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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

6 CFR Part 1000

[PCLOB Case 2019–001; Docket No. 2019–0001; Sequence No. 1]

RIN 0311–AA05

Amendment to Organization and Delegation of Powers and Duties of the Privacy and Civil Liberties Oversight Board

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Final rule.

SUMMARY: The Privacy and Civil Liberties Oversight Board (the Board) revises its Organization and Delegation of powers to reflect the current structure of the agency and set forth greater authority for agency delegations. This revision also reflects the structural flexibility envisioned by our enabling statute.

DATES: *Effective:* August 28, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Broxmeyer, General Counsel, Privacy and Civil Liberties Oversight Board, at 202–296–4617 or *eric.broxmeyer@pclob.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The changes to the organization and delegation of powers and duties reflect changes to the agency's organization and powers of certain agency officials. Specifically, section 1000.2 provides more detailed definitions for the roles and responsibilities of the Board's Executive Director and General Counsel. Section 1000.3 presents the Board's revised organizational structure, which has changed from the time the organizational structure was originally published. Finally, Section 1000.5 provides greater specificity regarding how the Board handles delegations and designations.

II. Regulatory Analysis and Notices

Administrative Procedure Act

This rule is a rule of agency organization, procedure, or practice. The Board publishes it as a final rule in accordance with 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires each agency to assess the effects of its regulatory actions on state, local, and tribal governments, and the private sector. Agencies must prepare a written statement of economic and regulatory alternatives any time a proposed or final rule imposes a new or additional enforceable duty on any state, local, or tribal government or the private sector that causes those entities to spend, in aggregate, $100 million or more (adjusted for inflation) in any one year (defined in UMRA as a ''federal mandate''). This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Board is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Board does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Board has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule deals with the structure of the Board and sets forth greater authority for agency delegations and will not impose any costs on the public. The Board has determined that the benefits of this regulation, *i.e.,* providing transparency to the public regarding its current structure and its authority for agency delegations, outweigh any costs.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Board has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Board has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This rule is not expected to be a regulatory action under Executive Order 13771 because this rule is not significant under Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. This rule does not impose new or revised information collection requirements under the provisions of the PRA.

List of Subjects in 6 CFR Part 1000

Administrative practice and procedure; Organization; Functions; Delegations of Authority.

Dated: July 23, 2019.

Eric Broxmeyer,

General Counsel, Privacy and Civil Liberties Oversight Board.

For the reasons set forth in the preamble, the Board amends 6 CFR part 1000 as set forth below:

PART 1000—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

■ 1. The authority citation for 6 CFR part 1000 through 1000 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

■ 2. Amend § 1000.2 by adding in alphabetical order a definition for ''Executive Director'' and revising the definition of ''General Counsel'' to read as follows:

§ 1000.2 Definitions.

* * * * *

Executive Director means the individual appointed by the Chairman to act as the Executive Director (or, in the event the Chairman position is vacant, by the Board) to discharge the responsibilities assigned to the Executive Director.

General Counsel means the individual appointed by the Chairman to act as the chief legal officer of the Board or, if the General Counsel is absent or unavailable, the Deputy General Counsel, or in the event both positions are vacant, the individual(s) designated by the Chairman (or, in the event the Chairman position is vacant, by the Board) to discharge the responsibilities assigned to the General Counsel. If both the General Counsel and Deputy General Counsel are absent and unavailable for a prolonged period of time, the Chairman (or the Board in the event the Chairman position is vacant) may designate any Staff Member who is an active member of the bar of any state, territory, or the District of Columbia to temporarily discharge the responsibilities assigned to the General Counsel until the General Counsel or Deputy General Counsel is again available or a successor has been duly appointed.

* * * * *

■ 3. Amend § 1000.3 by revising paragraph (b) to read as follows:

§ 1000.3 Organization.

* * * * *

(b) The Board's staff is comprised of the following:

(1) Mission staff who assist the Board with its advice, oversight, and other mission functions, as described in 42 U.S.C. 2000ee(d) and 6 CFR 1000.4; and

(2) Administrative staff who support the Board's operations on a variety of administrative matters, such as budget, contracts, information technology and information assurance, and security; and

(3) Legal staff who provide the Board and agency employees with legal advice and ethical guidance.

■ 4. Amend § 1000.5 by—

■ a. Revising paragraph (a)(5);

■ b. Adding paragraph (a)(6);

■ c. Revising paragraphs (b)(5) and (6);

■ d. Removing paragraphs (b)(7) through (10); and

■ e. Revising paragraph (c) and paragraphs (d) introductory text and (d)(2).

The revisions and addition read as follows:

§ 1000.5 Delegations of authority.

(a) * * *

(5) Formulation and implementation of policies designed to assure the effective administration of the Board's operations and the efficient operations of the staff.

(6) Any authority that is not delegated by the Board in this part, or otherwise vested in officials other than the Board, is reserved to the Board. The Board may reverse delegations at any time, and all delegated authority reverts to the Board upon the termination or expiration of the delegation.

(b) * * *

(5) Redelegate to one or more Board staff persons those responsibilities to the Executive Director or General Counsel under this part, in the event that either position is unfilled.

(6) Authorize any officer or employee of the Board to perform a function vested in, delegated, or otherwise designated to the Chairman.

(c) *Executive Director.* The Executive Director manages the staff and assists with the day-to-day operation of the agency. The Executive Director is delegated authority to—

(1) Manage the Board's mission-related projects in accordance with the priorities set by the Board;

(2) Supervise the Board's mission staff; and

(3) Authorize any officer or employee of the Board to perform a function vested in, delegated, or otherwise designated to the Executive Director.

(d) *General Counsel.* The General Counsel is the Board's chief legal officer, and serves as the Board's legal advisor. The General Counsel is delegated authority to—

* * * * *

(2) Certify Board votes and conduct other necessary corporate secretary functions consistent with Board policies and procedures; and

* * * * *

[FR Doc. 2019–15951 Filed 7–26–19; 8:45 am]

BILLING CODE 6820–B3–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1409

RIN 0560–AI51

Trade Mitigation Program

AGENCY: Commodity Credit Corporation, Agricultural Marketing Service, Food and Nutrition Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising the regulations to implement a Trade Mitigation Program (TMP) for producers of 2019 agricultural commodities that have been significantly impacted by trade actions of foreign governments resulting in the loss of exports. As part of TMP, the Market Facilitation Program (MFP) regulation specifies the eligibility requirements, payment calculations, and application procedures. The details for specific commodities and the relevant application start dates will be announced in applicable notices of funds availability (NOFAs). As part of TMP, the Expanded Domestic Commodity Donation Program (EDCDP) regulation specifies disposition of surplus commodities through outlets not currently used in existing Food and Nutrition Service (FNS) programs, the application process, eligibility, and use of grants or cooperative agreements. The details for specific commodities and conditions will be announced in applicable notices of commodity availability (NOCAs). This rule adds new subparts to the TMP regulation to address the 2019 agricultural commodities.

DATES: *Effective:* July 29, 2019.

FOR FURTHER INFORMATION CONTACT: For information related to FSA, contact William L. Beam; telephone: (202) 720–3175; email: *Bill.Beam@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice). For information related to FNS, contact: Laura Castro; telephone: (703) 305–2680; email: *Laura.Castro@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The imposition of tariffs by other countries on U.S. agricultural products has been and continues to disrupt the marketing of agricultural commodities and are outside of the control of the agricultural producers who are being negatively impacted. In response to the trade actions of foreign governments resulting in the loss of exports, the President has pledged that up to $16 billion in financial assistance will be made available for certain agricultural commodities. This assistance will be made available under section 5 of the CCC Charter Act (15 U.S.C. 714c) for the 2019 crop year. This section authorizes CCC to assist in the disposition of surplus commodities and to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

The MFP regulation in 7 CFR part 1409 was implemented initially for 2018 agricultural commodities. The MFP regulation specifies the eligibility requirements, payment calculations, and application procedures. This rule expands the regulation, revising the title to ''Trade Mitigation Program,'' moving the prior regulation into a new subpart A and adding new subparts B and C to address the 2019 agricultural commodities. Some of the ways in which the program is being implemented for the 2019 agricultural commodities is consistent with the implementation for the 2018 agricultural commodities. There are expected to be new participants; therefore, we are revising the regulations in 7 CFR part 1409 to provide the entire program regulation in the new subparts, instead of revising individual portions of the 2018 regulation. Subparts A and B provide the 2018 and 2019 MFP regulations, respectively, and subpart C provides the EDCDP regulations. The Farm Service Agency (FSA) will administer subparts A and B on behalf of CCC and FNS and the Agricultural Marketing Service (AMS) will administer subpart C on behalf of CCC.

The 2019 MFP payments constitute one portion of financial assistance to farmers of up to $14.5 billion. The 2019 MFP payments will aid producers in the disposition of surplus commodities and aid in the expansion of domestic markets or aid in the development of new and additional markets and uses for the specific crops or commodities that are negatively impacted by trade actions of foreign governments. The 2019 MFP payments will provide producers with financial assistance that gives them the ability to absorb some of the additional costs from having to delay or reorient marketing of the new crop due to the trade actions of foreign governments resulting in the loss of exports. The determination of commodities that are included in MFP and specific program requirements applicable to the commodities, such as enrollment periods, will be announced in the applicable NOFAs published in the **Federal Register**.

In 2018, under section 5(d) of the CCC Charter Act, CCC acquired surpluses of some of the commodities impacted by the imposition of tariffs by other countries on U.S. agricultural products. Those commodities were offered to State agencies and eligible recipient agencies primarily in The Emergency Food Assistance Program (TEFAP), which is administered by FNS. In reviewing the use of TEFAP to provide the surplus commodities to food and nutrition assistance outlets, CCC has determined, taking into account the commodities and products that are currently subject to the trade actions of foreign governments resulting in the loss of exports, greater flexibility in the use of surplus commodities may be warranted than the flexibility provided under TEFAP if existing distribution channels are unable to absorb the commodities provided. Section 5(e) of the CCC Charter Act provides that CCC may increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities. Surplus commodities which are acquired at market prices under section 5(d) will continue to be provided through TEFAP and other FNS Food Distribution Programs, and FNS will continue to work with States to use current operational flexibilities to ensure maximum distribution through the existing infrastructure. However, given the variety of potential products and capacity of organizations that States currently use to distribute food through FNS' food distribution programs, there may be a need for CCC to provide food to other outlets outside of existing FNS programs. States have discretion to choose agencies that distribute food from FNS' food distribution programs; therefore, there may be entities with sufficient operational capacity that are not currently participating in FNS' nutrition assistance programs that would be capable of distributing these foods to low-income individuals. To provide CCC with maximum flexibility in the event that the current distribution system is unable to use the commodities acquired, this rule adds a subpart C to 7 CFR part 1409 to specify the process by which CCC will notify the public through notices of commodity eligibility published in the **Federal Register** and on the FNS website. These notices will specify:

1. The types of surplus commodities available for use in accordance with section 5(d);
2. Entities that may receive such commodities and related financial assistance, if any, from CCC for use in distribution and handling;
3. Terms and conditions applicable to the use of the commodities; and
4. The process for submitting an application to receive such commodities.

Should EDCDP need to be used, it is not expected to divert currently participating organizations or food resources from existing FNS programs. This is because the significant amount of administrative funding that FNS currently provides to existing organizations would not be available to support the much smaller pool of organizations expected to receive food through EDCDP. In addition, EDCDP is designed to be implemented only if currently existing FNS program organizations are unable to absorb the commodities. FNS and AMS will work to ensure that the administration of EDCDP includes standards for food safety, administrative oversight and accountability.

TMP Subpart B Description

MFP will be available to producers of those commodities determined by the Secretary to have been adversely affected by the trade actions of foreign governments resulting in the loss of exports.

The 2019 MFP payment rates and units of measure will be in effect no later than July 29, 2019. USDA will continue to monitor the situation with respect to adverse effects felt by American commodity producers as a result of trade actions of foreign governments resulting in the loss of exports and will determine whether additional assistance is necessary at a later date, considering additional available data and updated methodologies.

Producer Eligibility Requirements

Under MFP, CCC will provide payments to producers of those

commodities determined by the Secretary to have been adversely affected by the trade actions of foreign governments resulting in the loss of exports. Participation in other CCC programs is not a prerequisite to participate in MFP.

Non-Specialty Crops

For the purposes of MFP for 2019, agricultural commodities referred to as ''non-specialty crops'' include: Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra long staple cotton, flaxseed, lentils, long grain and medium grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat. If warranted, additional non-specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the **Federal Register**. Generally, payments will be available to those producers who:

1. Have an ownership interest in the 2019 crop of any non-specialty crop that was planted; and

2. Would have had such an interest in the crop but were prevented from planting the crop due to adverse weather but were able to plant a CCC approved cover crop on such acreage.

All applicants must have reported to FSA on form FSA–578, ''Report of Acreage'' (acreage report) the acreage planted to these crops for the 2019 crop year by the applicable acreage reporting dates. Producers who did not file a 2019 acreage report by applicable acreage reporting dates must file a ''late filed'' acreage report under existing FSA procedures. Similarly, producers who were prevented from planting a crop by the final acreage reporting date must submit a ''late filed'' acreage report regarding the CCC approved cover crop that was planted.

The payment rate used by CCC to issue payments will be on a county-by-county basis and will take into account the degree of impact in a county on producers of non-specialty crops from the trade actions of foreign governments on U.S. agricultural products resulting in the loss of exports. The payment rate for a county may be found at *www.fsa.usda.gov.*

Producers of non-specialty crops will receive payments based on 2019 planted acres of non-specialty crops multiplied by the payment rate for the relevant county. As specified in the applicable NOFA, payments may be adjusted by CCC if 2019 planted acres on a farm exceed 2018 planted acres to non-specialty crops, if the trade situation changes, or if CCC determines such adjustments are warranted.

Specialty Crops, Dairy, and Livestock

Producers of specialty crops that are specified in the applicable NOFA will receive a payment based on 2019 bearing acres of the specialty crops multiplied by the payment rate for the relevant specialty crop. Specialty crops include the following crops: Almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts. If warranted, additional specialty crops may be included in MFP as specified in the applicable NOFA published in the **Federal Register**.

Producers of dairy and livestock that are specified in the applicable NOFA will receive a payment calculated on production, similar to the manner in which MFP payments were calculated in 2018 as specified in 7 CFR part 1409 (now subpart A).

Adjusted Gross Income and Payment Limitation Requirements

The average adjusted gross income (AGI) limitations specified in 7 CFR part 1400 apply to MFP. No person or legal entity (excluding a joint venture or general partnership), as defined and determined under 7 CFR part 1400 may receive, directly or indirectly, more than $250,000 in MFP payments for each crop year as specified in the applicable NOFA. The application of the payment limitation will be specified in the NOFA. For example, certain commodities may have a combined payment limitation.

For the $250,000 annual payment limit, payments will be determined through current attribution rules used in other CCC agricultural programs. The regulations in 7 CFR 1400.105 specify how payments are attributed; the total payment amount is attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive payments. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and to those that have an indirect interest to the amount of that indirect interest.

A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable program year is more than $900,000 unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the participant provides the required certification and documentation, the person or legal entity, other than a joint venture or general partnership, is eligible to receive 2019 MFP payments, directly or indirectly up to the payment limit, as discussed above. The relevant years used to calculate average AGI are the 3 consecutive tax years immediately preceding the year before the payment year, which will be the crop year, or the marketing year for livestock or dairy. For example, for 2019 the relevant years to calculate AGI are the 2015, 2016 and 2017 tax years.

In addition to having a share in the commodity, to be eligible for an MFP payment for non-specialty crops, each applicant is required to be a person or legal entity who was actively engaged in farming, as provided in 7 CFR 1409.3, in the 2019 crop year.

Payment Calculations

The payment calculations for specific commodities will be specified in the applicable NOFA.

MFP General Requirements

Producers will apply to receive an MFP payment using the MFP application form. Such producers must comply with the provisions of 7 CFR part 1409 and any applicable NOFA published in the **Federal Register** by CCC.

General requirements that apply to other CCC programs also apply to MFP including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation,'' during the year for which assistance is made available.

Federal, State, and local governments are not eligible for MFP payments.

The regulations at 7 CFR part 1400 Subpart E are applicable to the eligibility of foreign persons.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) to be eligible for participation in MFP.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. MFP commodity eligibility and other matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed.

Application Process

To apply for MFP, each applicant must submit a complete ''Market Facilitation Program 2019 (MFP 2019) Application'' (form CCC–913) either in person, by mail, email, or facsimile to

an FSA county office, or through *www.farmers.gov.* For many crops, FSA possesses the producer share data from the applicable crop year's acreage report for producers who participate in other FSA-administered CCC programs. For crops, the applicant's crop share interest on an MFP application cannot be greater than the crop share interest as reported on the acreage report. FSA will verify and confirm the applicant's crop share interest reported on the MFP application by comparing it to the applicant's crop share interest as reported on that farm's acreage report for the applicable crop year.

For livestock, the application will include number of head (production) and ownership share information as provided in the applicable NOFA. For dairy, the application will include the amount of historical production as provided in the applicable NOFA.

If FSA decides it is necessary to confirm the planting of the commodity, the applicant will be required to submit evidence upon request, such as seed receipts, custom harvesting receipts, bale gin lists, or purchase or sales receipts. In addition, the applicant must provide supporting documentation for the amount of production as specified in the applicable NOFA.

Documentation for MFP Applications

FSA will require producer specific documentation of the amount of production for all dairy and livestock, as applicable.

MFP Payments

The payments will be provided in up to 3 payments. The first payment will be up to 50 percent of the total calculated payment. CCC will determine if any further payments are warranted. If CCC determines that a second payment is warranted, it will be up to 75 percent of the total calculated payment less the amount received in the first payment and the second payment period will begin in November 2019. If CCC determines that a final payment is warranted, it will be for up to the remaining amount of the total calculated payment, unless otherwise adjusted by CCC, and the last payment period will begin in January 2020.

Provisions Requiring Refund to CCC

In the event that any application for an MFP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the participant must refund any excess payment to CCC; if the error was the applicant's error, the refund must include interest to be calculated from the date of the disbursement to the MFP participant. If, for whatever reason, FSA determines that the applicant misrepresented either the total amount or producer's share of the crop, head of livestock, or production, or if the MFP payment would exceed the participant's correct payment, the application will be disapproved and the full MFP payment for that crop or livestock for that participant will be required to be refunded to CCC with interest from the date of disbursement. If any corrections to the ownership interest in the crop are made to the acreage report after the MFP application deadline, and would have resulted in a lower MFP payment, the applicant will be required to refund the difference with interest from date of disbursement.

TMP Subpart C Description

Subpart C establishes EDCDP under which CCC may provide to eligible non-profit entities surplus commodities CCC has acquired in response to trade actions taken by foreign governments resulting in the loss of exports. The types and quantities of commodities made available under subpart C depend to a large extent upon the ability of CCC to use such commodities through existing domestic feeding programs administered by FNS. EDCDP is intended to provide commodities to low income individuals, primarily through eligible entities not participating in existing FNS food distribution programs.

Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs the program for payments to certain agricultural commodity producers and thus falls within that exemption. Due to the nature of the rule and the need to implement the regulations expeditiously to provide assistance to agricultural producers, CCC finds that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available in the docket on *regulations.gov*.

OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfer rules'' are not covered by Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

Cost Benefit Analysis Summary

The 2019 MFP payments will provide producers with financial assistance that gives them the ability to absorb some of the additional costs from having to delay or reorient marketing of the 2019 crop due to the trade actions of foreign governments resulting in the loss of exports. Payment calculations for specific commodities are specified in the applicable NOFA. In general, for non-specialty crops, a single average payment rate per acre will be determined for each county, based on fixed average planted acres and yields for non-specialty crops in each county and the assessed amount of damage calculated due to trade actions of foreign governments resulting in the loss of exports for these crops. The total number of acres used to calculate a MFP payment on a farm is equal to 2019 reported planted acreage for a farm not to exceed the sum of planted acres and prevented planted acres of non-specialty crops on the farm in 2018, and available acreage from 2018 expired Conservation Reserve Program contracts. The use of a

single county-wide payment rate per acre for all non-specialty crops will minimize cross-commodity production distortions and better account for cross-commodity market effects from disrupted trade, which are the basis for the payments relating to specific crops or commodities that are negatively impacted by actions of foreign governments. For specialty crops, 2019 MFP payments will be based on 2019 bearing acres of each specialty crop multiplied by the payment rate for the relevant specialty crop and the relevant state. For dairy and hogs, 2019 MFP payments will be made in a similar manner to payments made under the 2018 MFP—production of the commodity (hundredweight or number of animals) times the applicable national payment rate per unit for the commodity.

