in 8 CFR 204.6(d) that the petitioner of multiple immigrant petitions approved for classification as an investor is entitled to the earliest qualifying priority date, (3) changing ''approved EB–5 immigrant petition'' to ''immigrant petition approved for classification as an investor, including immigrant petitions whose approval was revoked on grounds other than those set forth below,'' and ''approved petition'' to ''immigrant petition approved for classification as an investor,'' (4) changing ''based upon that approved petition'' to ''using the priority date of the earlier-approved petition'' in final 8 CFR 204.6(d), (5) clarifying that a TEA may include census tracts directly adjacent to the census tract(s) in which the NCE is primarily engaged in business, and (6) making a technical correction to the inflation adjustment formula for the standard minimum investment amount and the high employment area investment amount, such that future inflation adjustments will be based on the initial investment amount set by Congress in 1990, rather than on the most recent inflation adjustment. All of these provisions are technical changes and will have no impact on investors or the government. Therefore, the benefits and costs for these changes were not estimated.

Miscellaneous Costs. Familiarization costs: DHS assumes that there will be familiarization costs associated with this rule. To estimate these costs, DHS relied on several assumptions. First, DHS believes that each approved regional center will need to review the rule. Other than regional centers, the NCEs will also need to be familiar with the final rule. Based on the 851 regional centers as having approved Forms I–924 and 719 non-regional center NCEs when this analysis was conducted (July 3, 2017), a total of at least 1,570 identified entities will likely need to review the rule. DHS believes that lawyers will likely review the rule and that it will take about 4 hours to review and inform any additional parties of the changes in this final rule. Based on the BLS ''Occupational Employment Statistics (OES)'' dataset, the current mean hourly wage for a lawyer was $68.22.[135] DHS burdens this rate by a multiple of 1.47 to account for other compensation and benefits, to arrive at an hourly cost of $100.28. The total cost of familiarization is $629,758.4 annually based on the current number of approved regional centers and non-regional center NCEs in the recent past.[136]

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States companies to compete with foreign-based companies in domestic and export markets. However, as some small businesses may be affected under this regulation, DHS has prepared a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 5 U.S.C. 601–612, requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An ''individual'' is not defined by the RFA as a small entity, and costs to an individual from a rule are not considered for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[137] Consequently, any indirect impacts from a rule to a small entity are not costs for RFA purposes.

However, the changes proposed by DHS to modernize and improve the EB–5 program may have the potential to affect several types of business entities involved in EB–5 projects. Therefore, DHS prepared an Initial Regulatory Flexibility Analysis (IRFA) under the RFA in the proposed rule because some of the entities involved may be considered small entities.

In the IRFA of the NPRM, DHS explained that there were four main types of business entities involved in EB–5 that could be affected by the proposed rule changes: Immigrant Investors, Regional Centers (RCs), New Commercial Enterprises (NCEs), and Job-Creating Entities (JCEs). DHS explained that the investors who invest funds and file Form I–526 petitions are individuals who voluntarily apply for immigration benefits on their own behalf and thus do not meet the definition of a small entity. Therefore, the EB–5 investors were not considered further for purposes of the RFA.

DHS also explained in the IRFA that the complex, multi-layered structure of most EB–5 investments, coupled with a lack of data concerning revenue and employment, made it impossible for DHS to determine if NCEs and JCEs were small entities. These constraints still apply and DHS cannot determine if these entities are small in terms of the RFA. DHS sought public feedback on the topic but did not receive data or information that could facilitate an appropriate small entity analysis for this final rule.

In the IRFA, DHS explained that RCs were difficult to analyze because of the lack of official data concerning employment, income, and industry classification of the regional center itself. First, DHS explained that the bundled investments that RCs typically pool and structure as loans do not constitute revenue. Second, RCs typically report the North American Industry Classification (NAICS) codes associated with the sectors they plan to direct investor funds toward, but these codes do not generally apply to the RCs business themselves. In addition, information provided to DHS concerning RCs generally does not explicitly include revenues or employment.[138] As a result, DHS was unable to make a determination concerning the small entity status of RCs in the IRFA.

Since the IRFA, DHS was able, despite data constraints, to obtain some information under some specific assumptions to develop a methodology to analyze the small entity status of RCs, as will be explained in detail under section D. Therefore, DHS presents this Final Regulatory Flexibility Analysis (FRFA), which includes this additional

[135] The wage figure reflects the May 2017 update from Bureau of Labor Statistics, Occupational Employment Statistics (OES) data set, provided in HTML format *available at https://www.bls.gov/oes/2017/may/oes_nat.htm#23-0000.*

[136] Calculation: 1,570 entities × 4 hours each × burdened hourly wage of $100.28.

[137] A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act, May 2012 page 22. *See* Direct versus indirect impact discussion, *available at https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.*

[138] DHS conducted a small entity analysis on EB–5 regional centers for the 2016 comprehensive fee rule, which went into effect on December 23, 2016. *See* 81 FR 73292. However, the same data constraints as described in the NPRM of this rule made it impossible to draw any conclusions.

analysis. In summary, DHS was able to determine that a significant number of RCs may be small entities. However, DHS was still not able to conclusively determine the impact of this final rule on those small entities.

Final Regulatory Flexibility Analysis

Small entities that may incur additional indirect costs by this rule are the RCs that pool immigrant investors' funds into associated NCEs that in turn undertake job-creating activities directly or, more typically, indirectly through JCEs that receive EB–5 capital from the RC-associated NCEs (most often through loans). RC activity has grown substantially since 2008, and as of July 3, 2017, there were 851 approved RCs. RC-affiliated Form I–526 petitions accounted for 13,103, or 92 percent, of Form I–526 petitions submitted annually from 2014–2016. Since RCs, NCEs, and JCEs all have a role to play in the EB–5 program, the regulatory changes promulgated in this final rule notice could affect all three types of entities. However, as was discussed in the IRFA of the NPRM, DHS does not have a way of knowing if NCEs and JCEs are small entities.

1. A Statement of the Need for, and Objectives of, the Rule.

DHS is updating its EB–5 regulations to modernize aspects of the EB–5 program and improve areas of the program in need of reform. The rule will also reflect statutory changes and codify existing policies. Elsewhere in this preamble, DHS provides further background and explanation for changes being made in this final rule.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, A Statement of the Assessment of the Agency of Such Issues, and A Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments.

DHS received several comments on the IRFA analysis provided with the proposed rule. These comments are summarized and addressed as follows:

1. Industry Classifications/NAICS Codes To Classify Regional Centers

A commenter that represents multiple regional centers stated that according to its members, RCs typically are classified under NAICS code 523, Securities, Commodity Contracts, and Other Financial Investments and Related Activities. According to the commenter, subsector 523 is identified in the Small Business Administration's (SBA) size standard list as a small entity based on a revenue level of $38.5 million or less. *See* 13 CFR 121.201. The commenter suggested that DHS should review such data, and that if most regional centers are small businesses, additional analysis is needed to assess potential changes to the course of the regulatory process.

DHS appreciates the commenter's suggestion on using the size standard revenue found in NAICS subsector 523 to determine the small entity status of RCs. However, DHS disagrees that subsector 523, and its corresponding size standard revenue, is the only appropriate industry in which to classify RCs. Subsector 523 primarily engages in underwriting, brokering, or providing other services related to securities, commodity contracts, and other financial investments and related activities.[139] However, other NAICS categories might also apply to certain RCs. For instance, DHS determined that some RCs could be classified under NAICS code 522310, Mortgage and Nonmortgage Loan Brokers, given the prevalence of the NCE to JCE loan model and the role that RCs typically occupy in facilitating such loans. NAICS industry 522310 is comprised of establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis.[140] The small business size standard for NAICS industry 522310 is based on a revenue level of $7.5 million or less. Regardless of which NAICS code applies to some RCs, however, DHS reiterates that the revenue of RCs is still difficult to determine because of the lack of official data concerning income and employment of the RC. Therefore, even if a NAICS code allows for industry classification of the RC itself, application of the size standard is more challenging. The information provided by RC applicants as part of the Form I–924 and I–924A processes does not include RC revenues or employment, which would be necessary to compare against the SBA size standard.

2. Industry Classifications/NAICS Codes To Classify NCEs

One commenter stated that if most NCEs and JCEs consider projects within a few industries, it would not be burdensome for DHS to review IPO annual reports to make the most economically sound conclusions as to the NAICS codes for most EB–5 program NCEs and JCEs.

As described in the proposed rule and similar to challenges with identifying RCs as small entities, DHS had challenges in trying to identify NCEs and JCEs as small entities. The multiplicity of ways in which an NCE can engage in the job creating activity make it difficult to assign a NAICS code to any particular entity that constitutes or comprises part of what is considered the NCE. Additionally, DHS does not require RC applicants or petitioners to submit on their applications or petitions the type of revenue and employment data appropriate for analysis, regardless of the type of NCE or how it is structured. Also, due to data capture limitations, it is not feasible for DHS to reliably estimate the number of JCEs at this time. DHS anticipates forthcoming form revisions that may collect additional data on JCEs that receive EB–5 capital, and expects to be able to examine this more closely in the future.

3. Sources of Revenue for RCs and NCEs

A commenter stated that although revenue and employee numbers for RCs and NCEs are not collected on the Form I–924A for Annual Certification, the revenue and employee numbers are contained in supplementary papers filed annually with the Form I–924A.

DHS reiterates that the information provided by RC applicants as part of the Form I–924 and I–924A processes does not include adequate data to allow DHS to reliably identify the small entity status of individual RCs or businesses entities, such as NCEs and JCEs, under their purview. Information provided to DHS concerning RCs generally does not include RC revenues or employment of the RCs themselves.

4. Other Comments on the RFA

There were several other comments concerning the RFA. One commenter claimed that individual investors should be considered small entities for purposes of this RFA. A second claimed that although DHS has acknowledged its responsibilities under the RFA, it is actually not compliant with the RFA because of the lack of detailed analysis. A third claimed that the rule would cause significant impacts on many small businesses, but that DHS did not seriously consider any alternative proposals. These commenters suggest that the rule should not be implemented until a more detailed analysis of small entity impacts can be undertaken and evaluated.