USDA has revised estimation of the impacts of the trade actions of foreign governments resulting in the loss of exports based on a longer-term analysis of U.S. commodity exports to affected markets than was used for the 2018 MFP. The revised method better accounts for the longer than expected duration of trade retaliation. USDA estimates that for TMP, MFP payments will total up to $14.5 billion and purchases of surplus commodities and food products will total up to $1.4 billion. The payments and purchases represent benefits to producers, which is the cost to the government for TMP.

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

While OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. TMP was designed to avoid skewing planting decisions one way or another. Farmers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of a new USDA program might or might not look like. The discretionary aspects of TMP (for example, determining AGI and payment limitations) were designed to be consistent with established FSA and CCC programs and are not expected to have any impact to the human environment, as MFP payments will only be made after the commodity has been reported for non-specialty or specialty crops and produced for dairy and livestock. Accordingly, the following Categorical Exclusions in 7 CFR part 799.31 apply: § 799.31(b)(6)(iii) applies to financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities; § 799.31(b)(6)(iv) applies to individual farm participation in FSA-administered programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) applies to ''safety net'' programs administered by FSA. No Extraordinary Circumstances (§ 799.33) exist. Additionally, as specified in 7 CFR 1b.4, FNS is categorically excluded. As such, the implementation of TMP and the participation in TMP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, CCC will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

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 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 does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA and CCC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by legislation.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. The UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E-Government Act Compliance

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

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is 10.123—Market Facilitation Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the information collection request that supports MFP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. FSA will merge the approved information collection burden under OMB control number 0560–0292.

If, in the course of implementing the EDPCP, either FNS or AMS determine that there are new information collection requirements, they will request approval from OMB.

List of Subjects in 7 CFR Part 1409

Agriculture, Agricultural commodities, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, CCC amends 7 CFR part 1409 as follows:

PART 1409—TRADE MITIGATION PROGRAM

■ 1. The authority citation for part 1409 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

■ 2. Revise the heading for part 1409 to read as set forth above.

§§ 1409.1 through 1409.7 [Redesignated as Subpart A]

■ 3. Redesignate §§ 1409.1 through 1409.7 as subpart A and add a heading for subpart A to read as follows:

Subpart A—2018 Market Facilitation Program (MFP)

§ 1409.1 [Amended]

■ 4. In § 1409.1, remove ''part'' and add ''subpart'' in its place and at the end of the first sentence, add the words ''for 2018 crops''.

■ 5. Add subpart B, consisting of §§ 1409.101 through 1409.107, to read as follows:

Subpart B—2019 Market Facilitation Program (MFP)

Sec.
1409.101 Applicability.
1409.102 Definitions.
1409.103 Producer eligibility requirements.
1409.104 Method of application.
1409.105 Calculation of payments.
1409.106 Eligibility subject to verification.
1409.107 Miscellaneous provisions.

§ 1409.101 Applicability.

This subpart specifies the eligibility requirements and payment calculations for the MFP for 2019 agricultural commodities. MFP will provide payments with respect to agricultural commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. Any specific program requirements for a commodity will be specified in a notice of funding availability published by the Commodity Credit Corporation (CCC) in the **Federal Register**.

§ 1409.102 Definitions.

The following definitions apply to MFP. The definitions in 7 CFR part 718 and parts 1400 and 1421 of this chapter apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes that has been designated as eligible for payments under MFP.

County payment rate means the per acre value determined by: Historical acres and yields of non-specialty crops planted in that county and the amount of damage calculated due to trade actions of foreign governments resulting in the loss of exports represented as a per unit (for example, bushel or pound).

Crop means the non-specialty crops and specialty crops.

Crop year means:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

MFP means the Market Facilitation Program funded by CCC and administered by the Farm Service Agency (FSA).

NOFA means a notice of funds availability published by CCC in the **Federal Register** that specifies terms and conditions of MFP that are applicable to a specific commodity.

Non-specialty crop means any of the following crops: Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra long staple cotton, flaxseed, lentils, long grain and medium grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat. If warranted, additional non-specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the **Federal Register**.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in 7 CFR 718.2.

Specialty crops means any of the following crops: Almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts. If warranted, additional specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the **Federal Register**.

§ 1409.103 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must meet all of the requirements in this part and the NOFA that is applicable to the commodity.

(b) A producer's share in the crop must be reported for the 2019 crop year on form FSA–578, Report of Acreage, submitted to FSA, and must be on file in the FSA county office by the applicable reporting dates, or no later than the date specified in the applicable NOFA.

(c) For non-specialty crops, except as determined by CCC, each applicant

must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter.

(d) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.104 Method of application.

(a) To apply for a payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of CCC to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for a payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the 2019 crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation and wetland conservation certification as provided in part 12 of this title;

(4) For non-specialty and specialty crops, an acreage report for the applicable crop year as provided in 7 CFR part 718; and

(5) For dairy and livestock, verifiable records that substantiate the amount of production as specified in the applicable NOFA.

§ 1409.105 Calculation of payments.

(a) For non-specialty crops, the payment under this subpart will be calculated by multiplying the county payment rate by the 2019 reported planted acreage for a farm not to exceed the sum of planted and prevented planted acres of non-specialty crops on the farm in 2018, and available acreage from 2018 expired Conservation Reserve Program contracts. Producers' payments may be adjusted as determined by CCC and as detailed in the applicable NOFA.

(b) For non-specialty prevented planted crops followed by a CCC approved cover crop, the payment rate will be $15 per acre.

(c) For dairy and livestock, the payment under this subpart will be calculated by multiplying the total production of the commodity times the producer's eligible share of the commodity times the payment rate for that commodity, as provided for in a subsequent NOFA.

(d) For specialty crops, the payment under this subpart will be calculated by multiplying 2019 bearing acres of the specialty crop by the payment rate for the relevant specialty crop.

(e) For MFP payments:

(1) The first payment will be up to 50 percent of the total calculated payment.

(2) CCC will determine if any further payments are warranted. If CCC determines that a second payment is warranted, it will be up to 75 percent of the total calculated payment less the amount received in the first payment and the second payment period will begin in November 2019.

(3) If CCC determines that a final payment is warranted, it will be for up to the remaining amount of the total calculated payment, unless otherwise adjusted by CCC, and the last payment period will begin in January 2020.

§ 1409.106 Eligibility subject to verification.

(a) Producers approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.107 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in 7 CFR parts 11 and 780 part 1400 of this chapter apply to determinations under this subpart.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The $900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching or forestry related activities. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities, the person or legal entity, other than a joint venture or general partnership, is eligible to receive 2019 MFP payments up to the $250,000 payment limitation specified in the applicable NOFA. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2019 crop year or marketing year for livestock and dairy the tax years are 2015, 2016, and 2017).

(f) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than $250,000 in payments as specified in the applicable NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under

MFP but only as to beneficiaries who, as a condition of such waiver, agree to apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of 7 CFR 718.304, ''Failure to Fully Comply,'' do not apply to this part.

■ 6. Add subpart C, consisting of §§ 1409.201 through 1409.207, to read as follows:

Subpart C—Expanded Domestic Commodity Donation Program (EDCDP)

Sec.
1409.201 Applicability.
1409.202 Definitions.
1409.203 Application process.
1409.204 Award process.
1409.205 Execution of agreement.
1409.206 Eligibility subject to verification.
1409.207 Miscellaneous provisions.

Subpart C—Expanded Domestic Commodity Donation Program (EDCDP)

§ 1409.201 Applicability.

(a) This subpart specifies the process for eligible non-profit entities to receive commodities from the Commodity Credit Corporation (CCC) that CCC has acquired in response to trade actions taken by foreign governments resulting in the loss of exports. The types and quantities of commodities made available under this subpart, if any, is dependent upon the ability of CCC to use such commodities through existing domestic feeding programs administered by the Food and Nutrition Service (FNS). In the event that these domestic feeding programs are unable to use the commodities acquired by CCC, EDCDP is intended to provide the remaining commodities to low income individuals, primarily through eligible entities not participating in existing FNS food distribution programs.

(b) CCC, as specified in the applicable Notice of Commodity Availability, will use grants and cooperative agreements to conduct the Expanded Domestic Commodity Donation Program (EDCDP).

(c) The Food and Nutrition Service and the Agricultural Marketing Service will administer the EDCDP on behalf of CCC.

§ 1409.202 Definitions.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes.

Eligible entity means an incorporated nonprofit entity that is operating for religious, charitable, or educational purposes, and does not provide net earnings to or operate in any other manner that inures to the benefit of any officer, employee, or shareholder of the entity as defined in section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791) and meets the requirements of § 1409.203.

Notice of Commodity Availability (NOCA) means the notice published by CCC specifying: The types of commodities available for use under this subpart; the terms and conditions that are in addition to the requirements of this subpart regarding approved uses of such commodities; the requirements a non-profit entity must meet to be an eligible entity; and whether funds will be made available by CCC regarding storage, handling, transportation and other administrative costs.

§ 1409.203 Application process.

(a) A non-profit entity that seeks approval for participation in EDCDP, as specified in the applicable NOCA must submit to the U.S. Department of Agriculture office identified in the NOCA:

(1) The application form;

(2) A copy of the entity's 501(c)(3) tax exempt status letter from the Internal Revenue Service (IRS);

(3) A copy of the entity's most recent IRS Form-990; and

(4) Any other supporting documents specified in the NOCA.

(b) After CCC has determined that the entity has met all eligibility requirements, the eligible entity may be considered for participation in EDCDP. After approval by CCC, the eligible entity must execute the applicable grant or cooperative agreement presented by CCC.

§ 1409.204 Award process.

(a) CCC intends to make awards to responsive applicants able to fully meet the requirements of the program subject to the priority criteria outlined below.

(b) To the extent that it is unable to make awards to all fully qualified applicants due to the limited quantity of commodities that will be available under this subpart, CCC reserves the right to both make awards on a prorated basis and to prioritize awards on the criteria listed below. CCC will consider the following factors in accepting offers for participation:

(1) The extent to which an eligible entity is already a participant in existing FNS administered programs with priority placed upon those entities that are not participating in such programs;

(2) The ability of the eligible entity to receive, store, and distribute at least 20,000 pounds of food per shipment and any other requirements as outlined in the NOCA, as determined by CCC, to successfully implement the proposed program activity;

(3) The eligible entity's operational and financial capability to receive and distribute commodities provided by CCC under this subpart;

(4) The scope of the proposed program activity in terms of its intended use of such commodities in low income areas, as determined by CCC using United States Census Bureau data and information available from federal means tested programs; and

(5) Any other criteria specified in the NOCA.

(c) An eligible entity may submit only one program proposal in response to a NOCA for the same geographic area.

§ 1409.205 Execution of agreement.

CCC will enter into a grant or cooperative agreement with an eligible entity regarding the entity's approved program proposal. The eligible entity may not assign or delegate any required action or responsibility of the entity except as provided in the applicable grant or cooperative agreement. Any modification of the grant or cooperative agreement must be made with the written approval of CCC.

§ 1409.206 Eligibility subject to verification.

(a) Eligible entities participating in EDCDP are required to retain documentation relating to the EDCDP for 3 years after the date of approval of the grant or cooperative agreement. However, records pertaining to claims or audits that remain unresolved in this period of time must be retained until such actions have been resolved.

(b) Eligible entities participating in EDCDP must permit authorized representatives of the U.S. Department of Agriculture or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by such entity.

§ 1409.207 Miscellaneous provisions.

(a) An eligible entity must comply with the provisions of:

(1) 2 CFR Chapters I and II (Office of Management and Budget Government-wide Guidance for Grants and Agreements);

(2) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards);

(3) 2 CFR part 415 (General Program Administrative Regulations); and

(4) 2 CFR part 418 (New Restrictions on Lobbying).

(b) An eligible entity that does not comply with the terms of the applicable

grant or cooperative agreement is subject to the provisions of: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

Stephen Censky,

Deputy Secretary, Vice Chairman, Commodity Credit Corporation.

[FR Doc. 2019–15700 Filed 7–25–19; 11:15 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0129; Product Identifier 2019–NE–01–AD; Amendment 39–19683; AD 2019–14–05]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Fischer GmbH Common Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain B/E Aerospace Fischer GmbH (B/E Aerospace Fischer) Common Seats 170/260 H160. This AD was prompted by the discovery during testing that the energy absorber (EA) may not function as intended during emergency landing. This AD requires removing and replacing the EA assemblies on the affected seats. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 3, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 3, 2019.

ADDRESSES: For service information identified in this final rule, contact B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: +49 (0) 871 93248–0; fax: +49 (0) 871 93248–22; email: *spares@fischer-seats.de.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0129.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0129; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain B/E Aerospace Fischer Common Seats 170/260 H160. The NPRM published in the **Federal Register** on April 9, 2019 (84 FR 14041). The NPRM was prompted by the discovery during testing that the EA may not function as intended during emergency landing. The NPRM proposed to require removing and replacing the EA assemblies on the affected seats. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0223, dated October 17, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> During dynamic tests of the seat energy absorber, a too long stroke was identified. Analysis indicated that, when the seat is used in low height adjustment during an emergency landing, the energy absorber may not function as intended.
>
> This condition, if not corrected, could lead to impact on lower stop of the energy absorber stroke, possible resulting in injury to the seat occupant.
>
> To address this unsafe condition, B/E Aerospace Fischer issued the SB, providing instructions to replace the seat energy absorber assembly and to re-identify the seat.
>
> For the reason described above, this [EASA] AD requires modification of the affected seats and reidentification.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0129.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB0718–004, Issue A, dated June 26, 2018. The ASB describes procedures for removing and replacing the EA assemblies on Common Seats 170/260 H160. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 341 Common Seats installed on aircraft of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect to determine if re-work has been accomplished.	0.2 work-hours × $85 per hour = $17	$0	$17	$5,797

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace EA Assembly	3 work-hours × $85 per hour = $255	10,000	10,255	3,496,955

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–14–05 B/E Aerospace Fischer GmbH: Amendment 39–19683; Docket No. FAA–2019–0129; Product Identifier 2019–NE–01–AD.

(a) Effective Date

This AD is effective September 3, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to B/E Aerospace Fischer GmbH (B/E Aerospace Fischer) Common Seats 170/260 H160 with a part number and serial number combination listed in Annex A to B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB0718–004, Issue A, dated June 26, 2018.

(2) These seats are known to be installed on, but not limited to: Airbus Helicopters (formerly Airbus Helicopters Deutschland GmbH, Eurocopter Deutschland GmbH, Eurocopter España S.A.) EC135 and EC635 helicopters; and Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) AS 332 L1 and EC 225 LP helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by the discovery during testing that the energy absorber (EA) installed on certain B/E Aerospace Fischer Common Seats 170/260 H160 may not function as intended during emergency landing. The FAA is issuing this AD to prevent malfunction of the EA on the seat. The unsafe condition, if not addressed, could result in injuries to the occupants during an emergency landing.

(f) Compliance

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

(g) Required Actions

Within 12 months or 1,000 flight hours, whichever occurs first, after the effective date of this AD:

(1) Review each affected B/E Aerospace Fischer Common Seat as identified by part number and serial number in Annex A of the B/E Aerospace Fischer ASB No. SB0718–004, Issue A, dated June 26, 2018, to determine if rework has already been performed. If the rework has been performed, the seat will be marked with a placard stating ''SB0718–004A implemented'' and no further action is required.

(2) Rework the affected seats in accordance with paragraphs 1 and 2 in B/E Aerospace Fischer ASB No. SB0718–004, Issue A, dated June 26, 2018. Once the rework is complete, mark the seat by installing a placard in accordance with paragraph 3 in B/E Aerospace Fischer ASB No. SB0718–004 except submittal of the reply form to B/E Aerospace Fischer is not required.

(h) Installation Prohibition

From the effective date of this AD, do not install any seat affected by this AD onto any aircraft unless the seat is marked with a placard stating completion of B/E Aerospace Fischer ASB No. SB0718–004, Issue A, dated June 26, 2018.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD.

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

(j) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0223, dated October 17, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0129.

(k) Material Incorporated by Reference

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

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

(i) B/E Aerospace Fischer Alert Service Bulletin No. SB0718–004, Issue A, dated June 26, 2018.

(ii) [Reserved]

(3) For B/E Aerospace Fischer service information identified in this AD, contact B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: *+49 (0) 871 93248–0;* fax: +49 (0) 871 93248–22; email: *spares@fischer-seats.de.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on July 22, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–15985 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0273; Airspace Docket No. 19–AGL–10]

RIN 2120–AA66

Revocation of Class E Airspace; Tecumseh, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace extending upward from 700 feet above the surface at Meyers-Divers' Airport, and Tecumseh Products Airport, Tecumseh, MI. This action is due to the cancellation of the instrument procedures; and the airspace is no longer required.

DATES: Effective 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 *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 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 removal of Class E airspace extending upward from 700 feet above the surface at Meyers-Divers' Airport and Tecumseh Products Airport, Tecumseh, MI.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 22745; May 20, 2019) for Docket No. FAA–2019–0273 to remove Class E airspace extending upward from 700 feet above the surface at Meyers-Divers'Airport and Tecumseh Products Airport, Tecumseh, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6005 of FAA Order 7400.11C, dated August 3, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 3, 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

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 removes the Class E airspace extending upward from 700 feet above the surface at Meyers-Divers' Airport and Tecumseh Products Airport, Tecumseh, MI.

This action due to the cancellation of the instrument approach procedures at the airport and the airspace is no longer necessary.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when

promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 3, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Tecumseh, MI [Removed]

Issued in Fort Worth, Texas, on July 22, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–15938 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–1022; Airspace Docket No. 18–ANE–8]

RIN 2120–AA66

Amendment of VOR Federal Airways V–115, V–184, V–188, and V–542 in the Vicinity of Tidioute, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF Omnidirectional Range (VOR) Federal airways V–115, V–184, V–188, and V–542 due to planned decommissioning of the Tidioute, PA, VORTAC navigation aid which provides navigation guidance for segments of the routes. The Tidioute VORTAC is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901, 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 *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2018–1022 in the **Federal Register** (83 FR 67163; December 28, 2018) amending VOR Federal airways V–115, V–184, V–188, and V–542. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the descriptions of VOR Federal airways V–115, V–184, V–188, and V–542, due to the planned decommissioning of the Tidioute, PA, VORTAC. The route changes are described below.

V–115: V–115 currently extends between the Crestview, FL, VORTAC and the Buffalo, NY, VOR/DME. This change removes the route segments between the Franklin, PA, VOR and the Buffalo VOR/DME. The amended route

extends between Crestview, FL, and Franklin, PA.

V–184: V–184 currently extends between the Erie, PA, VORTAC and the intersection of radials from the Kennedy, NY, VOR/DME and the Robbinsville, NJ, VORTAC. This change removes the segments between the Erie, PA, VORTAC and the Philipsburg, PA, VORTAC. The amended route extends between Philipsburg, PA, and the intersection of radials from the Kennedy, NY, VOR/DME and the Robbinsville, NJ, VORTAC.

V–188: V–188 currently extends between the Tidioute, PA, VORTAC and the Groton, CT, VOR/DME. This change removes the segment between the Tidioute, PA, VORTAC and the Slate Run, PA, VORTAC. The amended route extends between Slate Run, PA and Groton, CT.

V–542: V–542 currently extends between the Tidioute, PA, VORTAC and the Lebanon, NH, VOR/DME. This change removes the segments between the Tidioute, PA, VORTAC and the Elmira, NY, VOR/DME. The amended route extends between Elmira, NY and Lebanon, NH.

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 because 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 does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airways V–115, V–184, V–188, and V–542 in the eastern United States due to the planned decommissioning of the Tidioute, PA, VORTAC qualifies for categorical exclusion under the National Environmental Policy Act and its agency-specific implementing regulations in FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures at paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Therefore, this airspace action is not expected to result in any significant environmental impacts. 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 6010(a)—Domestic VOR Federal Airways

V–115 [Amended]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, GA; Volunteer, TN; Hazard, KY; Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; to Franklin.

V–184 [Amended]

From Philipsburg, PA; Harrisburg, PA; INT Harrisburg 135° and Modena, PA, 274° radials; Modena; INT Modena 120° and Woodstown, NJ, 326° radials; Woodstown; Cedar Lake, NJ; Atlantic City, NJ; INT Atlantic City 055° and Kennedy, NY, 198° radials; to INT Kennedy 198° and Robbinsville, NJ, 112° radials.

V–188 [Amended]

From Slate Run, PA; Williamsport, PA; Wilkes-Barre, PA; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; Sparta; INT Sparta 082° and Carmel, NY, 243° radials; Carmel; INT Carmel 078° and Groton, CT, 276° radials; to Groton.

V–542 [Amended]

From Elmira, NY; Binghamton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

Issued in Washington, DC, on July 22, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–15940 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2013–0023]

RIN 1218–AD17

Recording and Reporting Occupational Injuries and Illnesses; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Announcement of OMB information collection approval.

SUMMARY: This document announces Office of Management and Budget (OMB) approval for the information collection requirements in the Recording and Reporting Occupational Injuries and Illnesses regulation as revised by the Tracking of Injuries and Illnesses final rule. OSHA sought OMB approval of these requirements under the Paperwork Reduction Act of 1995 (the PRA), and, as required by that Act, is announcing the approval for these requirements. The OMB approval number is 1218–0176.

DATES: The information collection requirements contained in the final rule which was published on January 25, 2019 (84 FR 380), were approved by OMB on March 28, 2019.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, OSHA, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: On January 25, 2019, OSHA published the Tracking of Injuries and Illnesses final rule revising the Recording and Reporting Occupational Injuries and Illnesses regulation, 29 CFR 1904.41.

The regulation contains new and revised information collection requirements. These requirements are contained in the Information Collection Request (ICR) approved by OMB under control number 1218–0176, which OSHA included in the final rule published in the **Federal Register** (84 FR 405). OSHA sought OMB approval of these requirements under the PRA (44 U.S.C. 3501 *et seq.*), and, as required by that Act, is announcing the approval for these requirements. A copy of the approved ICR is available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201901-1218-001.*

The final rule amended the information collection requirements of the recordkeeping regulation 29 CFR 1904.41 by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. The final rule also established a new information collection requirement by requiring covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.

The public already has had the opportunity to comment on the information collection requirements and OMB has approved them on March 28, 2019. This announcement is to increase public awareness of OMB's approval of the information collection requirements. In addition, 29 CFR 1904.45 displays the approved recordkeeping and reporting information collection requirements, including 29 CFR 1904.41, with the OMB control number, 1218–0176.

Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document. The authority for this document is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 21, 2019.

Loren Sweatt,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–15880 Filed 7–26–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0621]

RIN 1625–AA00

Safety Zone; Allegheny River, Mile 0 to Mile 0.6, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Allegheny River from Mile 0 to Mile 0.6. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by high speed boat races and paddle boat races. Entry of vessels or persons into this zone is prohibited unless specifically authorized by Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 10:30 a.m. on August 2, 2019 through 10:30 p.m. on August 4, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0621 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. After receiving and fully reviewing the event information, circumstances and exact location, the Coast Guard determined that a safety zone was necessary to protect personnel, vessels, and the marine environment from potential hazards created from high speed boat races and paddleboat races. It would be impracticable to complete the full NPRM process for this safety zone because we need to establish it by August 2, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that a safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from high speed boat races and paddle boat races.

IV. Discussion of the Rule

This rule establishes a safety zone from 10:30 a.m. on August 2, 2019 through 10:30 p.m. on August 4, 2019, to be enforced from 10:30 a.m. through 10:30 p.m. each day. The safety zone will cover all navigable waters on the Allegheny River from Mile 0 to Mile 0.6.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Marine Safety Unit Pittsburgh at 412–221–0807. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts approximately a one-half mile stretch of the Allegheny River for a duration of twelve hours on each of three days. Vessel traffic can seek permission to transit the zone. Moreover, the Coast Guard will issue LNMs, MSIBs, and BNMs via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting twelve hours on each of three days that will prohibit entry on the Allegheny River from Mile 0 to Mile 0.6, during the high speed boat race and paddleboat race event. It is categorically excluded from further review under paragraph L60(a) in Table Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0621 to read as follows:

§ 165.T08–0621 Safety Zone; Allegheny River, Mile 0 to Mile 0.6, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Allegheny River from Mile 0 to Mile 0.6

(b) *Effective period.* This section is effective from 10:30 a.m. on August 2, 2019, through 10:30 p.m. on August 4, 2019. It will be enforced from 10:30 a.m. through 10:30 p.m. each day.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Marine Safety Unit Pittsburgh at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2019–15969 Filed 7–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0620]

Safety Zone; Leukemia and Lymphoma Light the Night Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce regulations for the Leukemia and Lymphoma Light the Night Fireworks display safety zone on October 12, 2019. Our regulation for firework display safety zones within the Captain of the Port Zone Columbia River identifies the regulated area for this event on the Willamette River in Portland, OR, and the regulations that will be enforced. These regulations prohibit persons and vessels from entry into, transit through, mooring, or anchoring within the regulated area unless authorized by the Captain of the Port Sector Columbia River or their designated representative.

DATES: The regulations in 33 CFR 165.1315 will be enforced for the Leukemia and Lymphoma Light the Night Fireworks display safety zone listed in the table in § 165.1315(a) from 7 p.m. to 9:30 p.m. on October 12, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LCDR Dixon Whitley, Waterways Management Division, MSU Portland, Oregon, Coast Guard; telephone 503–240–9319, email *MSUPDXWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Leukemia and Lymphoma Light the Night Fireworks display in Portland, OR detailed in 33 CFR 165.1315 from 7 p.m. to 9:30 p.m. on October 12, 2019. This action is necessary to ensure the safety of life on the Columbia River during the fireworks display. Under the provisions of 33 CFR 165.1315 and subpart C of part 165, no person or vessel may enter the safety zone, consisting of all waters of the Columbia River within a 450 yard radius of the launch site located at 45°30′23″ N, 122°40′4″ W, without permission from the Captain of the Port Sector Columbia River or their designated representative. Persons or vessels wishing to enter the safety zone may request permission to do so from the on-scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

Dated: July 23, 2019.

J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2019–15997 Filed 7–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AD39

[Docket ID ED–2018–OPE–0041]

Institutional Eligibility and Student Assistance General Provisions

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule; announcement of effective date.

SUMMARY: Consistent with the decisions of the U.S. District Court for the Northern District of California, this document memorializes that selected provisions of these final regulations took effect on May 26, 2019.

DATES: In *National Education Association* v. *DeVos,* No. 18–cv–05173–LB (N.D. CA April 26, 2019), the court vacated the rule amending 34 CFR 600.2, 600.9(c), 668.2, and the addition of 34 CFR 668.50, published December 19, 2016 at 81 FR 92236, and delayed June 29, 2018 (83 FR 31296), is effective May 26, 2019.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 290–44, Washington, DC 20202. Telephone: (202) 453–6318. Email: *sophia.mcardle@ed.gov* or Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 290–42, Washington, DC 20202. Telephone: (202) 453–7249. Email: *scott.filter@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2016 (81 FR 92236), the U.S. Department of Education (Department) published regulations related to distance education and correspondence courses as well as regulations providing students and the public with disclosures about the educational institutions that offered these programs (Distance Education Rules). The regulations originally were to go into effect July 1, 2018. But on July 3, 2018 (83 FR 31296) with an effective date of June 29, 2018, the Department published a notice delaying the effective date of the amendments to 34 CFR 600.2, 600.9(c), 668.2, and the addition of 34 CFR 668.50, published December 19, 2016 (81 FR 92236) until July 1, 2020 (Delay Rule).

The National Education Association (NEA), the California Teachers Association (CTA), and individual plaintiffs Shane Heiman, Kwynn Uyehara, and Stephanie Portilla, who are NEA and CTA members who were enrolled or considering enrolling in online education programs, filed a challenge to the Delay Rule, arguing that, because the Department did not submit these regulations to negotiated rulemaking, the Department violated the Higher Education Act of 1965, as amended, and the Administrative Procedure Act. They asked for the Delay Rule to be vacated and that the December 2016 Distance Education Rules be allowed to go into effect. Complaint for Declaratory and Injunctive Relief, *National Education Association* v. *DeVos,* No. 18–cv–05173–LB (N.D. CA August 23, 2018).

On April 26, 2019, the Court issued its Memorandum Opinion and Order, granting the Plaintiffs' motion for summary judgment and denying the Department's cross-motion for summary judgment, stating that the Department did not have good cause to forgo negotiated rulemaking with respect to the Delay Rule. The Court vacated the Delay Rule, but stayed the vacatur for 30 days from the date of the order (April 26, 2019). *National Education Association* v. *DeVos,* No. 18–cv–05173–LB (N.D. CA April 26, 2019).

Regulations

With this action by the Court, the final regulations, published December 19, 2016 (81 FR 92236), listed below took effect.

- Section 600.2 Definitions ''State authorization reciprocity agreement.''
- Section 600.9(c) State authorization.
- Section 668.2 Definitions ''Distance Education.''
- Section 668.50 Institutional disclosures for distance or correspondence programs.

Accessible Format: Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 22, 2019.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2019–15869 Filed 7–26–19; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R07–OAR–2019–0190; FRL–9996–08–Region 7]

Approval of Missouri Air Quality Implementation Plans; Redesignation of the Missouri Portion of the St. Louis-St. Charles-Farmington, MO-IL 2012 $PM_{2.5}$ Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a request from the Missouri Department of Natural Resources (MoDNR) to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL fine particulate matter ($PM_{2.5}$) unclassifiable area (''St. Louis area'' or ''area'') to unclassifiable/attainment for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The Missouri portion of the St. Louis area comprises of the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis. The EPA now has sufficient data to determine that the St. Louis area is in attainment of the 2012 $PM_{2.5}$ NAAQS. Therefore, EPA is approving the state's December 11, 2018 request to redesignate the area to unclassifiable/attainment for the 2012 $PM_{2.5}$ NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the $PM_{2.5}$ monitors in the area are in compliance with the 2012 $PM_{2.5}$ NAAQS. The EPA will address the Illinois portion of the St. Louis area in a separate rulemaking action.

DATES: This final rule is effective on July 29, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0190. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7214, or by email at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP submission been met?
III. The EPA's Response to Comments
IV. What action is the EPA taking?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

This final rulemaking takes final action on MoDNR's December 11, 2018, request to change the designation of the Missouri portion of the St. Louis area from unclassifiable to unclassifiable/attainment for the 2012 $PM_{2.5}$ NAAQS, based on quality-assured and certified monitoring data for 2015–2017, and approves that the Missouri portion of the St. Louis area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The background for this action is discussed in detail in the EPA's proposed rulemaking published in the **Federal Register** on May 16, 2019 (84 FR 22101).

II. Have the requirements for approval of a SIP submission been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The MoDNR held a thirty-day comment period, and a public hearing on October 25, 2018. No oral or written comments were received. The submission satisfied the completeness criteria of 40 CFR part 51, appendix V.

III. The EPA's Response to Comments

The public comment period on EPA's proposed rule opened May 16, 2019, the date of its publication in the **Federal Register** and closed on June 17, 2019. During this period, the EPA received no comments on the action.

IV. What action is the EPA taking?

The EPA is approving the MoDNR's December 11, 2018, request to redesignate the Missouri portion of the St. Louis area from unclassifiable to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS. This final rulemakng changes the legal designation, found at 40 CFR part 81, of the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis from unclassifiable to unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, a redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not create any new requirements. Accordingly, this action merely takes final action to approve to redesignate an area to unclassifiable/attainment and does not impose additional requirements. For that reason, this action:

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

This action 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 81

Environmental protection, Air pollution control.

Dated: July 23, 2019.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 81 as set forth below:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.326, the table entitled ''Missouri—2012 Annual $PM_{2.5}$ NAAQS'' is amended by revising the entries for ''St. Louis Area, MO-IL:'' to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
St. Louis Area, MO-IL:				
Franklin County	7/29/2019, [insert **Federal Register** citation].	Unclassifiable/Attainment.		
Jefferson County	7/29/2019, [insert **Federal Register** citation].	Unclassifiable/Attainmant.		
St. Charles County	7/29/2019, [insert **Federal Register** citation].	Unclassifiable/Attainmant.		
St. Louis County	7/29/2019, [insert **Federal Register** citation].	Unclassifiable/Attainmant.		
St. Louis City	7/29/2019, [insert **Federal Register** citation].	Unclassifiable/Attainmant.		
*	*	*	*	*	*	*

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2019–16044 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2003–0010; FRL–9996–45–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 announces the deletion of 500 residential parcels of the Omaha Lead Superfund site (Site or OLS) located in Omaha, Nebraska, from the National Priorities List (NPL). This partial deletion pertains to 500 residential parcels. The remaining parcels will remain on the NPL and are not being considered for deletion as part of this action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Nebraska, through the Nebraska Department of Environmental Quality, determined that all appropriate Response Actions under CERCLA were completed at the identified parcels. However, this deletion does not preclude future actions under CERCLA.

DATES: This action is effective July 29, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID no. EPA–HQ–SFUND–2003–0010. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, and viewing hours of the Site information repositories are:

- EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, open from 8 a.m. to 4 p.m. Monday–Friday.
- W. Dale Clark Library, located at 215 S 15th Street, Omaha, NE 68102, open 10 a.m. to 8 p.m. Monday–Thursday; 10 a.m. to 6 p.m. Friday and Saturday; and 1 p.m. to 6 p.m. Sunday.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hagenmaier, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, SEMD/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7939, email: *hagenmaier.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL are 500 residential parcels of the Omaha Lead Superfund site, Omaha, Nebraska. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (84 FR 24069) on May 24, 2019.

The closing date for comments on the Notice of Intent for Partial Deletion was June 24, 2019. No public comments were received, and EPA has determined it will proceed with the partial deletion.

The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 23, 2019.

James Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2019–16046 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1992–0007; FRL–9997–23–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Cleburn Street Well Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is publishing a direct final Notice of Partial Deletion of the Cleburn Street Well Superfund Site (Site), located in Grand Island, Nebraska, from the National Priorities List (NPL) for of the Operable Unit (OU) 1 and OU4. This partial deletion pertains to OU1—Contaminated sub-surface soil at former One-Hour Martinizing (OHM) and OU4—Soil and Groundwater at Ideal Cleaners. The remaining OU2, OU3, and OU5 will remain on the NPL and are not being considered for deletion as part of this action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Nebraska, through the Nebraska Department of Environmental Quality (NDEQ); because EPA has determined that all appropriate response actions at these identified parcels under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund, including Five Year Reviews.

DATES: This direct final partial deletion is effective September 27, 2019 unless EPA receives adverse comments by August 28, 2019. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1992–0007, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

• *Email: wennerstrom.david@epa.gov* or *houston.pamela@epa.gov.*

• *Mail:* Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Attention: David Wennerstrom, SEMD Divison or Pam Houston, ECO Office.

• *Hand delivery:* Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Such deliveries are only accepted between 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1992–0007. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* online at: *https://www.epa.gov/superfund/cleburnstreetwell,* or in hardcopy at EPA Region 7 Records Center, 11201 Renner Boulevard, Lenexa, KS 66219 between 8 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

David Wennerstrom, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7996, email: *wennerstrom.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Partial Site Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 7 is publishing this direct final Notice of Partial Deletion for the Cleburn Street Well Superfund Site, (Site), from the National Priorities List (NPL). This partial deletion pertains to the soil and subsurface soil at the One-Hour Martinizing facility (OHM) (OU1) and the soil and groundwater at Ideal Cleaners (OU4). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Cleburn Street Well Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses OU1 and OU4 of the Cleburn Street Well Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site media and/or parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL

without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of OU1 and OU4 of the Site:

(1) The EPA has consulted with the State of Nebraska prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion published in the ''Proposed Rules'' section of this issue of the **Federal Register**.

(2) The EPA has provided the State 30 working days for review of this document and the parallel Notice of Intent for Partial Deletion prior to their publication in this issue of the **Federal Register**, and the State, through the NDEQ, has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, The Grand Island Independent. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, the EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides the EPA's rationale for deleting OU1 and OU4 of the Cleburn Street Well Superfund Site from the NPL:

Site Background, Location, and History

The Cleburn Street Well Superfund Site (CERCLIS ID #NED981499312) is located within the urban setting of Grand Island, Nebraska. Grand Island's 2016 census reports a population of 51,517. The Site is situated in central Nebraska, approximately two miles north of the Wood River and approximately seven miles northeast of the Platte River. The Site encompasses a portion of the downtown area and is surrounded by a variety of light industries, commercial businesses and residential dwellings. Surface runoff is controlled by man-made features typically present in a city (storm sewers/gutters) and is eventually discharged into the Wood River.

The Cleburn Street Well Site consists of four distinct volatile organic compound (VOC) release areas located within the central portion of the City of Grand Island, Nebraska. Three of the source areas are locations of commercial dry-cleaning businesses: Former One-Hour Martinizing (OHM) (OUs 1 and 2), Ideal Cleaners (OU3), and former Liberty Cleaners (OU4). Ideal Cleaners is currently an operating business. The fourth release area is the location of the former Nebraska Solvent Distribution Company (OU5).

OU1 (former OHM) is located on a property which includes a structure with concrete slab on grade construction. The former OHM dry cleaner building is currently being used temporarily as commercial building space for a construction business. A used tire shop operates in an adjacent building. The immediate vicinity of the former OHM predominantly consists of commercial businesses; however, residential properties are also present.

OU4 (Liberty Cleaners) is an operating business located in a predominantly residential area.

Contamination at the Cleburn Street Well Site was first discovered in March 1986 when the Nebraska Department of Health detected tetrachloroethene (PCE) at the Cleburn Street public drinking water supply well. The EPA became involved in 1987 and conducted a preliminary assessment with subsequent site investigations resulting in the identification of four separate source areas: Three dry cleaning facilities—OHM, Liberty Cleaners, and Ideal Cleaners; and a former solvent distribution company (Nebraska Solvent Company). These source areas are all within an approximate 1,960 feet radius of the Cleburn Street well, which is located near the intersection of Cleburn Street and North Front Street.

The EPA follow-on investigations identified significant PCE and trichloroethene (TCE) contamination OU1 and OU4 locations. The release of hazardous substances resulted in the contamination above maximum contaminant levels (MCLs), of the aquifer providing potable water to the city of Grand Island. The MCL of both TCE and PCE is 5 parts per billion, as defined by the 1976 Safe Water Drinking Act. This necessitated the abandonment of the Cleburn Street public water supply well and subsequently the abandonment of both the Lincoln and Pine Street public supply wells, also located in the area.

The State of Nebraska has designated the aquifer impacted by the Cleburn Site as a Class GA Groundwater Supply. Class GA Groundwater is a groundwater supply which is currently being used as a public drinking water supply or is proposed to be used as a public drinking water supply. The contamination detected caused the State of Nebraska to designate the Site as a Remedial Action Class 1, requiring the ''most extensive remedial action measures'' to clean up and restore the groundwater to drinking water quality suitable for all beneficial uses.

Remedial Investigation and Human Health Assessments

The Site was proposed for the National Priorities List, or NPL, on July 29, 1991 (56 FR 21460) and listed as final on the NPL on October 14, 1992 (57 FR 47180). The remedial investigation was completed in May 1993 and the Feasibility Study was completed in July 1995.

The human health risk assessment completed in 1993 evaluated risk at OU1 and OU4. Current groundwater exposures are not likely because city residents have access to city water and are not known to be using private wells; and soil contamination is below ground and not accessible for direct contact exposures. Although residents are not believed to be currently exposed to contamination, the risk assessment evaluated several potential future exposure pathways. Future residents could be exposed to contaminated groundwater via ingestion, inhalation, and direct contact if private wells are installed and used in place of city water; and future development could also result in direct contact, ingestion, and inhalation exposures to contaminated soils.

The 1993 human health risk assessment determined that the carcinogenic risk associated with

exposure to soil at the OU1 and OU4 source was low with an estimated excess cancer risk of $2x10^{-7}$.

A screening level ecological risk assessment was performed in 1998. It was determined that there were no ecological exposure pathways.

Remedial Action Objectives

The EPA composed the 1996 Record of Decision (ROD) to address soil and groundwater contamination at all three dry cleaner locations. Remedy selection was based on the following 1996 ROD Remedial Action Objectives, or RAOs:

The RAO for groundwater at OU4, defined in the 1996 ROD, is restoration of the shallow aquifer to its designated use as a drinking water source.

The general RAO for groundwater which provides for the protection of human health includes the prevention or minimization of ingestion of groundwater having a carcinogenic risk greater than $1x10^{-6}$ and/or a HI for noncarcinogens greater than 1. The specific remediation goals which would achieve this objective are the MCLs for PCE contamination. The RAO for groundwater which is protective of the environment involves the restoration of groundwater quality to below MCLs for all contaminants which have MCLs. The primary contamination of concern is PCE.

The following RAO for OU1 and OU4 soils is defined in the 1996 ROD:

The RAO for soil which is protective of human health includes the prevention or minimization of direct contact with soils having a carcinogenic risk greater than 1×10^{-6}, and/or an HI for noncarcinogens greater than 1. The specific remediation goals which would achieve this objective have not been established. However, the agency's soil screening levels for PCE will be used as a guideline to determine the level of protectiveness achieved by the remedial action. The soil RAO also includes the prevention of migration of PCE contaminant from soil that would result in groundwater contamination in excess of the MCL with a site-specific cleanup level of 0.89 mg/kg.