DHS appreciates the commenters' concerns but disagrees with the premise that DHS did not comply with the RFA. DHS has fully complied with the requirements of the RFA, which are

[139] 2017 NAICS Definition of Subsector 523 Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=523&search=2017 NAICS Search.*

[140] 2017 NAICS Definition of 522310, Mortgage and Nonmortgage Loan Brokers, *available at https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522310&search=2017 NAICS Search.*

procedural in nature. Sections 603 and 604 of the RFA describe what information needs to be included in an IRFA and FRFA. DHS has provided that information. DHS notes the RFA provides analytical flexibilities to agencies and does not contain a requirement for a detailed analysis; for instance, section 607 of the RFA states a quantitative analysis is not required to comply with the RFA's analytical requirements.[141]

DHS explained in the proposed rule and in this final rule the reasons why this data is difficult to obtain and assess. Since the proposed rule, however, DHS has attempted to seek some additional data on RCs and has included that analysis in this final regulatory flexibility analysis. This additional analysis provides an estimated percentage of RCs that may be considered small entities. As DHS has described in this analysis and in the published NPRM, DHS was not able to obtain additional data on JCEs. Additionally, aside from the suggestion to review investor and RC filings (which, as described above, DHS has done), commenters did not provide any data sources that would allow small entity analysis for JCEs.

DHS disagrees with the commenter that investors must be considered under the RFA. An investor who wishes to immigrate to the United States through the EB–5 program must file an Immigrant Petition by Alien Investor (Form I–526). Individuals who file Form I–526 petitions apply for immigration benefits on their own behalf and thus do not meet the definition of a small entity. Therefore, DHS reiterates that investors need not be considered further for purposes of regulatory flexibility analysis.

Finally, although the commenters claimed that there would likely be significant costs to small entities, they did not provide credible data or analysis to support the claim. As it pertains to compliance with regulatory flexibility analysis requirements, DHS complied with such requirements. For instance, DHS considered several alternatives, and determined that a significant share of affected business entities could be small entities, as described below.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments.

No comments were filed by the Chief Counsel of Advocacy of the SBA.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available.

As mentioned above, DHS was able to obtain some additional information on RCs since the publication of the NPRM. RCs file Form I–924 with DHS that includes a plan of operations for the RC and information regarding fees and surcharges paid to the RC. Additionally, individuals investing through the RC program file Form I–526 with DHS based on a specific NCE, which are affiliated with a specific RC. For this analysis, DHS manually consulted internal file tracking datasets on Form I–526 and NCE submissions for RC investors. NCEs can have multiple investors, but each individual investor must file a unique Form I–526. DHS searched for filed Forms I–526 and grouped them according to NCE. Then, DHS connected the identified NCEs to the unique regional center. Through this process, DHS obtained the number of investors and year of each investment for each of the approved RCs.

When reviewing Forms I–924 submitted by RCs to DHS, adjudicators and economists prepare economic due diligence reports (EDD) as part of the adjudication process. These EDDs are not captured in formal DHS databases. However, for this analysis, DHS manually obtained EDDs for 574 regional centers with approved Forms I–924 in FY 2017. The EDDs contain data from the Form I–924 submission, such as the administrative fee that the RC may charge to investors as well as plans and projections concerning investors. DHS assumes that these administrative fees contribute to the revenues of RCs.[142] While the RCs submit projections of anticipated numbers of investors, the actual investments and related Form I–526 filings submitted under the purview of RCs can only be determined after the Form I–924 is approved. Thus, DHS cannot rely on these early projections in determining RC revenue. But DHS can multiply the administrative fees by the number of associated EB–5 investors. Therefore, in an effort to reach a more accurate count of RC revenue, DHS manually matched each RC EDD to the corresponding investors from the Form I–526.

Through the process described in the preceding paragraph, DHS obtained the number of investors per RC and proceeded to refine the RC cohort by removing RCs that did not have relevant data, RCs that have been terminated, and those RCs that had no affiliated Form I–526 petitions associated with them (as those would present no information that could be used in the analysis). For those RCs included in the analysis, DHS notes that the numbers of Forms I–526 filed under a specific RC (and related administrative fee payments) are not spread evenly across years, as some years have more Form I–526 submissions than others. This posed substantial challenges for DHS analysis, because there is no natural cutoff (such as a fiscal year or calendar year) for analyzing the data and it does not allow DHS to capture the number of unique investors to each RC. If DHS were to extend the analytical cohort back to earlier approvals in order to capture the total number of investors unique to the RC, the timeframe for analysis would span multiple years.[143] Therefore, this makes DHS' ability to accurately assess RC revenue against the SBA standards difficult.[144]

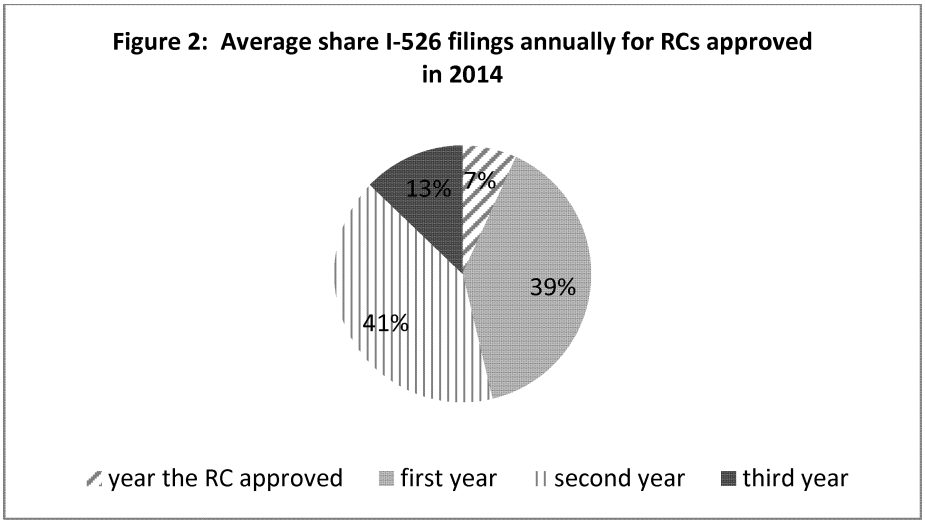
To address the timing issue, DHS analyzed the time-distribution of the filing of Form I–526 petitions associated with designated RCs and found that the clear bulk of filings—exactly four-fifths—were made in the first year and the second year after a RC was designated, while only 7 percent of filings were made in the same year the RC was designated. Moreover, a larger share, 13 percent, were made in the first half of 2017), as is reported in Figure 2:

[141] Section 607 of the RFA, Preparation of Analyses, states that in complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

[142] The administrative fees charged to the investor may cover various charges related to the economic impact analysis, legal fees, business plan development, and immigration services fees.

[143] *See* ''How to Comply with the Regulatory Flexibility Act,'' (2017) U.S. Small Business Administration, Office of Advocacy, available at page. 114, *available at https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[144] The SBA Table of Small Business Size Standards is found at: *https://www.sba.gov/sites/default/files/files/Size.*



For the purposes of this analysis, DHS assumes that each Form I–526 filed under an RC represents an instance in which the RC will receive an administrative fee that will contribute to the RC's revenue. Although DHS cannot assume that administrative fees are paid when the forms are filed, this analysis assumes the fees will be paid eventually.

DHS believes that the Form I–526 filings made through RCs that were designated in 2014 are a reasonable benchmark for analysis that mitigate the aforementioned constraints as best as possible.

For the RCs approved in 2014 that had EDDs with viable information, and were non-terminated and ''active'' (meaning that they actually had Form I–526 filings in 2016), we obtained a cohort of 95 RCs that were associated with 6,308 individual investors. DHS analysis reveals that the number of investors per RC varies substantially, with a range of 2,272. The distribution is highly right-skewed, with a mean of 85, a median of 39, and a skewness value of 8. These results indicate suggest that the median is a proper measure for central location. Next, DHS analyzed the administrative fees in the cohort. The distribution is tight (or clustered closely together) with both the mean and median at $50,000. Next DHS estimated revenues for each RC in the analytical cohort by multiplying the total number of investors who filed a Form I–526 for each RC by its actual administrative fee reported on the EDD, which yielded a median revenue amount of $1,250,000 over the period considered. DHS recognizes that by using the total number of investors who filed a Form I–526 for each RC over the course of 2014, when the RC was designated, FYs years 2015 and 2016, and the first half of 2017 does not exactly match the SBA size standard time-frame, which is based on a single calendar year. However, DHS believes that this is the best analysis that can be conducted given the uniqueness of regional centers. DHS believes that our modified methodology provides a reasonable estimate of RC revenue.[145]

To determine the appropriate size standard for the RCs, DHS extensively reviewed various NAICS codes. DHS determined that NAICS code 522310, Mortgage and Nonmortgage Loan Brokers defined as an ''industry [that] comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis,'' may be an appropriate NAICS industry in which RCs might be found given the typical activities undertaken by RC-associated NCEs (loaning EB–5 capital to the JCEs) and the role typically undertaken by RCs in facilitating those activities. The SBA size standard for the NAICS category chosen is based on a revenue of $7.5 million. DHS compared the revenues of the 95 RCs against this size standard and concludes that approximately 89 percent of RCs may be small entities for the purposes of this FRFA. Extrapolating this share to the 864 approved RCs would mean that approximately 769 RCs may be small entities.

DHS evaluated the suggestion from a commenter that regional centers should be classified under NAICS code subsection 523, as either ''an entity engaged in miscellaneous investment activities'' or ''an entity engaged in miscellaneous intermediation.'' However, DHS believes that the coding we chose is the most appropriate to use in the analysis because it applies to the majority of regional center projects, and thus is a more accurate reflection of the regional center entities.[146]

DHS again caveats that due to the uniqueness of the RC business operation system and constraints on data, this analysis incorporates some modifications to the typical methodology that DHS utilizes in its rulemakings. Namely, DHS had to use a three-and-a-half-year timeframe instead of the standard one-year timeframe and was compelled to assign an industry code based on a description of RCs that is our best knowledge of how RCs tend to function. Lastly, we note that the number of investors utilized likely understates the true time-independent revenue of RCs since there will generally be forthcoming investments (and associated fee payments) not measurable at the point in time when the analysis was conducted.

While DHS believes the methodology described in this section can lead to reasonable assumptions on the number of small entities that may be RCs, DHS still cannot determine the exact impact of this rule on those small entities. Part of this issue is due to the fact that DHS is not sure how many, if any, investors will be deterred from the EB–5 program

[145] An additional assumption in this FRFA analysis is that the only source of regional center revenue is administrative fees charged to each investor. DHS believes that some regional centers may also obtain revenue from charges made to NCEs for management, consulting, or loan arrangements. DHS does not have data on these fees and thus relies on the aforementioned assumption of the single revenue stream accruing to administrative fees charged to investors.

[146] DHS points out for the administrative record that even though a large majority of regional centers would be small entities under the analysis undertaken, both classifications recommended by the commenter would involve revenue based size standards of $38.5 million, which means that an even larger share of regional centers would be small entities.

due to the increased investment amounts and the new TEA requirements. DHS cannot estimate the full potential impact of this rule on RC revenue.

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record.