Selected Remedy, Operations, and Results

Per the 1996 ROD, the following are the selected remedies for OU1 and OU4.

The selected remedies for OU1 (Soils at OHM) are:

—Institutional controls to restrict groundwater use and prevent exposures
—Extraction of subsurface contaminants using soil vapor extraction (SVE)
—Treatment of extracted vapors by carbon absorption

The selected remedies for OU4 (Ideal Cleaners) are:

—Natural attenuation and groundwater monitoring for ten years
—Institutional controls to restrict groundwater use and prevent exposures
—Contingency action of in situ treatment of source soil by SVE*

* The SVE system was not warranted or needed to achieve the clean-up goal at OU4, and the SVE contingency remedy ws not imlemented.

OU1

The remedial design for OU1 actions selected in the 1996 ROD were completed in September 1997, and the remedies were constructed and operating by October 1998. Following the first year of operation, on October 29, 1999, a joint inspection was conducted by the EPA and the NDEQ, and the remedies were determined to be operational and functional.

The OU1 SVE system was operated by NDEQ for a period of approximately four years between 1998 and 2002, and for an additional year from April 2005 through early 2006. In April 2006, NDEQ notified the EPA of its position that the OU1 remedy was complete because soil vapor concentrations had reached asymptotic levels and no further mass removal was being achieved by the SVE system. As a part of the 2007 Source Investigation for OU2, Groundwater at former One-Hour Martinizing, soil samples were collected from seven locations from within the footprint of the building in the vadose zone, less than 24 feet below ground surface. All soil samples exhibited PCE concentrations less than the site-specific cleanup level of 0.89 mg/kg. In a letter dated February 22, 2007, the EPA agreed with NDEQ that the OU1 remedy had achieved its intended purpose of addressing source soils. The 2012 ROD Amendment, which selected in-situ thermal remedial action for OU2, also summarized the soil clean-up at OU1, ''The remediation goals for COC's detected in the shallow subsurface soils have been achieved by operation of the SVE system at the facility.''

OU4

The Remedial Design for OU4 was completed in June 1997. The remedial action for the natural attenuation remedy with monitoring included the installation of two downgradient monitoring wells and six quarterly monitoring events. The final RA Report for OU4 was approved on July 14, 1999. The remedy for OU4 was turned over to the State for O&M on September 10, 1999. Since 1999, NDEQ has sampled the monitoring wells at regular intervals. Nine of the last 11 groundwater sampling events for all OU4 wells have been non-detect and all groundwater monitoring wells have been under the MCL since the year 2001. After 2012, NDEQ management, with EPA concurrence, made the decision not to sample OU4 wells henceforth as there is no evidence of residual contamination.

Institutional Controls

Institutional controls at the Cleburn Well Superfund Site were implemented in February 1988 when the city of Grand Island passed Ordinance No. 8363, which restricts the use of groundwater pumped from within the Site and requires registration of new wells and adherence to permitting requirements within the Site.

Five-Year Review

Statutory five-year reviews are required at the Cleburn Street Well Superfund Site since hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Five-year reviews were completed for the Site in 2003, 2008, 2013, and 2018. For both OU1 and OU4, the remedy is protective of human health and the environment. There are no issues or recommendations for either OU1 or OU4. The next five-year review is scheduled for 2023.

Community Involvement

Throughout the process from development of the remedy to completion of the remedial activities, all phases of the Site remediation have been an extensive community involvement process with input from Federal and State regulators, the City of Grand Island, and members of the public. Over the life of the project, there were public comment periods and public meetings to ensure that the local residents were able to contribute to the process and express their opinions.

Public involvement has been included throughout the remediation process at this Site and has been memorialized in site documents including the Record of Decision, Proposed Plans, and EPA Five-Year Reviews. Public comments are also solicited during this partial deletion with a notice in the local newspaper, the Grand Island Independent.

Determination That the Criteria for Deletion Have Been Met

In accordance with 40 CFR 300.425(e), EPA Region 7 detemined the response at OU1 and OU4 of the Site

(the subject of this deletion) meet the substantive criteria for deletion from the NPL. The EPA has consulted with and has the concurrence of the State of Nebraska. All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

The implemented remedies at OU1 and OU4 have achieved the degree of cleanup specified in the remedy decisions for all pathways of exposure. All selected remedial action objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

V. Partial Deletion Action

The EPA, with concurrence of the State of Nebraksa through the NDEQ, has determined that all appropriate response actions under CERCLA, have been completed. Therefore, the EPA is deleting OU1 and OU4 from the Cleburn Street Well Superfund Site from the NPL.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication. This action will be effective September 27, 2019 unless EPA receives adverse comments by August 28, 2019. If adverse comments are received within the 30-day public comment period, the EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 17, 2019.

David Cozad,

Acting Regional Administrator, Region 7.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by revising the listing under Nebraska for ''Cleburn Street Well'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes[a]
*	*	*	*
NE	Cleburn Street Well	Grand Island	P
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * * * *

P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2019–15858 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140501394–5279–02]

RIN 0648–XS005

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2019 Commercial Accountability Measure and Closure for South Atlantic Blueline Tilefish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings of blueline tilefish are projected to reach the commercial annual catch limit (ACL) by July 30, 2019. Therefore, NMFS is closing the commercial sector for blueline tilefish in the South Atlantic EEZ at 12:01 a.m., local time, on July 30, 2019, and it will remain closed until the start of the next fishing year on January 1, 2020. This closure is necessary to protect the blueline tilefish resource.

DATES: This temporary rule is effective at 12:01 a.m., local time, on July 30, 2019, until 12:01 a.m., local time, on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

As specified at 50 CFR 622.193(z)(1)(i), the commercial ACL for blueline tilefish is 87,521 lb (39,699 kg), round weight. The commercial AM for blueline tilefish requires NMFS to close the commercial sector when the commercial ACL is reached, or projected to be reached, by filing a notification to that effect with the Office

of the Federal Register (50 CFR 622.193(z)(1)(i)). NMFS has projected that for the 2019 fishing year, the commercial ACL for South Atlantic blueline tilefish will be reached by July 30, 2019. Accordingly, the commercial sector for South Atlantic blueline tilefish is closed effective at 12:01 a.m., local time, on July 30, 2019, until 12:01 a.m., local time, on January 1, 2020.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having blueline tilefish on board must have landed and bartered, traded, or sold such blueline tilefish prior to July 30, 2019. During the commercial closure, all sale or purchase of blueline tilefish is prohibited. The harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limits specified in 50 CFR 622.187(b)(2) and 622.187(c)(1), respectively, while the recreational sector for blueline tilefish is open. These bag and possession limits apply in the South Atlantic on board a vessel with a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, and apply to the harvest of blueline tilefish in both state and Federal waters.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of blueline tilefish and the South Atlantic snapper-grouper fishery and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.193(z)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for blueline tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.193(z)(1)(i) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect blueline tilefish, since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: July 24, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–16030 Filed 7–24–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 145

Monday, July 29, 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 ENERGY

10 CFR Part 431

[EERE–2017–BT–STD–0032]

RIN 1904–AE07

Energy Conservation Program: Energy Conservation Standards for Evaporatively-Cooled Commercial Package Air Conditioners and Water-Cooled Commercial Package Air Conditioners

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for evaporatively-cooled commercial package air conditioners and water-cooled commercial package air conditioners (referred to as evaporatively-cooled commercial unitary air conditioners (ECUACs) and water-cooled commercial unitary air conditioners (WCUACs) in this document, respectively). Under the Energy Policy and Conservation Act of 1975, as amended, DOE must review these standards at least once every six years and publish either a notice of proposed rulemaking (''NOPR'') to propose new standards for ECUACs and WCUACs or a notice of determination that the existing standards do not need to be amended. This request for information (''RFI'') solicits information from the public to help DOE determine whether amended standards for ECUACs and WCUACs would result in significant additional conservation of energy and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before September 12, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number and provide docket number EERE–2017–BT–STD–0032, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: WCandECUAC2017STD0032@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0032 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

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

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-STD-0032.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Introduction

A. Authority and Background

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1]

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes ECUACs and WCUACs, the subject of this RFI. (42 U.S.C. 6311(1)(B)–(D))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6316(b)(2)(D).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings, as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989). ECUACs and WCUACs are covered under EPCA's definition of commercial package air conditioning and heating equipment. (42 U.S.C. 6311(8)) EPCA established initial standards for ECUACs and WCUACs with cooling capacity less than 240,000 Btu/h. (42 U.S.C. 6313(a))

If ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial equipment, including ECUACs and WCUACs, not later than 180 days after the amendment of the standard, DOE must publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) With certain exceptions,[3] DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish the more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

EPCA also requires that every six years DOE evaluate the energy conservation standards for certain commercial equipment, including ECUACs and WCUACs, and publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, a determination that more-stringent standards would (1) result in significant additional conservation of energy and (2) be both technologically feasible and economically justified must be supported by clear and convincing evidence. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A))

Following an update to ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2010), DOE published a final rule on May 16, 2012 (''May 2012 final rule''), amending the standards for 12 classes of ECUACs and WCUACs by adopting the energy efficiency ratio (EER) levels for this equipment established in ASHRAE 90.1–2010. 77 FR 28928. Since ASHRAE Standard 90.1–2010 was published, ASHRAE Standard 90.1 has undergone two revisions. On October 9, 2013, ASHRAE published ASHRAE Standard 90.1–2013, and on October 31, 2016, ASHRAE published ASHRAE Standard 90.1–2016. In neither of these publications did ASHRAE amend minimum EER levels for small, large, and very large water-cooled and evaporatively-cooled unitary air conditioners, and, thus, DOE was not triggered to examine amended standards for this equipment under 42 U.S.C. 6313(a)(6)(A). As a result, the current standards for ECUACs and WCUACs are those set forth in the May 2012 final rule and codified at 10 CFR 431.97. These standards are reproduced in Table I.1.

TABLE I.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR WATER-COOLED AND EVAPORATIVELY-COOLED COMMERCIAL PACKAGE AIR-CONDITIONING AND HEATING EQUIPMENT

Equipment type	Cooling capacity (Btu/h)	Heating type	Minimum EER	Compliance date
Small Water-Cooled	<65,000	All	12.1	October 29, 2003.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] DOE cannot adopt an ASHRAE standard that (1) increases energy use or decreases the minimum required energy efficiency or (2) results in the unavailability in any equipment class of performance characteristics that are currently available in the market. (42 U.S.C. 6313(a)(6)(B)(iii))

TABLE I.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR WATER-COOLED AND EVAPORATIVELY-COOLED COMMERCIAL PACKAGE AIR-CONDITIONING AND HEATING EQUIPMENT—Continued

Equipment type	Cooling capacity (Btu/h)	Heating type	Minimum EER	Compliance date
Small Water-Cooled	≥65,000 and <135,000	No Heating or Electric Resistance Heating.	12.1	June 1, 2013.
		All Other Types of Heating	11.9	June 1, 2013.
Large Water-Cooled	≥135,000 and <240,000	No Heating or Electric Resistance Heating.	12.5	June 1, 2014.
		All Other Types of Heating	12.3	June 1, 2014.
Very Large Water-Cooled	≥240,000 and <760,000	No Heating or Electric Resistance Heating.	12.4	June 1, 2014.
		All Other Types of Heating	12.2	June 1, 2014.
Small Evaporatively-Cooled	<65,000	All	12.1	October 29, 2003.
Small Evaporatively-Cooled	≥65,000 and <135,000	No Heating or Electric Resistance Heating.	12.1	June 1, 2013.
		All Other Types of Heating	11.9	June 1, 2013.
Large Evaporatively-Cooled	≥135,000 and <240,000	No Heating or Electric Resistance Heating.	12.0	June 1, 2014.
		All Other Types of Heating	11.8	June 1, 2014.
Very Large Evaporatively-Cooled	≥240,000 and <760,000	No Heating or Electric Resistance Heating.	11.9	June 1, 2014.
		All Other Types of Heating	11.7	June 1, 2014.

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligation under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment. EPCA requires that in order to adopt a more-stringent standard for ECUACs and WCUACs, DOE must determine, supported by clear and convincing evidence, that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)) To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.2 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.2—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.

TABLE I.2—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of an energy use analysis for ECUACs and WCUACs. The issues relevant to the energy use analysis are also relevant to the technical and economic analyses should DOE determine it necessary to conduct them. In addition to the specific issues identified in the following section on which DOE requests comment, DOE requests comment on its overall approach and analyses used to evaluate potential standard levels for ECUACs and WCUACs.

II. Requests for Information and Comments

DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards update that may justify a new rulemaking to consider more stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more-stringent standard: (1) Would not result in significant additional savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of the foregoing. In the following sections, DOE has identified a variety of issues on which it seeks input to aid in determining whether to proceed with a ''no new standard'' determination or propose more-stringent standards for ECUACs and WCUACs.

A. Market Analysis

In preparation for this RFI, DOE conducted a review of the current market for ECUACs and WCUACs, including equipment literature, and the DOE Compliance Certification Management System (CCMS) database.[4] In addition, DOE reviewed market data and stakeholder comments received as part of the previous standards rulemaking for ECUACs and WCUACs, as well as the energy savings potential for amended standards determined in that rulemaking. The following subsections discuss DOE's analysis of the current market for ECUACs and WCUACs as well as relevant results from the May 2012 final rule, including shipments estimates.

1. Shipments Estimates

As part of the previous rulemaking, AHRI provided historical shipments data from 1989 to 2009 for WCUACs by cooling capacity range. DOE searched for, but was unable to identify, publicly available sources of shipments of ECUACs and WCUACs.

Previously submitted historical AHRI data showed strongly decreasing shipments for certain small (*i.e.,* greater than 65,000 Btu/h and less than 135,000 Btu/h cooling capacity) and large WCUACs over the period from 1989 to 2009. (Docket No. EERE–2011–BT–STD–0029–0003) For the analyses conducted for a notice of data availability (NODA) published on May 5, 2011 (''May 2011 NODA''), DOE developed shipments projections for these equipment classes using an exponential curve fit to the 21 years of available data. 76 FR 25622, 25641–25642. The energy savings estimates from the May 2011 NODA (which depend on the shipments projections) were presented unchanged in the May 2012 final rule. 77 FR 28969–28971. Because the historical trends showed a steep decline in shipments for these classes, the shipment projections resulted in very few shipments by the end of the 30-year analysis period. For very large WCUACs, the decline in shipments was less definitive, although a linear fit of the available 21 years of shipment data showed gradually declining shipments. For each of the WCUAC equipment classes analyzed, DOE used these shipments data to analyze two shipment scenarios: (1) Based on historical trends of declining shipments, and (2) based on shipments remaining constant at 2009 levels. DOE analyzed the energy savings potential by equipment class for both scenarios to provide a range of energy savings estimates. 76 FR 25641–25642. Estimates of annual shipments averaged over the 30-year analysis periods used in the previous rulemaking, 2013–2042 for small WCUACs and 2014–2043 for large and very large WCUACs, resulted in the shipment estimates shown in Table II.1 for each equipment class.

In the May 2012 final rule analysis, DOE did not identify any models of certain small (*i.e.,* greater than 65,000 Btu/h but less than 135,000 Btu/h cooling capacity) or large ECUACs, and thus DOE assumed no shipments for these equipment classes. *Id.* At 76 FR 25639. DOE identified multiple models of very large ECUACs. Because no shipments data were available for ECUACs, DOE developed shipment estimates based on the ratio of the number of identified models of very large ECUACs (9) to the number of models of very large WCUACs (35). *Id.* at 76 FR 25642. The average of the projected shipments per year (averaged over the 30-year analysis period) under both scenarios considered is shown in Table II.1. Average shipment estimates for ECUACs and WCUACs in Table II.1 are shown as ranges bounded by the estimates for the two different analyzed shipment scenarios (*i.e.,* (1) based on historical trends of declining shipments, and (2) based on shipments remaining constant at 2009 levels). Shipments for ECUACs and WCUACs are also shown as a percentage of package air conditioner and package heat pump annual shipments reported by AHRI, averaged over the 5-year period from 2013–2017, for each cooling capacity range.[5]

[4] The DOE CCMS database can be found at: *http://www.regulations.doe.gov/certification-data/.*

[5] U.S. Manufacturers' Shipments of Central Air Conditioners and Air-Source Heat Pumps by Btu/h, AHRI Shipments Data. *http://www.ahrinet.org/Resources/Statistics/Historical-Data/Central-Air-Conditioners-and-Air-Source-Heat-Pumps.aspx* (last accessed April 8, 2019). DOE interprets the cited AHRI data as consisting of shipments for air-cooled and water-cooled package air conditioners and air-cooled heat pumps. Because the AHRI data uses cooling capacity ranges that differ from DOE's equipment class structure, AHRI shipments data for equipment with cooling capacity between 135,000 and 249,900 Btu/h are included in the row designated for equipment with cooling capacity ≥135,000 and <240,000 Btu/h in Table II.1. Additionally, AHRI shipments data for equipment with cooling capacity greater than or equal to 640,000 Btu/h are included in the row designated for equipment with cooling capacity ≥240,000 and <760,000 Btu/h in Table II.1. DOE estimates that shipments of package air conditioners with cooling capacity greater than 760,000 Btu/h are very small relative to shipments of all very large packaged air conditioner and heat

Continued

TABLE II.1—SHIPMENTS FOR WATER-COOLED, EVAPORATIVELY-COOLED, AND AIR-COOLED AIR-CONDITIONING AND HEATING EQUIPMENT BY EQUIPMENT CLASS

Equipment type	Cooling capacity (Btu/h)	Annual shipments—average over 30 years (Low and High Projections from May 2012 Final Rule) *	AHRI package AC/HP annual shipments **	Percentage of AHRI package AC/HP shipments (%)
Small Water-Cooled	≥65,000 and <135,000	51–152	180,377	0.03–0.08
Large Water-Cooled	≥135,000 and <240,000	85–182	72,797	0.12–0.25
Very Large Water-Cooled	≥240,000 and <760,000	585–909	27,282	2.1–3.3
Small Evaporatively-Cooled	≥65,000 and <135,000	0	180,377	0
Large Evaporatively-Cooled	≥135,000 and <240,000	0	72,797	0
Very Large Evaporatively-Cooled	≥240,000 and <760,000	150–234	27,282	0.55–0.86

* Projected average annual shipments shown were averaged over the 30-year analysis periods used in the May 2012 final rule analysis: 2013–2042 for small WCUACs, and 2014–2043 for large and very large WCUACs and very large ECUACs. Shipment estimates in the May 2012 final rule were developed for two different scenarios: (1) Based on historical trends of declining shipments, and (2) based on shipments remaining constant at 2009 levels. Estimates for the two different scenarios are the bounds for the ranges of shipments provided for each equipment class.

** U.S. Manufacturers' Shipments of Central Air Conditioners and Air-Source Heat Pumps by Btu/h, AHRI Shipments Data. *http://www.ahrinet.org/Resources/Statistics/Historical-Data/Central-Air-Conditioners-and-Air-Source-Heat-Pumps.aspx* (last accessed April 8, 2019).

As shown in Table II.1, average shipments of ECUAC and WCUACs with cooling capacity greater than or equal to 65,000 Btu/h were previously estimated to be less than 1,000 for each equipment class and are only a small fraction of shipments of air-cooled commercial unitary air conditioners (ACUACs). DOE is not aware of any publicly-available shipments data for ECUACs or WCUACs more recent than the data presented in the May 2012 final rule. On July 25, 2017, DOE published an RFI for test procedures for several categories of commercial air conditioners and heat pumps, including ECUACs and WCUACs (''July 2017 TP RFI''). 82 FR 34427. In response to the July 2017 TP RFI, Goodman Global, Inc (Goodman) stated that the market for WCUACs is extremely small and represents only a fraction of a percentage of ACUAC shipments. (Docket No. EERE–2017–BT–TP–0018–0014 at p. 3)

Issue A.1 DOE seeks comment on whether the shipments estimates for WCUACs and ECUACs analyzed in the May 2012 final rule are representative of the current market.

Issue A.2 DOE requests feedback and/or data on historical and recent shipments for each of the current seven equipment classes of WCUACs and seven equipment classes of ECUACs, including for units with cooling capacity less than 65,000 Btu/h. DOE also seeks evidence or reasoning for expected trends in future shipments that differ from those analyzed in the May 2012 final rule.