The final rule does not directly impose any new or additional ''reporting'' or ''recordkeeping'' requirements on filers of Forms I–526, I–829 or I–924. The rule does not require any new professional skills for reporting. However, the rule may create some additional time burden costs related to reviewing the proposed provisions, as is discussed earlier. As noted, DHS believes that lawyers would likely review the rule and that it would take about 4 hours to review and inform any additional parties of the changes in this rule. As was discussed above under ''Miscellaneous Costs,'' the current benefits-burdened hourly wage of a lawyer is $100.28. At this rate each reviewing entity would face a familiarization cost of $401.12

While DHS has estimated these costs, and assumes that they may affect some small entities, for reasons stated previously, data limitations prevent DHS from determining the extent of the impact to the small entities.

6. A Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Application Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected.

While DHS has determined, via the preceding analysis, that a significant share of regional centers may be considered small entities, DHS does not have enough data to determine the impact that this rule may have on those entities. Therefore, while many regional centers may be small entities, DHS cannot determine whether this rule will have a substantial impact, positive or negative, on those small entities.

DHS considered several alternatives to reform the TEA designation process, but found that they did not adequately accomplish the objective of INA section 203(b)(5)(B)(ii). One alternative DHS considered was limiting the geographic or political subdivision of TEA configurations to an area containing up to, but no more than, 12 contiguous census tracts, an option currently used by the state of California in its TEA designation process.[147] However, DHS is not confident that this option is necessarily appropriate for nationwide application, as the limitation to 12 census tracts may be justifiable for reasons specific to California but may not be practical on a national scale. Another significant alternative DHS considered that would be relatively straightforward to implement and understand would be to limit the geographic or political subdivision of the TEA to the actual project tract(s). While this option would be easy to put in practice for both stakeholders and the agency, it was considered too restrictive in that it would exclude immediately adjacent areas that would be affected by the investment.

DHS also considered options based on a ''commuter pattern'' analysis, which focuses on defining a TEA as encompassing the area in which workers may live and be commuting from, rather than just where the investment is made and where the new commercial enterprise is principally doing business. The ''commuter pattern'' proposal was deemed too operationally burdensome to implement as it posed challenges in establishing standards to determine the relevant commuting area that would fairly account for variances across the country.[148] In addition, DHS could not identify a commuting-pattern standard that would appropriately limit the geographic scope of a TEA designation consistent with the statute and the policy goals of this proposed regulation.

With respect to the minimum investment amount provision, DHS proposed an alternative to setting the reduced TEA investment amount to half of the standard minimum amount ($900,000 instead of $1,350,000), consistent with the existing regulatory framework.[149] DHS initially proposed a reduction to 75 percent rather than 50 percent of the standard minimum amount to better balance the Congressional aim of incentivizing investment in TEAs with the goal of encouraging greater investment in the United States more generally. History suggests that a 50 percent reduction coincides with an imbalance in favor of TEA investments. DHS continues to have some concern about the imbalance, though Congress granted DHS explicit authority to create this ''imbalance'' to incentivize investments in targeted employment areas. 8 U.S.C. 203(b)(5)(C)(ii). However, the reforms to the designation process for certain high unemployment TEAs finalized in this rule will ensure that, even if some imbalance remains, it is benefiting truly deserving communities as Congress intended. Ultimately, DHS believes in a meaningful incentive to invest in rural areas and areas of true high-unemployment, and thus, upon careful consideration of the comments related to this issue, DHS opted to retain the differential between TEA and non-TEA investments at 50 percent.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of $100 million in 1995 adjusted for inflation to 2016 levels by the Consumer Price Index for

[147] *See* Cal. Governor's Office of Bus. and Econ. Dev., EB–5 Investor Visa Program, *available at http://business.ca.gov/International/EB5Program.aspx.*

[148] In the NPRM and development of this final rule, DHS reviewed a proposed commuter pattern analysis incorporating the data table from the Federal Highway Administration, ''CTPP 2006–2010 Census Tract Flows,'' *available at* (*http://www.fhwa.dot.gov/planning/census_issues/ctpp/data_products/2006-2010_tract_flows/*) (last updated Mar. 25, 2014). DHS also reviewed the CTTP updated status report (released in January 2018), entitled ''CTPP Oversight Board is Discontinuing Census TAZ for Small Geography Data Reporting and Urging the Transportation Planning Community to Engage in 2020 Census Participant Statistical Areas Program (PSAP),'' *available at https://www.fhwa.dot.gov/planning/census_issues/ctpp/status_report/sr0118/fhwahep18046.pdf,* which will phase in slight methodological changes over the next year. DHS found that the required steps to properly manipulate the Census Transportation Planning Product (CTPP) database might prove overly burdensome for petitioners with insufficient economic and statistical analysis backgrounds. As an alternate methodology for TEA commuter pattern analysis, DHS reviewed data from the U.S. Census tool, On the Map, *available at http://onthemap.ces.census.gov/,* which is tied to the U.S. Census Bureau's American Community Survey. Although the interface appeared to be more user-friendly overall, using this data would be operationally burdensome, potentially requiring hours of review to obtain the appropriate unemployment rates for the commuting area.

[149] The current reduced minimum investment amount ($500,000) is 50 percent of the standard minimum investment amount ($1,000,000).

All Urban Consumers (CPI–U) is $157 million.

As noted above, this rule does not include any unfunded Federal mandates. The requirements of Title II of the UMRA, therefore, do not apply, and DHS has not prepared a statement under the UMRA.

E. Executive Order 13132

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections (3)(a) and (3)(b)(2) of Executive Order 12988.

G. National Environmental Policy Act

DHS Directive (Dir.) 023–01 Rev. 01 and Instruction (Inst.) 023–01–001 Rev. 1 establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508. The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions which experience has shown do not individually or cumulatively have a significant effect on the human environment (''categorical exclusions'') and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4.

Inst. 023–01–001 Rev. 01 establishes Categorical Exclusions that DHS has found to have no such effect. Inst. 023–01–001 Rev. 01 Appendix A Table 1. Inst. 023–01 –001 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Inst. 023–01–001 Rev. 01 section V.B (1)–(3).

This final rule amends the regulations implementing the EB–5 immigrant visa program. The final rule purely relates to the agency's administration of the EB–5 program. DHS does not believe that NEPA applies to this action as any attempt to analyze a potential environmental impact associated with changes to the agency's administration of the EB–5 program contemplated by this rule would be largely, if not completely, speculative. Specifically, this rule changes a number of eligibility requirements and introduces priority date retention for certain immigrant investor petitioners. It also amends existing regulations to reflect statutory changes and codifies existing EB–5 program policies and procedures. Additionally, the rule does not affect the number of visas which can be issued and for this reason as well would have no impact on the environment. DHS does not know where new commercial enterprises will be established, or where petitioners will invest or live. To the degree that it is possible to ascertain reasonably foreseeable impacts, DHS knows only that this rule does not change the number of visas Congress initially authorized in 1990. Public Law 101–649. With a current population in excess of 323 million and a land mass of 3.794 million square miles, an unchanged 10,000 visas annually is insignificant by any measure.

While DHS believes that NEPA frequently does not apply to USCIS rules, that analysis is unnecessary here because DHS has determined that if NEPA were to apply, this rule fits within categorical exclusions number A3(a) in Inst. 023–01–001 Rev. 01, Appendix A, Table 1: ''Promulgation of rules . . . strictly of an administrative or procedural nature'' and A3(d) for rules that interpret or amend an existing regulation without changing its environmental effect.

This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995). USCIS is revising one information collection in association with this rulemaking action: Immigrant Petition by Alien Entrepreneur (Form I–526), consistent with the changes proposed in the NPRM, and is making conforming changes to two information collections: Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, Form I–829, Application for Regional Center Designation Under the Immigrant Investor Program, approved OMB Control Number 1615–0045; and Form I–924, Annual Certification of Regional Center, and Form I–924A, Supplement to Form I–924, approved under OMB Control Number 1615–0061.

Specifically, the Form I–526 will collect additional information about the targeted employment area and the new commercial enterprise into which the petitioner is investing to determine the eligibility of qualified aliens to enter the United States to engage in commercial enterprises. In accordance with the final regulatory text, DHS is changing the title of Form I–526 to ''Immigrant Petition by Alien Investor'' from ''Immigrant Petition by Alien Entrepreneur.''

DHS is also making two additional conforming changes. First, DHS will update the references to the Form I–526, which will now be entitled ''Immigrant Petition by Alien Investor'' in Forms I–829, I–924, and I–924A. Second, as this final rule replaces references to ''entrepreneur'' with ''investor,'' DHS will replace the references to ''entrepreneur'' with ''investor'' in the Forms I–829, I–924, and I–924A. Accordingly for Forms I–829, I–924, and I–924A, USCIS will submit a Form OMB 83–C, Correction Worksheet, and amended form and instructions to OMB for review and approval in accordance with the PRA.

Overview of Information Collection-Form I–526

(1) *Type of Information Collection:* Revision to a currently approved information collection.

(2) *Title of the Form/Collection:* Immigrant Petitioner by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–526; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Form I–526 is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 15,799 and the estimated hour burden per response is 1hour and 50 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 28,912 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $17,378,900.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens.

Regulatory Amendments

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 2. Section 204.6 is amended by:
■ a. Revising the section heading and paragraphs (a), (c), and (d);
■ b. In paragraph (e):
■ i. Removing the terms ''entrepreneur'' and ''entrepreneur's'' and adding in their place ''investor'' and ''investor's,'' respectively, in the definitions for *Capital, Invest,* and *Qualifying employee;*
■ ii. Removing the terms ''Immigrant Investor Pilot'' and ''Pilot'' and adding in their place the term ''Regional Center'' in the definitions for *Employee* and *Full-time employment;*
■ iii. Adding a definition for *Regional Center Program* in alphabetical order;
■ iv. Revising the definitions for *Rural area* and *Targeted employment area;*
■ v. Removing ''entrepreneur's Form I–526'' and adding in its place ''investor's EB–5 immigrant petition'' in the definition for *Troubled business;*
■ c. Revising paragraphs (f)(1), (2), and (3);
■ d. In paragraph (g)(1), removing the term ''entrepreneur'' and adding in its place the term ''investor'';
■ e. Revising paragraphs (g)(2), (i), (j)(2)(iii), (j)(5) introductory text, (j)(5)(iii), (j)(6)(i) and (ii), and (k); and
■ f. Adding paragraph (n).

The revisions and additions read as follows:

§ 204.6 Petitions for employment creation immigrants.

(a) *General.* An EB–5 immigrant petition to classify an alien under section 203(b)(5) of the Act must be properly filed in accordance with the form instructions, with the appropriate fee(s), initial evidence, and any other supporting documentation.