Issue A.3 DOE requests feedback on whether the historical decline in shipments for WCUACs that was found in the May 2012 final rule analysis still applies for the current WCUAC market. Specifically, DOE seeks information on market forces that are expected to influence future WCUAC shipment trends and could support DOE's assessment of future shipments. DOE also requests feedback on the market forces affecting shipments for the ECUAC market, and on whether there is any information to suggest a growing or declining market. DOE requests any shipment data that maps into the model counts as shown in table II.2.

2. Model Counts

For this RFI, DOE conducted a review of the current market for WCUACs and ECUACs based on models included in the DOE CCMS database. DOE also compared the number of ECUAC and WCUAC models to the number of ACUAC models listed in DOE's CCMS database. Table II.22 shows the number of models listed within the DOE CCMS database [6] that DOE has identified for each class of ACUACs, ECUACs, and WCUACs.

TABLE II.2—MODEL COUNTS FOR EVAPORATIVELY-COOLED, WATER-COOLED, AND AIR-COOLED AIR CONDITIONERS BY EQUIPMENT CLASS

Cooling capacity range (Btu/h)	Number of models		
	Evaporatively-cooled	Water-cooled	Air-cooled
<65,000	9	15	* 2,307
≥65,000 and <135,000	0	49	2,301
≥135,000 and <240,000	0	33	1,975
≥240,000 and <760,000	15	251	2,843

* This <65,000 Btu/h air-cooled model count includes only unique basic models of three-phase air-cooled commercial air conditioners with cooling capacity less than 65,000 Btu/h.

pumps (*i.e.*, with cooling capacity ≥240,000 Btu/h and <760,000 Btu/h).

[6] Accessed on April 1, 2019.

As shown in Table II.22, the number of models of ECUACs and WCUACs currently on the market is significantly less than the number of ACUAC models on the market for all capacity ranges, suggesting that the current market for ECUACs and WCUACs is much smaller than the market for ACUACs.

In the May 2012 final rule, DOE did not analyze small ECUACs and WCUACs with cooling capacity less than 65,000 Btu/h. As shown in Table II.22 of this RFI, DOE's CCMS database includes 9 models of ECUACs with cooling capacity less than 65,000 Btu/h and 15 models of WCUACs with cooling capacity less than 65,000 Btu/h. DOE identified only one manufacturer of ECUACs in this capacity range, and the models offered by this manufacturer are single-phase equipment and appear to be predominantly marketed for residential applications. Further, examination of the manufacturer literature for these models indicates that they are marketed specifically toward regions of the United States with hot and dry climates, suggesting that there are few if any shipments in other regions of the United States. In contrast, there are listings for over 3,000 basic models of air-cooled residential central air conditioners (CACs) in DOE's CCMS database, suggesting that evaporatively-cooled units comprise a very small share of the market for residential air conditioners.

DOE's CCMS database includes data for only two distinct product lines of WCUACs with cooling capacity less than 65,000 Btu/h. From examination of manufacturer literature for WCUACs with cooling capacity less than 65,000 Btu/h, the unit design and marketed application of these WCUAC models suggest that they do not comprise a significant share of the market for air conditioners in residential or commercial applications. As shown in Table II.22, the model count of WCUACs with cooling capacity less than 65,000 Btu/h is less than 1 percent of the model count of three-phase ACUACs in this capacity range.

Issue A.4 DOE seeks comment on the size of the current market for ECUACs and WCUACs, as compared to the market for ACUACs.

3. Current Market Efficiency Distributions

For this RFI, DOE examined the efficiency ratings of ECUACs and WCUACs currently on the market. Table II.3 presents the summary statistics by equipment category and size of equipment from DOE's CCMS database. As mentioned previously in section II.A.2 of this document, there were no ECUAC models listed in the DOE CCMS Database with cooling capacities between 65,000 Btu/h and 240,000 Btu/h.

TABLE II.3—CURRENT MARKET EFFICIENCY DISTRIBUTIONS FOR WATER-COOLED AND EVAPORATIVELY-COOLED AIR CONDITIONERS MODELS

Cooling capacity range (Btu/h)	Number of models	Average cooling capacity (Btu/h)	EER			Current federal EER standard level (no heat or electric heat)	Current federal EER standard level (all other types of heating)
			Minimum	Average	Maximum		
Water-Cooled Air Conditioners							
<65,000	15	52,907	12.2	12.9	14.8	* 12.1	
≥65,000 and <135,000	49	100,837	12.1	13.3	15.3	12.1	11.9
≥135,000 and <240,000	33	173,939	12.5	15.0	16.3	12.5	12.3
≥240,000 and <760,000	251	485,143	12.5	13.9	16.5	12.4	12.2
Evaporatively-Cooled Air Conditioners							
<65,000	9	38,300	13.2	14.8	16.0	* 12.1	
≥65,000 and <135,000	0	N/A	N/A	N/A	N/A	12.1	11.9
≥135,000 and <240,000	0	N/A	N/A	N/A	N/A	12.0	11.8
≥240,000 and <760,000	15	440,267	11.8	12.7	13.4	11.9	11.7

* The <65,000 Btu/h equipment classes for Water-cooled and Evaporatively cooled Air Conditioners are not divided by heating type.

Issue A.5 DOE seeks comment on the range of efficiency levels currently on the market for each equipment class of ECUACs and-WCUACs, and on whether efficiency levels above the current baseline are achievable for equipment across all cooling capacity ranges.

B. Energy Efficiency Descriptors

1. General

The current Federal energy conservation standards for ECUACs and WCUACs use EER as the energy descriptor. DOE notes that in addition to using EER for standard levels, ASHRAE Standard 90.1 also specifies standard levels using the integrated energy efficiency ratio (IEER). Unlike the EER metric, which only utilizes the efficiency of the equipment operating at full load, IEER factors in the efficiency of operating at part loads of 75 percent, 50 percent, and 25 percent of capacity as well as the efficiency at full load. This is accomplished by weighting the full- and part-load efficiencies with the average amount of time operating at each loading point. Additionally, IEER incorporates reduced condenser temperatures (*i.e.,* reduced entering water temperature for WCUACs and reduced outdoor air dry-bulb and wet-bulb temperatures for ECUACs) for part-load operation. ASHRAE 90.1 has included minimum efficiency levels for ECUACs and WCUACs in terms of both EER and IEER since 2010.

In response to the July 2017 TP RFI, the Appliance Standards Awareness Project (ASAP), Alliance to Save Energy, American Council for an Energy-Efficiency Economy (ACEEE), Northwest Energy Efficiency Alliance (NEEA), and Northwest Power and Conservation Council encouraged DOE to adopt IEER as the metric for WCUACs and ECUACs, stating that WCUACs and ECUACs provide the same function as

ACUACs and, like ACUACs, spend most of their operating hours at part load. (Docket No. EERE–2017–BT–TP–0018–0009 at p.4) In contrast, Goodman commented that the WCUAC market is so small that there would be no value in revising the regulated metric to IEER for WCUACs. (Docket No. EERE–2017–BT–TP–0018–0014 at p.3)

In the following sub-sections, three issues regarding IEER for ECUACs and WCUACs are discussed: (1) Representativeness of IEER for ECUACs and WCUACs of all capacities; (2) representativeness of IEER for ECUACs with cooling capacity less than 65,000 Btu/h; and (3) potential burdens to manufacturers of IEER testing.

2. Representativeness of IEER for Evaporatively-Cooled and Water-Cooled Units

As previously mentioned, IEER includes lower condenser temperatures for part-load tests. Specifically, Table II.4 shows the IEER test conditions for ECUACs and WCUACs specified in AHRI 340/360–2019.

TABLE II.4—IEER TEST CONDITIONS FOR WATER-COOLED AND EVAPORATIVELY-COOLED AIR CONDITIONERS FROM AHRI 340/360–2019

Percent load	Water-cooled	Evaporatively-cooled		
	Entering water temperature (°F)	Entering air dry-bulb temperature (°F)	Entering air wet-bulb temperature (°F)	Makeup water temperature (°F)
100	85.0	95.0	75.0	85.0
75	73.5	81.5	66.2	81.5
50	62.0	68.0	57.5	68.0
25	55.0	65.0	52.8	65.0

Performance of equipment at each of the four IEER testing conditions are combined in a weighted average to determine the IEER rating. The following equation shows the weighting factors for each testing condition.

$$IEER = (0.020 \cdot A) + (0.617 \cdot B) + (0.238 \cdot C) + (0.125 \cdot D)$$

Where (see Table II.4 for condenser temperature for all four test points):

A = EER, Btu/W · h at 100% capacity at standard rating conditions

B = EER, Btu/W · h at 75% capacity and reduced condenser temperature

C = EER, Btu/W · h at 50% capacity and reduced condenser temperature

D = EER, Btu/W · h at 25% capacity and reduced condenser temperature.

The intent of this weighted average across a range of condenser temperatures is to produce an IEER rating that is more representative of outdoor conditions that air conditioners face for much of the year, rather than just the peak temperature experienced in most climates for only a small minority of operating hours. However, these weighting factors may not be representative of typical applications for ECUACs. ECUACs may be disproportionally marketed and sold in relatively hot and dry climates in which there is a larger efficiency benefit to using evaporative condenser cooling. As previously shown in the IEER equation, the weighting factor for the full-load test point is only 2 percent, so almost all of the IEER rating reflects performance at cooler outdoor air temperatures.

Marketing literature for one ECUAC model line advertises its efficient performance at high outdoor air temperatures (90 °F and above) and states that the 95 °F outdoor air temperature used to determine EER is more representative of typical summer heat in hot climates than the lower outdoor air temperatures used to determine the seasonal energy efficiency ratio (SEER) rating (the seasonal cooling metric used for residential central air conditioners). (Docket No. EERE–2017–BT–STD–0032–0001 at p. 4) Presumably the same argument may apply for the suitability of IEER for ECUACs, as 98 percent of performance in the IEER rating is based on outdoor air dry-bulb temperatures of 81.5 °F or less.

In response to the July 2017 TP RFI, the California Investor Owned Utilities (CA IOUs) commented that their locations regularly experience summer ambient dry-bulb temperatures above 110 °F. CA IOUs further stated that the highest ambient IEER test point, 95 °F, does not reflect the conditions experienced in the western climate, and that IEER should include a ''hot-dry'' test point to reflect the conditions in the western climate. (Docket No. EERE–2017–BT–TP–0018–0007 at p. 3)

Issue B.1 DOE requests information on whether the IEER metric and weighting factors are representative of the average use cycles for ECUACs and WCUACs. Specifically, DOE seeks comment on the extent to which ECUACs and/or WCUACs are installed in hot and dry climates as compared to other climates. DOE also seeks comment on the types of buildings that represent the primary markets for ECUACs and WCUACs. DOE requests this information for all ECUAC and WCUAC equipment classes, including units with cooling capacities less than 65,000 Btu/h.

3. Representativeness of IEER for Evaporatively-Cooled Units With Cooling Capacity Less Than 65,000 Btu/h.

ASHRAE 90.1–2016 includes IEER efficiency requirements for all classes of ECUACs, including ECUACs with cooling capacity less than 65,000 Btu/h. However, DOE's preliminary analysis of models in this equipment class certified in DOE's CCMS database suggests that these units are primarily marketed for residential applications. In contrast, the IEER metric was developed for commercial applications by analyzing air conditioner energy use in commercial buildings. Therefore, it is not clear whether IEER is representative of average use cycles for ECUACs with cooling capacity less than 65,000 Btu/h.

One issue is the condenser conditions and weighting factors used for determining IEER. Over a third of the weighting for determining IEER for ECUACs is based on performance at outdoor air dry-bulb temperatures of 68 °F and 65 °F. While many commercial buildings have substantial cooling loads at these temperatures, residential cooling loads at these temperatures are likely significantly lower. Therefore, for residential applications, IEER may overweight cooling at lower outdoor ambient temperatures and underweight cooling at higher ambient temperatures.

Another issue is that the IEER equation for adjusting for cyclic

degradation[7] (see equation 4 of AHRI 340/360–2019) assumes continuous operation of the indoor fan when the compressor is not operating. While this may be representative of commercial applications (in which the indoor fan often runs continuously to provide ventilation), the indoor fan presumably does not run continuously in many residential applications.

Issue B.2 DOE requests comment on whether the IEER metric is representative of the average use cycle for ECUACs with cooling capacity less than 65,000 Btu/h. Specifically, DOE seeks comment on whether ECUACs in this equipment class are typically installed in residential or commercial applications. Additionally, DOE seeks feedback on whether the outdoor air dry-bulb and wet-bulb temperatures and weighting factors specified for IEER testing of ECUACs in AHRI 340/360–2019 are representative for ECUACs with cooling capacity less than 65,000 Btu/h. Further, DOE requests comment on whether the indoor fan typically runs continuously for ECUACs in this capacity range when installed in the field.

4. Burden of IEER Testing

Some manufacturers already rate performance in terms of EER and IEER for ECUAC and WCUAC models, but this is not the case for all models. IEER testing involves significantly more tests than an EER test—rather than a single test for EER, an IEER test requires at least four tests, and more tests can be required if interpolation for the target load fraction is needed for any part-load tests.[8]

Issue B.3 DOE requests data on the share of ECUAC and WCUAC models on the market, by capacity range, that are currently rated with both EER and IEER. For models that are not already rated for IEER, DOE also requests comment on the extent to which testing to IEER would impose testing and certification burden on manufacturers, including small business manufacturers.

[7] For units that cannot reduce compressor capacity sufficiently to meet a target IEER load fraction during steady-state operation, the cyclic degradation adjustment in AHRI 340/360–2019 quantifies the reduced efficiency that would be seen in field applications from compressor cycling at part-load conditions.

[8] Per AHRI 340/360–2019, if a unit cannot achieve the target part-load fraction (*i.e.,* 75%, 50%, or 25%) within tolerance but can operate at a load above and below the part load test point at the applicable reduced condenser temperature, the results of both tests at the applicable condenser temperature are used to interpolate the unit performance at the target load fraction.

C. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for ECUACs and WCUACs.

2. Other

DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (February 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to ECUACs and WCUACs while remaining consistent with the requirements of EPCA. Additionally, DOE also recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data and information on the issues presented in the RFI as they may be applicable to ECUACs and WCUACs.

III. Submission of Comments

DOE invites all interested parties to submit in writing by September 12, 2019, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended energy conservation standards for ECUACs and WCUACs. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do

not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person that would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on July 22, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–16048 Filed 7–26–19; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

RIN 3133–AF02

Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (''Second Chance IRPS'')

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed interpretive ruling and policy statement 19–1.

SUMMARY: The NCUA Board (Board) is issuing for public comment a proposal to update and revise its Interpretive Ruling and Policy Statement (IRPS) regarding statutory prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act). Section 205(d) prohibits, except with the prior written consent of the Board, any person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union. Based on its experience with IRPS 08–1 since its issuance in 2008, the Board is proposing to rescind current IRPS 08–1 and to issue a revised and updated IRPS to reduce regulatory burden. The Board is proposing to amend and expand the current *de minimis* exception to reduce the scope and number of offenses that would require an application to the Board. Specifically, the proposed IRPS would not require an application for insufficient funds checks of aggregate moderate value, small dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults.

DATES: Comments must be received on or before September 27, 2019.

ADDRESSES: You may submit comments by any of the following methods (*Please send comments by one method only*):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Website: https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on NCUA's website at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Special Counsel to the

General Counsel, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Proposed Revisions to the IRPS
IV. Regulatory Procedures

I. Introduction

The Board recognizes that many Americans face hiring barriers due to a criminal record, a great number of which are not violent or career criminals, but rather people who made poor choices early in life who have since paid their debt to society. Offering second chances to those who are truly penitent is consistent with our nation's shared values of forgiveness and redemption. In keeping with this spirit of clemency, the Board is seeking to expand career opportunities for those who have demonstrated remorse and responsibility for past indiscretions and wish to set on a path to productive living. Toward that end, the Board is proposing to revise its guidance regarding prohibitions imposed by Section 205(d) of the FCU Act.

Section 205(d) of the FCU Act prohibits, without the prior written consent of the Board, a person convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured credit union. In August 2008, the Board issued final IRPS 08–1, to provide direction and guidance to federally insured credit unions and those persons who may be affected by Section 205(d) because of a prior criminal conviction or pretrial diversion program participation by describing the actions that are prohibited under the statute and establishing the procedures for applying for Board consent on a case-by-case basis.[1] The IRPS has not been revised since 2008 and, based on its experience with the IRPS over the past decade, the Board is proposing to update and revise the guidance to reduce regulatory burden while protecting federally insured credit unions from risk by convicted persons. The Board encourages interested parties to provide their input and comments on all aspects of the proposal.

[1] 73 FR 48399 (Aug. 19, 2008).

II. Background

Under Section 205(d)(1) of the FCU Act, except with the prior written consent of the Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution-affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to participate in the affairs of the credit union without Board consent. Section 205(d)(2) imposes a ten-year ban against the Board's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the Board and approval by the sentencing court. Finally, Section 205(d)(3) states that ''whoever knowingly violates'' (d)(1)(A) or (d)(1)(B) commits a felony, punishable by up to five years in jail and a fine of up to $1,000,000 a day.

Recognizing that certain offenses are so minor and occurred so far in the past so as to not currently present a substantial risk to the insured credit union, IRPS 08–1 excludes certain *de minimis* offenses from the need to obtain consent from the Board. However, several recent applications requesting the Board's consent pursuant to Section 205(d) involved fairly minor, low-risk, erstwhile, and isolated offenses that did not fall within the current *de minimis* exception.[2] In light of these recent cases, the substantial passage of time since IRPS 08–1 was adopted, and importantly, the Board's commitment to opening a path forward for those seeking redemption for past criminal activities, the Board has determined it is appropriate to now consider revisions to IRPS 08–1.

In proposing these amendments to IRPS 08–1, the Board is, once again, mindful of a corresponding Statement of Policy (SOP) issued by the Federal Deposit Insurance Corporation (FDIC) to determine whether similar or other changes should be made to IRPS 08–1 to improve consistency between the prudential regulators and to reduce regulatory burden. Section 19 of the Federal Deposit Insurance Act (FDIA) contains a prohibition provision similar to Section 205(d) of the FCU Act. In 1998, the FDIC implemented an SOP regarding prohibitions imposed by Section 19 of the FDIA, and it has subsequently modified and updated its guidance on several occasions.[3] In the past, the NCUA has drawn on the FDIC's SOP for guidance on this topic. In 2018, the FDIC updated and revised its SOP to expand its *de minimis* exception and to make other clarifying changes.[4] In the Board's view, it is beneficial to both institutions and covered individuals for the NCUA's Section 205(d) requirements to be reasonably consistent, to the extent possible, with the FDIC's Section 19 requirements. Consistent guidelines between our sister agencies with respect to these parallel statutory provisions will help streamline the application process, particularly for those individuals seeking consent from both the NCUA and the FDIC to allow for potential employment at federally insured financial institutions.

[2] For example, in several recent cases, the offense in question met four of the five *de minimis* criteria but did not qualify for the exception because the *potential*—but not actual—punishment exceeded the standard set forth by the IRPS, the *de minimis* exception was not available. *See* BD–02–18 (Oct. 18, 2018); BD–01–19 (Mar. 14, 2019).

[3] The FDIC has revised its SOP multiple times since its implementation in 1998. *See* 63 FR 66177 (Dec. 1, 1998); 72 FR 73823 (Dec. 28, 2007); 73 FR 5270 (Jan. 29, 2008); 76 FR 28031 (May 13, 2011); 77 FR 74847 (Dec. 18, 2012); 83 FR 38143 (Aug. 3, 2018).

[4] 83 FR 38143 (Aug. 3, 2018).

III. Proposed Revisions to the IRPS

In addition to some minor grammatical, formatting, and clarifying changes, the Board proposes to revise the IRPS as described in detail below.

A. Background

IRPS 08–1 currently provides background regarding Section 205(d)'s prohibition, and discusses its purpose to provide requirements, direction and guidance to federally insured credit unions and individuals covered by the statutory ban. The background section would be revised to make clear that IRPS 19–1 supersedes and replaces IRPS 08–1.

B. Scope

1. Persons Covered

The scope section of the proposed IRPS would be modified to clarify the persons covered by the Section 205(d) prohibition. Under the statute, the prohibition applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act,[5] and others who are participants in the conduct of the affairs of an insured credit union.[6]

[5] 12 U.S.C. 1786(r).

[6] 12 U.S.C. 1785(d).

Under Section 206(r), independent contractors are considered institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured credit union. IRPS 08–1's inclusion of the statutory definition of independent contractors, as contained in Section 206(r), is confusing and unnecessary in determining whether Section 205(d) would apply at the time the individual commenced work for, or participated in the affairs of, the credit union.