* * * * *

(c) *Eligibility to file and continued eligibility.* An alien may file a petition for classification as an investor on his or her own behalf.

(d) *Priority date.* The priority date of a petition for classification as an investor is the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed. The priority date of an immigrant petition approved for classification as an investor, including immigrant petitions whose approval was revoked on grounds other than those set forth below, will apply to any subsequently filed petition for classification under section 203(b)(5) of the Act for which the alien qualifies. A denied petition will not establish a priority date. A priority date is not transferable to another alien. In the event that the alien is the petitioner of multiple immigrant petitions approved for classification as an investor, the alien shall be entitled to the earliest qualifying priority date. The priority date of an immigrant petition approved for classification as an investor shall not be conferred to a subsequently filed petition if the alien was lawfully admitted to the United States for permanent residence under section 203(b)(5) of the Act using the priority date of the earlier-approved petition or if at any time USCIS revokes the approval of the petition based on:

(1) Fraud or a willful misrepresentation of a material fact by the petitioner; or

(2) A determination by USCIS that the petition approval was based on a material error.

(e) * * *

Regional Center Program means the program established by Public Law 102–395, Section 610, as amended.

Rural area means any area other than an area within a standard metropolitan statistical area (as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more based on the most recent decennial census of the United States.

Targeted employment area means an area that, at the time of investment, is a rural area or is designated as an area that has experienced unemployment of at least 150 percent of the national average rate.

* * * * *

(f) * * *

(1) *General.* Unless otherwise specified, for EB–5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in the United States is one million eight hundred thousand United States dollars ($1,800,000). Beginning on October 1, 2024, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average reported by the Bureau of Labor Statistics, as compared to $1,000,000 in 1990. The qualifying investment amount will be rounded down to the nearest hundred thousand. DHS may update this figure by publication of a technical amendment in the **Federal Register**.

(2) *Targeted employment area.* Unless otherwise specified, for EB–5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in a targeted employment area in the United States is nine hundred thousand United States dollars ($900,000). Beginning on October 1, 2024, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, to be equal to 50 percent of the standard minimum investment amount described in paragraph (f)(1) of this section. DHS may update this figure by publication of a technical amendment in the **Federal Register**.

(3) *High employment area.* Unless otherwise specified, for EB–5 immigrant petitions filed on or after November 21, 2019, the amount of capital necessary to make a qualifying investment in a high employment area in the United States is one million eight hundred thousand United States dollars ($1,800,000). Beginning on October 1, 2024, and every five years thereafter, this amount will automatically adjust for petitions filed on or after each adjustment's effective date, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average reported by the Bureau of Labor Statistics as compared to $1,000,000 in 1990. The qualifying investment amount will be rounded down to the nearest hundred thousand. DHS may update this figure by publication of a technical amendment in the **Federal Register**.

(g) * * *

(2) *Employment creation allocation.* The total number of full-time positions created for qualifying employees shall be allocated solely to those alien investors who have used the

establishment of the new commercial enterprise as the basis for a petition. No allocation must be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. USCIS will recognize any reasonable agreement made among the alien investors in regard to the identification and allocation of such qualifying positions.

* * * * *

(i) *Special designation of a high unemployment area.* USCIS may designate as an area of high unemployment (at least 150 percent of the national average rate) a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business, and may also include any or all census tracts directly adjacent to such census tract(s). The weighted average of the unemployment rate for the subdivision, based on the labor force employment measure for each census tract, must be at least 150 percent of the national average unemployment rate.

(j) * * *

(2) * * *

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including U.S. Customs and Border Protection commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

* * * * *

(5) *Petitioner engagement.* To show that the petitioner is or will be engaged in the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, the petition must be accompanied by:

* * * * *

(iii) Evidence that the petitioner is engaged in policy making activities. For purposes of this section, a petitioner will be considered sufficiently engaged in policy making activities if the petitioner is an equity holder in the new commercial enterprise and the organizational documents of the new commercial enterprise provide the petitioner with certain rights, powers, and duties normally granted to equity holders of the new commercial enterprise's type of entity in the jurisdiction in which the new commercial enterprise is organized.

(6) * * *

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within an area not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, nor within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, the county in which a city or town with a population of 20,000 or more is located, or the city or town with a population of 20,000 or more outside of a metropolitan statistical area, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of at least 150 percent of the national average rate; or

(B) A description of the boundaries and the unemployment statistics for the area for which designation is sought as set forth in paragraph (i) of this section, and the reliable method or methods by which the unemployment statistics were obtained.

(k) *Decision.* The petitioner will be notified of the decision, and, if the petition is denied, of the reasons for the denial. The petitioner has the right to appeal the denial to the Administrative Appeals Office in accordance with the provisions of part 103 of this chapter.

* * * * *

(n) *Offering amendments or supplements.* Amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon changes to this section effective on November 21, 2019 shall not independently result in denial or revocation of a petition for classification under section 203(b)(5) of the Act, provided that the petitioner:

(1) Filed the petition for classification under section 203(b)(5) of the Act prior to November 21, 2019;

(2) Was eligible for classification under 203(b)(5) of the Act at the time the petition was filed; and

(3) Is eligible for classification under 203(b)(5) of the Act, including having no right to withdraw or rescind the investment or commitment to invest into such offering, at the time of adjudication of the petition.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 3. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

■ 4. Amend § 216.6 by:

■ a. Revising the section and paragraph (a)(1);

■ b. Removing and reserving paragraph (a)(4)(i);

■ c. Removing ''entrepreneur'' and adding in its place ''investor'' in paragraph (a)(4)(iv);

■ d. Revising paragraphs (a)(5) and (6) and (b);

■ e. Removing and reserving paragraph (c)(1)(i); and

■ f. Revising paragraphs (c)(2) and (d).