Accordingly, proposed IRPS 19–1 would delete reference to certain language in the definition of ''independent contractor'' contained in 12 U.S.C. 1786(r) that is unnecessary to determine whether Section 205(d) applies. It would clarify that an independent contractor typically does not have a relationship with the insured credit union other than the specific activity for which the insured credit union has contracted, and that the relevant factor in determining whether an independent contractor is covered by Section 205(d)'s prohibition is whether the independent contractor influences or controls the management or affairs of that credit union.

A person who does not meet the statutory definition of institution-affiliated party, as contained in Section 206(r), is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. Proposed IRPS 19–1 would update and clarify how the NCUA will determine whether a person qualifies as a participant in the affairs of an insured credit union. Currently, the NCUA does not define what constitutes participation in the conduct of the affairs of an insured credit union, but rather analyzes each individual's conduct on a case-by-case basis. The Board continues to maintain that participants in the affairs of a credit union is a term of art that defies precise definition. However, proposed IRPS 19–1 reiterates the NCUA's current position that agency and court decisions will inform its determination and that, generally, participation will depend upon the degree of influence or control over the management or affairs of the insured credit union.

2. Offenses Covered

Proposed IRPS 19–1 would clarify that, in order for an application to be considered by the Board, the case must be considered final by the procedures of the applicable jurisdiction. In other words, all of the sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion or similar program, including, but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed before the Board will deliberate a consent application.

3. Offenses Not Covered

De minimis offenses. Proposed IRPS 19–1 would reduce burden on credit unions and covered individuals by modifying the current exception for *de minimis* offenses: First, by updating the general criteria for the exception; and second, by substantially expanding the scope of the exception to include additional offenses to qualify as *de minimis* offenses. Under the current rule, where the covered offense is considered *de minimis,* approval is automatically granted, and an application for the Board's consent is not be required.

Under the NCUA's current policy in IRPS 08–1, a covered offense is considered *de minimis* if it meets all of the following five criteria: (1) There is only one conviction or entry into a pretrial diversion program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than $1,000, and the punishment imposed by the court did not include incarceration; (3) the conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required; (4) the offense did not involve an insured depository institution or insured credit union; *and* (5) the Board or any other Federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

Proposed IRPS 19–1 would modify the *de minimis* offenses exception by updating this general criteria to better align with developments in criminal reform and sentencing guidelines that have occurred since IRPS 08–1 was first adopted in 2008. Specifically, the potential punishment and/or fine provision (criterion (2)) would be updated to allow the following offenses to meet that *de minimis* criterion: Those punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and those punishable by three days or less of jail time.

Proposed IRPS 19–1 would also add a definition of ''jail time'' to clarify the circumstances under which a lesser crime would qualify as *de minimis.* The NCUA is aware that various jurisdictions take different approaches to confinement depending on the nature of the crime (*e.g.,* house arrest, home detention, ankle monitor, voice curfew, work release etc.). The new definition would clarify that the term ''jail time'' includes any significant restraint on an individual's freedom of movement, including confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time periods or both. However, the Board does not intend the term to include individuals on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location.

Additional applications of the de minimis exception. Proposed IRPS 19–1 would also significantly expand the scope of the exception to include additional offenses to qualify as *de minimis* offenses. The Board intends to meaningfully expand the scope of the exception, thereby eliminating the need to submit an application for certain low-risk, isolated offenses. This expansion would result in a significant reduction in regulatory burdens to credit unions, covered individuals, and the agency, while continuing to mitigate the risk to insured credit unions posed by convicted persons.

Age at time of covered offense. The Board recognizes that isolated, youthful mistakes may be worthy of forgiveness and second chances. Individuals who committed minor offenses when they were still at an impressionable age deserve a greater opportunity for redemption. Accordingly, the Board proposes a new age-based exception to the filing requirement. Under the proposal, a person with a covered conviction or program entry that occurred when the individual was 21 years of age or younger at the time of the conviction or program entry, and who otherwise meets the general *de minimis* criteria, will qualify for this *de minimis* exception if: (1) The conviction or program entry was entered at least 30 months [7] prior to the date an application would otherwise be required and (2) all sentencing or program requirements have been met prior to the date an application would otherwise be required.

Convictions or program entries for insufficient funds checks. The Board also proposes to expand the *de minimis*

[7] Or, half the regular 5-year period.

exception to cover certain convictions for ''bad'' or insufficient funds checks. In the Board's view, certain bad check offenses generally are low-risk and can be treated as *de minimis.* Thus, under proposed IRPS 19–1, convictions or pretrial diversion program entries of record based on the writing of ''bad'' or insufficient funds check(s) will be considered a *de minimis* offense and will not be considered as having involved an insured depository institution or insured credit union if the following conditions apply:

- There is no other conviction or pretrial diversion program entry subject to Section 205(d);
- The aggregate total face value of all ''bad'' or insufficient funds check(s) cited across all the conviction(s) or program entry or entries for bad or insufficient checks is $1,000 or less; and
- No insured depository institution or insured credit union was a payee on any of the ''bad'' or insufficient funds checks that were the basis of the conviction(s) or program entry or entries.

Offenses that meet the above criteria would not require an application for the Board's consent.

Convictions or program entries for small-dollar, simple theft. A substantial number of applications that have come before the Board since 2008 have involved convictions or program entries for relatively minor, low-risk, small-dollar, simple theft (for example, shoplifting, retail theft, etc.). Based on a historical review of Section 205(d) applications, the Board granted its consent to the vast majority of those covered individuals with small-dollar, simple theft convictions, or program entries. Treating this category of offenses as *de minimis* would streamline the application process, without creating undue or substantial risk to insured credit unions. Accordingly, under proposed IRPS 19–1, a conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) is considered *de minimis* where the following conditions are met:

- The aggregate value of the currency, goods, and/or services taken was $500 or less at the time of conviction or program entry; and
- The person has no other conviction or program entry described in Section 205(d); and
- It has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry); and
- It does not involve an insured depository institution or insured credit union.

For purposes of the exception, simple theft does not include the offenses of burglary, forgery, robbery, identity theft, or fraud. These crimes would continue to require an application for the Board's consent, unless otherwise qualifying as *de minimis.*

Convictions or program entries for the use of a fake identification card. Under proposed IRPS 19–1, the use of a fake, false, or altered identification card by a person under the legal age to obtain or purchase alcohol, or to enter a premises where alcohol is served and age appropriate identification is required, would be considered *de minimis,* provided there is no other conviction or program entry for the covered offense. The Board has determined that covered individuals with convictions for the use of fake identification pose little risk to insured credit unions.

Convictions or program entries for simple misdemeanor drug possession. There are a host of significant extrajudicial consequences for individuals with nonviolent drug possession convictions, including not only employment bans but the loss of Federal financial aid, eviction from public housing, disqualification from occupational licenses, loss of voting rights, and denial of public assistance. Moreover, research shows that drug convictions are a disproportionate burden on people of color. In addition, the Board recognizes that some uncertainty and confusion exists with respect to marijuana-related offenses, with marijuana now legal in many states but still illegal at the Federal level.[8]

While not discounting the public health implications of illegal drug use and possession, the Board maintains that covered persons with single convictions or program entries for simple drug possession pose minimal risk to insured credit unions. Thus, proposed IRPS 19–1 would classify as *de minimis* those convictions or entries for drug offenses meeting the following conditions:

- The person has no other conviction or program entry described in Section 205(d); and
- The single conviction or program entry for simple possession of a controlled substance was classified as a misdemeanor and did not involve the illegal distribution (including an intent to distribute), sale, trafficking, or manufacture of a controlled substance or other related offense; and
- It has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry).

Convictions or program entries for intent to distribute, illegal distribution, illegal sale or trafficking of a controlled substance, or illegal manufacture of a controlled substance would continue to require an application for the Board's consent, unless otherwise qualifying as *de minimis.*

Proposed IRPS 19–1 would continue to require that any person who meets the *de minimis* criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. In addition, that person must disclose the presence of the conviction or pretrial diversion program entry to all insured credit unions or insured depository institutions in the affairs of which he or she intends to participate.

In addition, consistent with current agency policy, no conviction or pretrial diversion program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1785(d)(2) can qualify under any of the *de minimis* exceptions to filing.

Expunged convictions. Under the NCUA's current policy, a conviction that has been ''completely expunged'' is not considered a conviction of record and will not require an application for the NCUA Board's consent under Section 205(d). However, the Board is aware that it is sometimes unclear whether certain state set-aside provisions constitute a complete expungement for Section 205(d) purposes (for example, where or the conviction may still be revealed under certain circumstances or otherwise remains on the individual's record). Accordingly, proposed IRPS 19–1 would clarify the circumstances under which a conviction would be deemed expunged for purposes of Section 205(d).

Specifically, the Board proposes to clarify that if an order of expungement has been issued in regard to a conviction or program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose. This includes, but is not

[8] Marijuana laws are rapidly evolving across all 50 states. Multiple states have legalized or decriminalized marijuana in some form at the state level. However, marijuana remains a Schedule I drug under the Federal Controlled Substances Act. *See* 21 U.S.C. 812(b)(1). Further information about marijuana legalization may be found online at *https://disa.com/map-of-marijuana-legality-by-state.*

limited to, an evaluation of a person's fitness or character. Under proposed IRPS 19–1, the failure to destroy or seal the records would not prevent the expungement from being considered complete for purposes of Section 205(d). Expungements of pretrial diversion or similar program entries would be treated the same as expungements for convictions. Moreover, under proposed IRPS 19–1, convictions set aside or reversed after the applicant has competed sentencing would be treated consistent with pretrial diversions programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

C. Duty Imposed on Credit Unions

Section 205(d) imposes a duty upon every federally insured credit union to make a reasonable inquiry regarding the history of every applicant for employment, including taking appropriate steps to avoid hiring or permitting the participation of convicted persons. Under the NCUA's current policy, federally insured credit unions should, at a minimum, establish a screening process to obtain information about convictions and program entries from job applicants. However, the current policy is unclear as to what steps a credit union should or must take when it learns about a job applicant's *de minimis* offense. Thus, proposed IRPS 19–1 would clarify that when a credit union learns that a prospective employee has a prior conviction or program entry for a *de minimis* offense, the credit union should document in its files that an application is not required because the covered offense is considered *de minimis* and meets the criteria for the exception.

The proposal would also allow for extensions of conditional offers of employment to prospective employees requiring the Board's consent under Section 205(d). While the Board endeavors to promptly consider all consent applications, it also recognizes that the lapse in time necessary to process an application is inconvenient and burdensome to both credit unions and prospective employees. Thus, under proposed IRPS 19–1, a credit union may extend a conditional offer of employment contingent on the completion of a satisfactory background check to determine if the applicant is barred by Section 205(d). If a conditional offer is extended, however, the job applicant may not commence work for or be employed by the credit union until the applicant is determined to not be barred under Section 205(d) or receives consent from the Board.

D. Procedures for Requesting the Board's Consent Under Section 205(d)

Proposed IRPS 19–1 would not modify the current procedures for requesting the Board's consent under Section 205(d). It would, however, add language to clarify the distinction between a credit union-sponsored application filed by the institution on behalf of a covered individual and an individual application filed on a covered person's own behalf. Generally, an application must be filed by an insured credit union on behalf of a person (credit union-sponsored application) unless the Board, for substantial good cause, grants a waiver of that requirement and allows the person to file an application in their own right (individual application). In most cases, a credit union-sponsored application is for a particular person, in a particular job, at a particular credit union. On the other hand, an individual application is typically requesting a blanket waiver for the applicant to be employed or participate in the conduct of the affairs of any insured credit union.

As discussed in more detail below, the Section 205(d) application form would also be revised to more clearly distinguish between the two types of applications and the supporting information required for each.

Additionally, the proposed IRPS would clarify that the appropriate regional office for submission of a credit union-sponsored application is the program office that oversees the credit union (*i.e.,* the program office covering the state where the credit union's home office is located, or the Office of National Examinations and Supervision), and the appropriate regional office for an individual application and waiver of the credit union-sponsored filing requirement is the program office covering the state where the person resides.

The Board is also considering whether delegating responsibility for reviewing certain applications could further streamline the application process and reduce burdens on credit unions and applicants. The Board is particularly interested in receiving public comment on this topic and encourages stakeholders to provide input on this aspect of the proposal.

E. Application Form

Proposed IRPS 19–1 also revises and updates the application form that is required to be used to submit a Section 205(d) consent request, ''Application to Request Consent Pursuant to Section 205(d),'' to reflect the changes in this proposal and to conform to current regulatory requirements. The modified Section 205(d) application form would also more clearly delineate between the two types of applications (credit union-sponsored versus individual) and the supporting documentation required for each.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed 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. Proposed IRPS 19–1 would provide regulatory relief by decreasing the number of covered offenses that will require an application to the Board. The NCUA certifies that proposed IRPS 19–1 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) applies to information collection requirements in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.[9] For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Proposed IRPS 19–1 will amend the current exceptions for *de minimis* offenses by expanding the scope, thereby eliminating the need to submit an application for certain low-risk, isolated offenses. This amendment would reduce the number of respondents applying for consent from three to one. The proposed IRPS

[9] 44 U.S.C. 3507(d); 5 CFR part 1320.

requires credit unions to document when an application is not required because the covered offense is considered *de minimis.* This new recordkeeping requirement is minimal and would only impact those credit unions or individuals who would otherwise have submitted an application for consent.

These program changes would revise the information collection requirement currently approved OMB control number 3133–0203, as follows:

Title of Information Collection: IRPS 19–1, Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act.

Estimated Number of Respondents: 3.

Estimated Annual Frequency of Response: 1.33.

Estimated Total Annual Reponses: 4.

Estimated Hours per Response: 0.75.

Estimated Total Annual Burden Hours: 3.

Affected Public: Private Sector: Not-for-profit institutions; Individual or Household.

The NCUA invites comments on: (a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections 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.

All comments are a matter of public record. Comments regarding the information collection requirements should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6016, Alexandria, Virginia 22314, or Fax No. 703–519–8572, or Email at *PRAcomments@ncua.gov* and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov.*

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. Proposed IRPS 19–1 would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As such, the NCUA has determined that proposed IRPS 19–1 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 proposed IRPS 19–1 will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.[10]

Authority: 12 U.S.C. 1752a, 1756, 1766, 1785.

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

Gerard Poliquin,

Secretary of the Board.

Interpretive Ruling and Policy Statement 19–1 Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (''Second Chance IRPS'')

I. Background

This Interpretive Ruling and Policy Statement (IRPS) provides requirements, direction, and guidance to federally insured credit unions (insured credit unions) and individuals regarding the prohibition imposed by operation of law by Section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d). Section 205(d)(1) provides that, except with the prior written consent of the National Credit Union Administration (NCUA) Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution-affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). The statute imposes a ten-year ban against the NCUA Board granting consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code. In order for the NCUA Board to grant consent during the ten-year period, the NCUA Board must file a motion with, and obtain the approval of, the sentencing court. Finally, Section 205(d)(3) states that ''whoever knowingly violates'' (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to $1,000,000 a day.

This IRPS provides guidance to credit unions and individuals regarding who is subject to the prohibition provision of Section 205(d). The IRPS defines what offenses come within the prohibition provision of Section 205(d) and thus require an application for the NCUA Board's consent to participate in the affairs of an insured credit union. The IRPS also identifies certain offenses that will be excluded from Section 205(d) and do not require the NCUA Board's consent. In order to assist those who may need the consent of the NCUA Board to participate in the affairs of an insured credit union, the IRPS explains the procedures to request such consent, specifies the application form that must be used, clarifies the duty imposed on credit unions by Section 205(d), and identifies the factors the NCUA Board will consider in deciding whether to provide such consent. Finally, the IRPS explains how an applicant could appeal a decision by the NCUA Board denying an application for its consent. This IRPS supersedes and replaces former IRPS 08–1.[11]

II. Policies and Procedures Regarding Prohibitions Imposed by Section 205(d)

A. Scope of Section 205(d) of the FCU Act

1. Persons Covered by Section 205(d)

Section 205(d) of the FCU Act applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act, 12 U.S.C. 1786(r), and others who are participants in the conduct of the affairs of a federally insured credit union. This IRPS applies only to insured credit unions, their institution-affiliated parties, and those participating in the affairs of an insured credit union.

(a) Institution-affiliated parties.

Institution-affiliated parties include any committee member, director, officer, or employee of, or agent for, and insured credit union; any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis)

[10] Public Law 105–277, 112 Stat. 2681 (1998).

[11] 73 FR 48399 (Aug. 19, 2008).

who participates in the conduct of the affairs of an insured credit union; or any independent contractor (including any attorney, appraiser, or accountant). Therefore, all officials, committee members and employees of an insured credit union fall within the scope of Section 205(d) of the FCU Act. Additionally, anyone the NCUA determines to be a *de facto* employee, applying generally applicable standards of employment law, will also be subject to Section 205(d). Typically, an independent contractor does not have a relationship with the insured credit union other than the activity for which the insured credit union has contracted. As a general rule, an independent contractor who influences or controls the management or affairs of an insured credit union, would be covered by Section 205(d). In addition, a ''person'' for purposes of Section 205(d) means an individual, and does not include a corporation, firm or other business entity.

(b) Participants in the affairs of an insured credit union.

A person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. Whether persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. Those who exercise major policymaking functions of an insured institution would be deemed participants in the affairs of that institution and covered by Section 205(d). Participants in the affairs of a credit union is a term of art and is not capable of more precise definition. The NCUA does not define what constitutes participation in the conduct of the affairs of an insured credit union but will analyze each individual's conduct on a case-by-case basis and make a determination. Agency and court decisions will provide the guide as to what standards will be applied. As a general proposition, however, participation will depend upon the degree of influence or control over the management or affairs of the insured credit union. Those who exercise major policymaking functions at an insured credit union would fall within this category.

2. Offenses Covered by Section 205(d)

Except as indicated in subsection 3, below, an application requesting the consent of the NCUA Board under Section 205(d) is required where any adult, or minor treated as an adult, has received a conviction by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust (a covered offense), or where such person has entered a pretrial diversion or similar program regarding a covered offense. Before an application is considered by the NCUA Board, all of the sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion or similar program, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The following definitions apply:

Conviction. There must be a conviction of record. Section 205(d) does not apply to arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application.

Pretrial Diversion or Similar Program. A pretrial diversion program, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and, if not so designated under applicable law then the determination on whether it is a pretrial diversion or similar program will be made by the NCUA Board on a case-by-case basis.

Dishonesty or Breach of Trust. The conviction or entry into a pretrial diversion program must have been for a criminal offense involving dishonesty or breach of trust.

''Dishonesty'' means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

''Breach of trust'' means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions or pretrial diversion program entries for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application for the NCUA Board's consent under Section 205(d) unless they fall within the provisions for the *de minimis* offenses set out below.

3. Offenses Not Covered by Section 205(d)

De minimis offenses.

In general. Approval is automatically granted and an application for the NCUA Board's consent under Section 205(d) will not be required where the covered offense is considered *de minimis,* because it meets all of the following criteria:

- There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and the individual served three (3) days or less of jail time. The NCUA Board considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time periods or both. However, this definition is not intended to include those on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location;
- The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;
- The offense did not involve an insured depository institution [12] or insured credit union; and
- The NCUA Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

Additional applications of the de minimis offenses exception to filing.

[12] For purposes of this IRPS, the term ''insured depository institution'' means any bank or savings association the deposits of which are insured by the FDIC. *See* 12 U.S.C. 1813(c)(2).

Age at time of covered offense. If the actions that resulted in a covered conviction or pretrial diversion program entry of record all occur when the individual was 21 years of age or younger, then the subsequent conviction or program entry, that otherwise meets the general *de minimis* criteria in (a)(1) above will be considered *de minimis* if the conviction or program entry was entered at least 30 months prior to the date an application would otherwise be required and all sentencing or program requirements have been met.

Convictions or program entries for insufficient funds checks. Convictions or pretrial diversion program entries of record based on the writing of ''bad'' or insufficient funds check(s) will be considered a *de minimis* offense and will not be considered as having involved an insured depository institution or insured credit union if the following applies:

- There is no other conviction or pretrial diversion program entry subject to Section 205(d) and the aggregate total face value of all ''bad'' or insufficient funds check(s) cited across all the conviction(s) or program entry or entries for bad or insufficient checks is $1,000 or less and;
- No insured depository institution or insured credit union was a payee on any of the ''bad'' or insufficient funds checks that were the basis of the conviction(s) or program entry or entries.

Convictions or program entries for small-dollar, simple theft. A conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) where the aggregate value of the currency, goods, and/or services taken was $500 or less at the time of conviction or program entry, where the person has no other conviction or program entry described in Section 205(d), and where it has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry) and which does not involve an insured depository institution or insured credit union is considered *de minimis.* Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

Convictions or program entries for the use of a fake, false, or altered identification card. The use of a fake, false, or altered identification card used by a person under the legal age for the purpose of obtaining or purchasing alcohol, or used for the purpose of entering a premises where alcohol is served but for which age appropriate identification is required, provided that there is no other conviction or pretrial diversion program entry for the covered offense, will be considered *de minimis.*

Convictions or program entries for simple misdemeanor drug possession. A conviction or pretrial diversion program entry based on simple drug possession or illegal possession of a controlled substance where the offense was classified as a misdemeanor at the time of conviction or program entry, where the person has no other conviction or program entry described in Section 205(d), and where it has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry) and which does not involve the illegal distribution (including an intent to distribute), sale, trafficking, or manufacture of a controlled substance or other related offense is considered *de minimis.* Simple possession excludes intent to distribute, illegal distribution, illegal sale or trafficking of a controlled substance, or illegal manufacture of a controlled substance.

Any person who meets the foregoing *de minimis* criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. An insured credit union may not allow any person to participate in its affairs, even if that person has a conviction for what would constitute a *de minimis* covered offense, if the person cannot obtain required fidelity bond coverage.

Any person who meets the foregoing criteria for a *de minimis* offense must disclose the presence of the conviction or pretrial diversion program entry to all insured credit unions or other insured institutions in the affairs of which he or she intends to participate.

Further, no conviction or pretrial diversion program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1785(d)(2) can qualify under any of the *de minimis* exceptions to filing set out above.

Youthful offender adjudgments. An adjudgment by a court against a person as a ''youthful offender'' under any youth offender law, or any adjudgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law does not require an application for the NCUA Board's consent. Such adjudications are not considered convictions for criminal offenses. Such adjudications do no constitute a matter covered under Section 205(d) and is not an offense or program entry for determining the applicability of the *de minimis* offenses exception to the filing of an application.

Expunged convictions. A conviction that has been completely expunged is not considered a conviction of record and will not require an application for the NCUA Board's consent under Section 205(d). If an order of expungement has been issued in regard to a conviction or pretrial diversion program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose including, but not limited to, an evaluation of a person's fitness or character. The failure to destroy or seal the records will not prevent the expungement from being considered complete for the purposes of Section 205(d) in such a case. Expungements of pretrial diversion or similar program entries will be treated the same as those for convictions. Convictions that are set aside or reversed after the applicant has competed sentencing will be treated consistent with pretrial diversions or similar programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

B. Duty Imposed on Credit Unions

Section 205(d) imposes a duty upon every insured credit union to make a reasonable inquiry regarding the history of every applicant for employment. The NCUA believes that inquiry should consist of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or entry into a pretrial diversion program for a covered offense. At a minimum, each insured credit union should establish a screening process which provides the insured credit union with information concerning any convictions or pretrial diversion programs pertaining to a job applicant. This would include, for example, the completion of a written employment application which requires a listing of all convictions and pretrial diversion program entries. When the credit union learns that a prospective employee has a prior conviction or entered into a pretrial diversion program for a covered offense, the credit union should document in its files that an application is not required because the covered offense is considered *de minimis* and meets the criteria for the exception, or submit an application requesting the NCUA Board's consent under Section 205(d) prior to hiring the person or otherwise permitting him or

her to participate in its affairs. In the alternative, for the purposes of Section 205(d), a credit union may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union and to determine if the applicant is barred by Section 205(d). In such a case, the job applicant may not commence work for or be employed by the credit union until such time that the applicant is determined to not be barred under Section 205(d).

If an insured credit union discovers that an employee, official, or anyone else who is an institution-affiliated party or who participates, directly or indirectly, in its affairs, is in violation of Section 205(d), the credit union must immediately place that person on a temporary leave of absence from the credit union and file an application seeking the NCUA Board's consent under Section 205(d). The person must remain on such temporary leave of absence until such time as the NCUA Board has acted on the application. When the NCUA learns that an institution-affiliated party or a person participating in the affairs of an insured credit union should have received the NCUA Board's consent under Section 205(d) but did not, the NCUA will look at the circumstances of each situation to determine whether the inquiry made by the credit union was reasonable under the circumstances.

C. Procedures for Requesting the NCUA Board's Consent Under Section 205(d)

Section 205(d) of the FCU Act serves, by operation of law, as a statutory bar to participation in the affairs of an insured credit union, absent the written consent of the NCUA Board. When an application for the NCUA Board's consent under Section 205(d) is required, the insured credit union must file a written application using the attached form with the appropriate NCUA Regional Director. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that institution. Such an application should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program. The applicant may also address the relevant factors and criteria the NCUA Board will consider in determining whether to grant consent, specified below. The burden is upon the applicant to establish that the application warrants approval.

The application must be filed by an insured credit union on behalf of a person (credit union-sponsored application) unless the NCUA Board grants a waiver of that requirement and allows the person to file an application in their own right (individual application). Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown. The appropriate regional office for a credit union-sponsored application is the program office that oversees the credit union (*i.e.,* the program office covering the state where the credit union's home office is located, or the Office of National Examinations and Supervision). The appropriate regional office for an individual filing for waiver of the credit union-sponsored filing requirement is the program office covering the state where the person resides.

When an application is not required because the covered offense is considered *de minimis,* the credit union should document in its files and be prepared to demonstrate that the covered offense meets the *de minimis* criteria enumerated above.

D. Evaluation of Section 205(d) Applications

The essential criteria in assessing an application for consent under Section 205(d) are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured credit union, and whether the employment, affiliation, or participation by the person in the conduct of the affairs of the insured credit union may constitute a threat to the safety and soundness of the institution or the interests of its members or threaten to impair public confidence in the insured credit union.

In evaluating an application, the NCUA Board will consider:

1. The conviction or pretrial diversion program entry and the specific nature and circumstances of the covered offense;
2. Evidence of rehabilitation, including the person's reputation since the conviction or pretrial diversion program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry;
3. Whether participation, directly or indirectly, by the person in any manner in the conduct of the affairs of the insured credit union constitutes a threat to the safety or soundness of the insured credit union or the interest of its members, or threatens to impair public confidence in the insured credit union;
4. The position to be held or the level of participation by the person at the insured credit union;
5. The amount of influence and control the person will be able to exercise over the management or affairs of the insured credit union;
6. The ability of management of the insured credit union to supervise and control the person's activities;
7. The applicability of the insured institution's fidelity bond coverage to the person;
8. For state chartered, federally insured credit unions, the opinion or position of the state regulator; and
9. Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the NCUA Board to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban for certain enumerated offenses in violation of Title 18 of the United States Code prior to its expiration date. NCUA believes such requests will be extremely rare and will be made only upon a showing of compelling reasons.

Some applications can be approved without an extensive review because the person will not be in a position to present any substantial risk to the safety and soundness of the insured credit union. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured credit union. Approval by the NCUA Board will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions.

In cases in which the NCUA Board has granted a waiver of the credit union-sponsored filing requirement to allow a person to file an application in their own right, approval of the application will be conditioned upon that person disclosing the presence of the conviction(s) or program entry or entries to all insured credit unions or insured depository institutions in the affairs of which he or she wishes to participate. When deemed appropriate, credit union-sponsored applications are to allow the person to work in a specific job at a specific credit union and may also be subject to the condition that the prior consent of the NCUA Board will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes

may, in the discretion of the appropriate Regional Director, require a new application for the NCUA Board's consent. When approval has been granted for a person to participate in the affairs of a particular insured credit union and subsequently that person seeks to participate in the affairs of another insured credit union, approval does not automatically follow. In such cases, another application must be submitted. Moreover, any person who has received consent from the NCUA Board under Section 205(d) and subsequently wishes to become an institution-affiliated party or participate in the affairs of an FDIC-insured institution, he or she must obtain the prior approval of the FDIC pursuant to Section 19 of the FDIA.

E. Right To Request a Hearing Following the Denial of an Application Under Section 205(d)

If the NCUA Board withholds consent under Section 205(d), the insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30 days following the date of notification of the NCUA Board's action. The NCUA Board will apply the process contained in regulations governing prohibitions based on felony convictions, found at part 747, subpart D of Title 12, Code of Federal Regulations, to any request for a hearing. The insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may also waive a hearing and request that the NCUA Board determine the matter on the basis of written submissions.

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

APPLICATION TO REQUEST CONSENT PURSUANT TO SECTION 205(d)

The estimated total annual burden for this collection of information is estimated to average 3 hours for biographical information. This estimate includes time to gather and maintain data in the required form, to review instructions and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden to: (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6016, Alexandria, Virginia 22314, or Fax No. 703–519–8572, or Email at *PRAcomments@ncua.gov* and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission,@OMB.EOP.gov.* An organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Section 205(d)(1) of the Federal Credit Union Act, 12 U.S.C. §1785(d)(1), provides that, except with the prior written consent of the National Credit Union Administration (NCUA) Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not become, or continue as an institution-affiliated party with respect to any insured credit union; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). Section 205(d)(3) states that "whoever knowingly violates" (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to $1,000,000 a day. The statute also prescribes a minimum ten-year prohibition period for certain offenses.

The NCUA Board issued Interpretive Ruling and Policy Statement (IRPS) 19-1, entitled *Exceptions to Employment Restrictions under Section 205(d) of the Federal Credit Union Act*, to assist credit unions and individuals in requesting the NCUA Board's consent pursuant to Section 205(d). IPRS 19-1 is available on the NCUA's website at https://www.ncua.gov/regulation-supervision/rules-regulations/interpretive-rulings-policy-statements, by contacting the Office of General Counsel at 703-518-6540 or OGCmail@ncua.gov or from any NCUA Regional Office.

All requests for the NCUA Board's consent pursuant to Section 205(d) should be submitted using the attached form. Please consult IRPS 19-1 prior to completing the attached application, as not all criminal convictions require an application to be submitted. IRPS 19-1 also lists the factors the NCUA Board will consider when evaluating any application for consent.

Any questions regarding the process to request the NCUA Board's consent pursuant to Section 205(d), including whether an application is required, may be directed to the Office of General Counsel at 703-518-6540 or OGCmail@ncua.gov.

Completed application should be sent to the appropriate NCUA Regional Office or other program office.

NATIONAL CREDIT UNION ADMINISTRATION

APPLICATION TO REQUEST CONSENT PURSUANT TO SECTION 205(d)

SECTION A – APPLICANT INFORMATION

1. Applicant: ☐ Credit union-sponsored ☐ Individual

Generally, an application must be filed by an insured credit union on behalf of a person. If the applicant is an individual, please explain why there is substantial good cause for the NCUA Board to grant a waiver of the institution filing requirement.

2. Applicant Name:

3. Date of Application:

4. Address of Applicant (Street, City, County, State, and Zip Code):

I/We have, in connection with preparing this Application, read Sections 205(d)(1) & (3) of the Federal Credit Union Act, 12 U.S.C. §§1785(d)(1) & (3), which governs requests by insured credit unions for the consent of the National Credit Union Administration Board for a person who has been convicted of a crime involving dishonesty or breach of trust, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of an insured credit union.

In support of this Application, the following statements, representations and information are submitted for the purpose of inducing the National Credit Union Administration Board to grant its written consent to the person identified below (the prohibited person), who has been convicted of a crime involving dishonesty or breach of trust or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of this credit union. **NOTE:** the Biographical Information Concerning the Prohibited Person (Section B) and Information Relative to the Prohibited Person's Convictions (Section C) should be completed by the prohibited person.

SECTION B – BIOGRAPHICAL INFORMATION CONCERNING THE PROHIBITED PERSON

1. Name of Prohibited Person:

2. Address of Prohibited Person (Street, City, County, State, and Zip Code):

3. Date of Birth (Month, Day, Year):

4. Place of Birth (City, State, and Country):

5. Social Security Number (*See* Privacy Act Statement on page 4):

6. Name and Address of Present of Most Recent Employer (Street, City, County, State, and Zip Code):

SECTION C – INFORMATION RELATIVE TO THE PROHIBITED PERSON'S CONVICTIONS

1. Description or Nature of Crime:

a. Date of Conviction:

b. Name and Address of Court:

c. Disposition of the Charges:

NOTE: Additional conviction(s) or program entry or entries for a crime involving dishonesty or breach of trust discovered subsequent to approval of this Application will require the submission of another application.

2. Briefly describe the nature of the offense and the circumstances surrounding it. Include age of the prohibited person at the time of conviction, date of the offense, and any mitigating circumstances (parole, suspension of sentence, pardon, etc.). Attach additional pages if necessary.

3. Briefly describe the extent of rehabilitation the prohibited person completed (attach supporting documents, if any).

4. Attach documentation of the Indictment, Information, or Complaint and Final Decree of Judgment, if available (Normally these can be obtained from the clerk of court of the relevant jurisdiction. If not provided, explain reasons for unavailability).

5. List any other pertinent facts relative to the crime which are not disclosed in the indictment or other court documents. Attach additional pages if necessary.

I do hereby certify that the Biographical Information Concerning the Prohibited Person (Section B) and Information Relative to the Prohibited Person's Convictions (Section C) are true and correct to the best of my knowledge and belief.

SIGNATURE OF THE PROHIBITED PERSON **DATE SIGNED**

PRIVACY ACT NOTICE

Authority: 12 U.S.C. § 1785(d) ("Section 205(d)")

Purpose: NCUA will use the information provided on this form to evaluate your application for the NCUA Board's consent to allow you to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of an insured credit union.

Routine Uses: This form may be disclosed to render legal advice, as part of judicial or administrative proceedings, to appropriate Federal or State credit union regulatory agencies and law enforcement or other governmental agencies if relevant to processing or necessary for administrative reasons or otherwise. A complete list of Routine Uses is available at www.ncua.gov/privacy.

Effects of Not Providing Information: Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the processing of this application. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form.

SORN: NCUA-13, Litigation Case Files, 75 FR 41539

[FR Doc. 2019–15706 Filed 7–26–19; 8:45 am]
BILLING CODE 7535–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0372; Airspace Docket No. 18–ANM–17]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Walden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Walden-Jackson County Airport, Walden, CO, to accommodate a new area navigation (RNAV) procedure at the airport. Additionally, this action proposes to remove Class E airspace extending upward from 700 feet above the surface within 4 miles each side of the 342° bearing extending from the 5 mile radius to V–524 northwest of the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System. Additionally, this action proposes to update the geographic coordinates of the airport to match the FAA's data base.

DATES: Comments must be received on or before September 12, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0372; Airspace Docket No. 18–ANM–17, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 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 would amend Class E airspace to support a new RNAV procedure at Walden-Jackson County Airport, Walden, CO.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0372; Airspace Docket No. 18–ANM–17''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Walden-Jackson County Airport, Walden, CO, within 4 miles each side of the 227° bearing extending from the 5 mile radius to 9.4 miles southwest of airport. Additionally, this action proposes to remove Class E airspace extending upward from 700 feet above the surface within 4 miles each side of the 342° bearing extending from the 5 mile radius to V–524 northwest of the airport, this airspace is not required to contain instrument procedures at the airport.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 14 CFR 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM CO E5 Walden, CO

Walden-Jackson County Airport, CO
(Lat. 40°45′01″ N, long. 106°16′18″ W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Walden-Jackson County Airport, and within 4 miles each side of the 227° bearing from the airport extending from the 5-mile radius to 9.4 miles southwest of the airport.

Issued in Seattle, Washington, on July 19, 2019.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–15935 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0535; Airspace Docket No. 19–AWP–20]

RIN 2120–AA66

Proposed Amendment of Class D Airspace; Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to correct a clerical error in the Los Angeles International Airport, Los Angeles, CA legal description to remove the language establishing the airspace as part time. This action is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 12, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You

must identify FAA Docket No. FAA–2019–0535; Airspace Docket No. 19–AWP–20, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2245.

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 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 would amend the Class D legal description for Los Angeles International Airport, Los Angeles, CA, in support of IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2019–0535; Airspace Docket No. 19–AWP–20) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number).

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0535; Airspace Docket No. 19–AWP–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St, Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by removing language from the legal description in FAA Order 7400.11C, that establishes the Class D airspace for Los Angeles International Airport, Los Angeles, CA as part time. NBAA informed the FAA that the LAX Class D legal description, the related chart supplement entry, and notes included on the VFR Sectional contained information that did not clearly identify when the airspace was in effect. The FAA concurs. The legal description contains language that implied the Class D airspace was part-time, inconsistent with the original intent of the airspace. The Chart Supplement does not include information indicating when the airspace is effective and directs users to the VFR Terminal Area Chart. The VFR Terminal Area Chart directs users to the Chart Supplement or NOTAMS for information and NOTAMS are not appropriate for this use. The original intent was to establish the Class D airspace as full time. In 2009, as a result of a mid-air collision in New York and in response to NTSB Recommendation A–09–86, Congress requested the FAA evaluate low-level flight around heavy-use airspace. The FAA committed to evaluations of flight operations in and around Class Bravo Airspace in New York, Los Angeles, Chicago, and Houston. The LAX VFR Airspace Taskforce was convened and made recommendations to modify the airspace around LAX in a two-step process. Step one was to establish full-time Class D airspace at LAX. Step two was to incorporate the Class D airspace into the LAX Class B at a later date. This proposal recommends removal of the language indicating the airspace is part time and does not affect the lateral boundaries of the airspace.

Class D airspace designations are published in paragraph 5000 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 Class D airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and

routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 14 CFR 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 5000 Class D Airspace.

* * * * *

AWP CA D Los Angeles, CA [Amended]

Los Angeles International Airport, CA
(Lat. 33°56′33″ N, long. 118°24′26″ W)
Santa Monica Municipal Airport, CA
(Lat. 34°00′57″ N, long. 118°27′05″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL bounded by a line beginning at lat. 33°57′42″ N, long. 118°27′23″ W; to lat. 33°58′18″ N, long. 118°26′24″ W; then via the 2.7-mile radius of the Santa Monica Municipal Airport counterclockwise to lat. 34°00′00″ N, long. 118°24′02″ W; to lat. 34°00′00″ N, long. 118°22′58″ W; to lat. 33°57′42″ N, long. 118°22′10″ W, thence to the point of beginning. That airspace extending upward from the surface to and including 2,500 feet MSL bounded by a line beginning at lat. 33°55′50″ N, long. 118°22′06″ W; to lat. 33°54′16″ N, long. 118°24′17″ W; to lat. 33°52′47″ N, long. 118°26′22″ W; to lat. 33°55′51″ N, long. 118°26′05″ W, thence to the point of beginning.

Issued in Seattle, Washington, on July 19, 2019.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–15936 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2019–OPEPD–0019]

1875–AA12

Secretary's Proposed Priority for Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Proposed priority.

SUMMARY: The Secretary of Education proposes to establish a priority for discretionary grant programs that would align the Department of Education's (the Department's) discretionary grant investments with the Administration's Opportunity Zones initiative, which aims to spur economic development and job creation in distressed communities.

DATES: We must receive your comments on or before August 28, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this proposed priority, address them to Allison Holte, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W243, Washington, DC 20202–5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Allison Holte, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W243, Washington, DC 20202–5970. Telephone: (202) 205–7726. Email: *allison.holte@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific issues that each comment addresses. We are particularly interested in comments that provide examples of how Qualified Opportunity Funds can support activities carried out under the Department's discretionary grant programs.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed priority by accessing *Regulations.gov.* You may also inspect the comments in person in 400 Maryland Avenue SW, Room 4W243, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority. If you

want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Program Authority: 20 U.S.C. 1221e–3.

Proposed Priority: This document contains one proposed priority.

Spurring Investment in Qualified Opportunity Zones.

Background: Public Law (Pub. L.) 115–97 authorized the designation of Qualified Opportunity Zones (*i.e.,* designated distressed communities) to promote economic development and job creation in distressed communities through preferential tax treatment for investors. Distressed communities could qualify as Opportunity Zones if they are nominated for that designation by the Chief Executive Officer of their State and then certified by the Secretary of the Treasury. The Secretary of the Treasury has certified more than 8,700 Qualified Opportunity Zones, approximately 12 percent of U.S. Census Tracts, across the 50 States, the District of Columbia, and five U.S. Territories.[1]

Specifically, Public Law 115–97 added sections 1400Z–2 and 1400Z–1 of the Internal Revenue Code of 1986 (IRC) to encourage economic growth and investment in Qualified Opportunity Zones by providing Federal income tax benefits to taxpayers who invest in businesses located within these zones. Section 1400Z–2 provides two main tax incentives to encourage investment in Qualified Opportunity Zones. First, it allows for the deferral of inclusion in gross income for certain gains to the extent that corresponding amounts are reinvested in a Qualified Opportunity Fund. Second, it excludes from gross income the post-acquisition gains on investments in a Qualified Opportunity Fund that are held for at least 10 years.