The revisions read as follows:

§ 216.6 Petition by investor to remove conditional basis of lawful permanent resident status.

(a) * * *

(1) *General procedures.* (i) A petition to remove the conditional basis of the permanent resident status of an investor accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the investor with the appropriate fee. The investor must file within the 90-day period preceding the second anniversary of the date on which the investor acquired conditional permanent residence. Before the petition may be considered as properly filed, it must be accompanied by the fee required under 8 CFR 103.7(b)(1), and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the investor. Upon receipt of a properly filed petition, the investor's conditional permanent resident status shall be extended automatically, if necessary, until such time as USCIS has adjudicated the petition.

(ii) The investor's spouse and children may be included in the investor's petition to remove conditions. Where the investor's spouse and children are not included in the investor's petition to remove conditions, the spouse and each child must each file his or her own petition to remove the conditions on their permanent resident status, unless the investor is deceased. If the investor is deceased, the spouse and children may file separate petitions or may be included in one petition. A child who reached the age of 21 or who married during the period of conditional permanent residence, or a former spouse who became divorced from the investor during the period of conditional permanent residence, may be included in the investor's petition or must each file a separate petition.

* * * * *

(5) *Termination of status for failure to file petition.* Failure to properly file the petition to remove conditions within the 90-day period immediately preceding the second anniversary of the date on which the investor obtained lawful

permanent residence on a conditional basis shall result in the automatic termination of the investor's permanent resident status and the initiation of removal proceedings. USCIS shall send a written notice of termination and a notice to appear to an investor who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the investor may request a review of the determination during removal proceedings. In proceedings, the burden of proof shall rest with the investor to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within the designated period. USCIS may deem the petition to have been filed prior to the second anniversary of the investor's obtaining conditional permanent resident status and accept and consider a late petition if the investor demonstrates to USCIS' satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in proceedings and USCIS excuses the late filing and approves the petition, USCIS shall restore the investor's permanent resident status, remove the conditional basis of such status, and cancel any outstanding notice to appear in accordance with 8 CFR 239.2. If the petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the investor and DHS.

(6) *Death of investor and effect on spouse and children.* If an investor dies during the prescribed 2-year period of conditional permanent residence, the spouse and children of the investor will be eligible for removal of conditions if it can be demonstrated that the conditions set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview.* USCIS shall review the petition to remove conditions and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, USCIS may waive the interview and approve the petition. If not so satisfied, then USCIS may require that an interview of the investor be conducted.

(2) *Location of interview.* Unless waived, an interview relating to the petition to remove conditions for investors shall be conducted by a USCIS immigration officer at the office that has jurisdiction over either the location of the investor's commercial enterprise in the United States, the investor's residence in the United States, or the location of the adjudication of the petition, at the agency's discretion.

(3) *Termination of status for failure to appear for interview.* If the investor fails to appear for an interview in connection with the petition when requested by USCIS, the investor's permanent resident status will be automatically terminated as of the second anniversary of the date on which the investor obtained permanent residence. The investor will be provided with written notification of the termination and the reasons therefore, and a notice to appear shall be issued placing the investor in removal proceedings. The investor may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the investor to establish by a preponderance of the evidence that he or she complied with the interview requirements. If the investor has failed to appear for a scheduled interview, he or she may submit a written request to USCIS asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If USCIS determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If USCIS waives the interview, USCIS shall restore the investor's conditional permanent resident status, cancel any outstanding notice to appear in accordance with 8 CFR 239.2, and proceed to adjudicate the investor's petition. If USCIS reschedules that investor's interview, USCIS shall restore the investor's conditional permanent resident status, and cancel any outstanding notice to appear in accordance with 8 CFR 239.2.

(c) * * *

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the investor obtained his or her investment funds through other than legal means, USCIS shall offer the investor the opportunity to rebut such information. If the investor fails to overcome such derogatory information or evidence that the investment funds were obtained through other than legal means, USCIS may deny the petition, terminate the investor's permanent resident status, and issue a notice to appear. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the investor's permanent resident status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) *Decision*—(1) *Approval.* If, after initial review or after the interview, USCIS approves the petition, USCIS will remove the conditional basis of the investor's permanent resident status as of the second anniversary of the date on which the investor acquired conditional permanent residence. USCIS shall provide written notice of the decision to the investor. USCIS may request the investor and derivative family members to appear for biometrics at a USCIS facility for processing for a new Permanent Resident Card.

(2) *Denial.* If, after initial review or after the interview, USCIS denies the petition, USCIS will provide written notice to the investor of the decision and the reason(s) therefore, and shall issue a notice to appear. The investor's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of USCIS' written decision. The investor shall also be instructed to surrender any Permanent Resident Card previously issued by USCIS. No appeal shall lie from this decision; however, the investor may seek review of the decision in removal proceedings. In proceedings, the burden shall rest with USCIS to establish by a preponderance of the evidence that the facts and information in the investor's petition for removal of conditions are not true and that the petition was properly denied.

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

[FR Doc. 2019–15000 Filed 7–23–19; 8:45 am]

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