Through this proposed priority, we seek to expand and improve the opportunities available to individuals in Qualified Opportunity Zones by (1) encouraging applicants to plan projects in Qualified Opportunity Zones; (2) soliciting applications from eligible entities who are located in Qualified Opportunity Zones; or (3) soliciting applications from eligible entities that have received investments, including accessing real estate that has received investment from Qualified Opportunity Funds for a purpose directly related to their proposed projects. A list of Qualified Opportunity Zones is available at: *www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

Under this proposed priority, the Department would have flexibility to use one or more of the priority's subparts in a given competition and, with respect to subpart (c), may give applicants additional time prior to the Department's award of grants to provide evidence of investment from a Qualified Opportunity Fund. We recognize that such additional time may be needed to enable an applicant to provide documentation of investment from a Qualified Opportunity Fund or that real estate they are accessing has received investment from a Qualified Opportunity Fund. If the Department elects to give applicants additional time, we will announce in the notice inviting applications (NIA) the deadline by which such evidence must be provided.

The Department may make changes to this proposed priority in response to final regulations from the Department of the Treasury when those regulations are published. Commenters are encouraged to view the proposed regulations, ''Investing in Qualified Opportunity Funds,'' which were originally published in the **Federal Register** on October 29, 2018 (83 FR 54279), and then updated on May 1, 2019 (84 FR 18652), and are available at *www.federalregister.gov/d/2018-23382* and *www.federalregister.gov/documents/2019/05/01/2019-08075/investing-in-qualified-opportunity-funds,* respectively.

Proposed Priority: Under this priority, an applicant must demonstrate one or more of the following:

(a) The area in which the applicant proposes to provide services overlaps with a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the IRC. An applicant must—

(i) Provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services; and

(ii) Describe how the applicant will provide services in the Qualified Opportunity Zone(s).

(b) The applicant is located in a Qualified Opportunity Zone. The applicant is located in a Qualified Opportunity Zone if the applicant has multiple locations, at least one of which is within a Qualified Opportunity Zone, or if the applicant's location overlaps with a Qualified Opportunity Zone. The applicant must provide the census tract number of the Qualified Opportunity Zone in which it is located.

(c) The applicant has received, or will receive by a date specified by the Department, an investment, including access to real property, from a Qualified Opportunity Fund under section 1400Z–2 of the IRC for a purpose directly related to its proposed project. An applicant must—

(i) Identify the Qualified Opportunity Fund from which it has received or will receive an investment; and

(ii) Describe how the investment would be directly related to its proposed project.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priorities, requirements, definitions, and selection criteria in a document in the **Federal Register**. We will determine the final priority after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore,

[1] *See: https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Although this regulatory action is a significant regulatory action, the requirements of Executive Order 13771 do not apply because this regulatory action is a ''transfer rule'' not covered by the Executive order.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary. Additionally, the benefits of the proposed priority outweigh any associated costs because it would result in the Department's discretionary grant programs selecting high-quality applications to implement activities that are designed to increase education opportunities and improve education outcomes while also targeting investment in our Nation's most economically distressed communities.

The Secretary believes that the costs imposed on applicants by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. The proposed priority would likely result in Federal funds transferring from areas that are not designated as Qualified Opportunity Zones to areas that have received that designation. However, the Department has no way of meaningfully estimating the amount of such transfers because the number of programs that may use the proposed priority in a future grant competition is unknown, the amount of future funding available for new awards in such programs is unknown, and the number of applicants likely to apply for grants under the proposed priority is unknown. Some of the Department's discretionary grant programs have included priorities for Qualified Opportunity Zones in their fiscal year 2019 competitions, but those competitions have not yet closed.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

We certify that that this proposed regulatory action would not have a significant economic impact on small entities. This proposed priority would be used in the Department's discretionary grant competitions, and small entities may choose whether to participate. The Secretary believes that the costs imposed on small entities by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Further, the Secretary believes that this proposed priority may help small entities because it would allow the Department to provide incentives for applicants to

conduct their projects in Qualified Opportunity Zones, thus directing additional resources to some small entities in our Nation's most economically distressed communities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 24, 2019.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2019–16062 Filed 7–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ56

Center for Innovation for Care and Payment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations that govern VA health care. This rule would establish parameters and authority for the new Center for Innovation for Care and Payment in its conduct of pilot programs designed to develop innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care furnished by VA.

DATES: Comments must be received on or before August 28, 2019.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue North West, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ56 Center for Innovation for Care and Payment.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Akinyele, VA Chief Innovation Officer and Executive Director (Acting), VA Innovation Center (VIC) (008E), 810 Vermont Ave. NW, Washington, DC 20420. *Michael.Akinyele@va.gov.* (202) 461–7271. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 6, 2018, section 152 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) by adding a new section 1703E, Center for Innovation for Care and Payment. Section 1703E(a)(1) establishes the Center for Innovation for Care and Payment (the Center). Section 1703E(a)(2) authorizes the conduct of pilot programs to develop innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care furnished by VA, and subsection (a)(3) requires VA to determine whether such models improve access to, and quality, timeliness, and patient satisfaction of care and services, and create cost savings for VA. Section 1703E(a)(4) requires that VA test a model in a location where VA determines that the model will address deficits in care (including poor clinical outcomes or potentially avoidable expenditures) for a defined population; it further directs VA to focus on models VA expects to reduce program costs while preserving or enhancing the quality of care received by individuals receiving benefits under chapter 17 of title 38, United States Code. Under section 1703E(a)(4)(C), VA could select those models described in 42 U.S.C. 1315a(b)(2)(B), the authority for the Center for Medicare and Medicaid Innovation. In selecting models for testing, section 1703E(a)(5) permits VA to consider a number of different factors, including whether the model includes a regular process for monitoring and updating patient care plans in a manner that is consistent with the needs and preferences of individuals receiving benefits under chapter 17; whether the model places the individual receiving benefits under chapter 17 (including family members and other caregivers of such individual) at the center of the care team of such individual; whether the model uses technology or new systems to coordinate care over time and across settings; and whether the model demonstrates effective linkage with other public sector payers, private sector payers, or statewide payment models. Section 1703E(a)(6) states that VA may not design models in such a way that would allow the United States to recover or collect reasonable charges from other Federal health care programs, such as Medicare, Medicaid, or TRICARE.

Section 1703E(b) provides that pilot programs must be terminated no later than five (5) years after they begin. Section 1703E(c) directs VA to ensure that each pilot program carried out under this section occurs in an area or areas appropriate for the intended purposes of the pilot program; to the extent practicable, VA should ensure that pilot programs are located in geographically diverse areas. Section 1703E(d) states that funding for each pilot program must come from appropriations provided in advance in appropriations acts for the Veterans Health Administration (VHA) and information technology systems. Section 1703E(e) requires VA publish

information about each pilot program in the **Federal Register** and to take reasonable actions to provide direct notice to veterans eligible to participate in such pilot programs.

Section 1703E(f) allows VA to waive requirements in subchapters I, II, and III of chapter 17, title 38, U.S.C., as VA determines necessary for the purposes of carrying out pilot programs under this section. Before waiving any such authority, VA will submit to Congress a report on a request for a waiver that describes the specific authorities to be waived, the standard or standards to be used in lieu of the waived authorities, the reasons for such waiver or waivers, and other matters including metrics, cost estimates (both budgets and savings), and schedules.

Section 1703E(g) imposes several restrictions on VA's authority under this section, notably limiting the number of pilot programs (10) that can be carried out concurrently, requiring VA to submit the first pilot program proposal to Congress within 18 months of the enactment of the Caring for Our Veterans Act of 2018 (June 6, 2018), and requiring VA to either modify or terminate a pilot program if VA determines it is not improving the quality of care or producing cost savings. Section 1703E(h) requires VA to conduct an evaluation of each pilot program, and section 1703E(i) requires VA to obtain advice from the Under Secretary for Health and the Special Medical Advisory Group in the development and implementation of any pilot program. VA must also consult representatives of relevant Federal agencies, and clinical and analytical experts with expertise in medicine and health care management. Finally, section 1703E(j) authorizes VA to expand, through rulemaking, successful pilot programs in duration or scope.

This proposed rule would implement the mandates and authorities of section 1703E, as added by the VA MISSION Act of 2018, by establishing a new § 17.450.

Proposed paragraph (a) would establish the purpose for this section and the organization of the Center. Proposed paragraph (a)(1) would explain that the Center for Innovation for Care and Payment will carry out pilot programs to develop innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care furnished by VA. This would be consistent with section 1703E(a)(2). We would further state that the Center for Innovation for Care and Payment will be operationally independent from any of VA's three administrations and will be responsible for collaborating across VA to develop and implement pilot programs under this section. As further explained in proposed paragraphs (a)(2)–(3), being operationally independent refers to the decision-making authority of the Center regarding the strategic, procedural, and tactical aspects of managing the pilot programs under this section. To ensure the limited number (10) of concurrent pilot programs under this section are not redundant of or conflicted by ongoing innovation efforts within any specific administration, the Center for Innovation for Care and Payment will not operate within any specific VA administration but will operate in VA's corporate portfolio.

We are strategically positioning the Center as operationally independent to focus on envisioning veteran care and payment requirements in the distant future and preparing VA to meet the needs of veterans today, as well as in the future; in 2045, for example, the population of veterans in the United States is projected to decline to 12 million. Of the approximately 20 million veterans alive today, VA provides health care for approximately 7 million unique patients each year, including approximately 1 million unique non-veterans. If current trends hold, we anticipate that by 2045, VA would be providing health care to approximately 3.6 million unique veteran patients each year. As such, we anticipate VA would need to re-imagine its current approach to furnishing services and payments for the veterans it hopes to serve in 2045. For the Center to be positioned for success in its mission to re-imagine VA's current approach to furnishing services and payments for veterans, it must enjoy strategic and operational independence from existing processes. In the commercial market, innovation efforts led by incumbents or large enterprises are rarely responsible for creating sustainably disruptive solutions that revolutionize the products or services of the incumbent. This is to be expected, because any new solution that threatens the viability or market position of established products or services is ultimately stifled by the enterprise focus on the near-term objectives of sustaining current products and services in lieu of investing additional time and resources in emerging solutions that could revolutionize product and service offerings to significantly benefit the organization's customers. We believe that creating an autonomous, independent organization with its own brand is the best way to enable corporate innovation to thrive. Autonomy does not mean the Center would work in isolation. The Center will report through the Office of the Secretary of Veterans Affairs and ultimately the President of the United States and does not have the unilateral authority to execute pilot programs.

Proposed paragraph (b) would define the terms for this section.

Proposed paragraph (b) would define the term access. Section 1703E(a)(3)(A) directs VA to test payment and service delivery models to determine whether such models improve access to, and quality, timeliness, and patient satisfaction of care and services. Because VA will be testing models to determine whether they improve access, it is important to define the term. We propose to define access as entry into or use of VA services. Entry into would refer to basic eligibility and enrollment, while use of services would refer to the actual receipt of care and services. Access to care is dependent on both availability and adequacy of services as well as barriers (*e.g.,* financial, cultural, etc.) that may interfere with utilization of available services. See Gulliford, M. et al., What Does ''Access to Care'' Mean? Journal of Health Services Research and Policy (2002), available at *https://www.ncbi.nlm.nih.gov/pubmed/12171751.*

We recognize that our beneficiaries face various issues affecting access, including lack of availability of VA services in a specific geographic area or barriers to obtaining care for specific populations. As such, we believe this comprehensive interpretation of access would be of greatest benefit to veterans affected by pilot programs conducted by the Center.

Proposed paragraph (b) would define the term patient satisfaction of care and services to mean the patients' rating of their experiences of care and services and as further defined in a pilot program proposal. In addition to requiring that we test payment and service delivery models to determine whether they improve access and timeliness, section 1703E(a)(3)(A) also requires that we assess whether the models improve patient satisfaction, which is a critical indicator of service quality and patient-centric care. The health care industry standard is to assess patients' perception of their health care experience using the Consumer Assessment of Health Providers and Systems (CAHPS) survey, which has been in use since the mid-1990s. For example, the Centers for Medicare and Medicaid Services (CMS) has adopted CAHPS for care delivered in multiple care settings. Each CAHPS

survey produces several measures of patient experience. These measures include composite measures, which combine two or more related survey items; rating measures, which reflect respondents' ratings on a scale of 0 to 10; and single-item measures. Measuring patient experience measures what is important to the patient: access, service, and communication. For years VA has been measuring patient satisfaction by focusing on patient experience. VA uses CAHPS to measure veterans' experience of care for outpatient care and VA's Survey of Healthcare Experience of Patients (SHEP) to measure inpatient experience of care. SHEP has been in use for many years and uses the same questions as the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS), a standardized, nationally-used, public survey that measures inpatient experience of care.

We believe that using these types of patient experience of care measures would be in line with health care industry standards and VA existing practices and would ensure that veterans and providers alike are not burdened with new types of assessments or surveys. In addition, measuring patient perceptions by using the industry-accepted patient experience of care would allow veterans to better understand how the care provided by VA compares to that provided outside of VA by having equivalent data to make comparisons, as well as how care furnished through the pilot compares with care furnished outside the pilot.

Proposed paragraph (b) would define the term payment models. Section 1703E(a)(2) authorizes VA to carry out innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care furnished by VA. Innovative payment models incorporate different types of arrangements that help lower cost while maintaining or improving the quality of services. We therefore propose to state that the term payment models refers to the types of payment, reimbursement, or incentives that VA deems appropriate for advancing the health and well-being of beneficiaries. Use of the term incentive indicates anything that is intended to motivate service providers to perform better or deliver services in a more favorable manner, which is consistent with the usual dictionary definition. While the term payment models is specifically applicable to service providers, we note that VA could use incentives for patients or other beneficiaries; such an approach would need to be developed through a pilot program proposal.

Proposed paragraph (b) would define the term pilot program to refer to a pilot program conducted under proposed § 17.450. VA operates programs on a pilot or temporary basis under authorities other than section 1703E, but because these regulations only implement that authority and place requirements or restrictions, or authorize certain functions under section 1703E, we propose to define the term here to avoid any impression that the proposed § 17.450 extends those requirements, restrictions, or authorities to other VA initiatives operated under separate legal authorities.

We aim, through testing innovative payment and service delivery models, to discover novel and innovative ways to deliver services that enhance the quality of care for beneficiaries. Section 1703E(a)(2) refers to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care. We propose to use the term quality enhancement to refer to enhancing the quality of care. We propose in paragraph (b) to state that quality enhancement refers to improvement or improvements in such factors as clinical quality, beneficiary-level outcomes (for example, symptom burden), and functional status, which is indicative of an individual's ability to perform normal daily activities required to meet basic needs, fulfill usual roles, and maintain health and well-being as documented by improvements in measurement data from a reliable and valid source, such as the electronic health record, and as further defined in a pilot program proposal. Quality enhancements are multi-faceted, and measurements on such enhancements would be tailored to the specific area tested by a pilot program and would be defined in VA's proposal, as required by section 1703E(f)(2)(D).

Similarly, we propose to define quality preservation in paragraph (b) to refer to the maintenance of such factors as clinical quality, beneficiary-level outcomes, and functional status as documented through measurement data from an evidence-based source, and as further defined in a pilot program proposal. Maintenance in this sense would mean continued, sustained, or improved performance by the patient along several dimensions of care as demonstrated by the types of factors described above and as documented through an evidence-based source. Like quality enhancement, specific measurements would be defined in VA's proposal.

We propose to define in paragraph (b) reduction in expenditure. Section 1703E(a)(2) authorizes VA to test payment and service delivery models that lead to a reduction in expenditures while enhancing or preserving the quality of care furnished by VA. Some innovative models will require upfront investment and additional resources that might increase associated expenditures in the near term, but we anticipate the rise in expenditures will be mitigated by corresponding improvements in outcomes and value creation over time. Value creation could occur in multiple scenarios such as through cost reduction, cost avoidance, or reallocation of resources to alternative, higher-value activities. For example, investing in a system that reduces unnecessary or duplicative testing could lead to long term cost avoidance. For these reasons, we propose to state that reduction in expenditure refers to, but is not limited to, cost stabilization, cost avoidance, and/or decreases in long- or short-term spending and as further defined in a pilot program proposal. We would not limit reduction in expenditures to cost stabilization, cost avoidance, and/or decreases in long- or short-term spending in case there are other methods for determining that VA's expenditures have been reduced that do not fit within any of the descriptions above. In considering the impact of a pilot program on expenditures, VA will estimate how the proposal is anticipated to impact VA expenditures and also consider the proposal's potential impact on expenditures for other related Federal programs.

In proposed paragraph (b), we would state that the term service delivery models refers to all methods or programs for furnishing care and services. Section 1703E(a)(2) authorizes VA to develop innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care. Health care services can be delivered by either VA staff or by non-VA entities or providers, as well as through different modalities (like telehealth) or different models (like VA's Patient-Aligned Care Teams) and the definition proposed here would capture all potential modalities and models for furnishing services and would be the common understanding of this phrase. The term service delivery model generally includes any method for furnishing services, and we believe this is intended to apply broadly given the range of services and support that VA provides to different beneficiaries.

In proposed paragraph (c), we would establish the procedures VA would use to determine the geographic locations where pilot programs would be conducted. Sections 1703E(a)(4)(A) and 1703E(c) require VA to test models and pilot programs in locations where there are deficits in care while ensuring that pilot programs are in geographically diverse areas of the United States. Because different beneficiary populations may have different needs depending on where they live, we believe that geographic location will play a critical role in the design of any pilot program. However, VA cannot yet define the specific factors that we would use to select geographic locations for specific pilot programs. We anticipate the basis for these decisions will vary based upon the goals and objectives of each specific pilot program. For example, if VA were to test a new payment methodology, it may be more appropriate to test it in a portion of the country where providers are already accustomed to being paid in alignment with that model. While market readiness would not serve as the sole reason for geographic location selection, it could be a key factor in selecting specific markets in which to test specific pilot programs. Consequently, we would state in proposed paragraph (c) that VA would make decisions regarding the location of each pilot program based upon the appropriateness of testing a specific model in a specific area while taking efforts to ensure that pilot programs are operated in geographically diverse areas of the country. We would identify the proposed geographic locations for each pilot program, the rationale for those decisions, and how we believe the selected locations would address deficits in care for a defined population in VA's proposal to Congress to operate the pilot program and a document in the **Federal Register**.

Proposed paragraph (d) would define limitations on the authority of the Center. These limitations would only apply to pilot programs under this section. Again, VA operates pilot programs under different authorities, and these limits would not affect such other pilot programs, nor would these other pilot programs affect the activities of the Center. Section 1703E(g) establishes several of VA's limitations in carrying out pilot programs through the Center. Section 1703E(g)(1) states that VA may not carry out more than 10 pilot programs concurrently. We propose to interpret this in paragraph (d)(1) to mean that VA cannot actively operate more than 10 pilot programs at one time. Conducting pilot programs requires advance preparation, as well as data analysis following the completion of a pilot program. VA proposes to exclude the time involved with this preparatory and post-program analysis by considering the operation of a pilot program as only the time of active operation. This would ensure that VA is able to operate the maximum number of pilot programs at any one time and mitigate potential delays to launching new pilot programs that could improve quality and reduce cost during the preparatory and post-pilot analysis effort of other pilot programs.

In proposed paragraph (d)(2), we would state that, unless VA determines it to be necessary and informs the appropriate Committees of Congress, VA would not obligate more than $50 million in any fiscal year to operate all the pilot programs under this section. This is consistent with section 1703E(d) and section 1703E(g)(2), which state that, subject to notification and approval conditions, VA may not expend more than $50 million in any fiscal year in the conduct of the pilot programs operated under this section. Funding required to operate the pilot programs includes all administrative and overhead costs, including measurement and evaluation, as well as the funding required to implement the specific payment or service delivery models being tested. We propose to interpret the term ''expend'' under section 1703E(g)(2) to mean ''obligate.'' This interpretation accounts for the legal requirement to record obligations that may result in immediate or future expenditures (outlays). An ''obligation'' is a definite commitment that creates a legal liability for payment. At the time that VA incurs a liability (*e.g.,* signing a contract) it records the full amount of its legal liability against currently-available funds pursuant to the recording statute, 31 U.S.C. 1501(a)(1). The timing of the incurrence of an obligation is generally within the agency's control, while the timing of the liquidation of the obligation is largely outside of the agency's control, due to factors such as contractor performance and billing. Thus, interpreting ''expend'' to mean ''outlay'' rather than ''obligate'' would frustrate the legislative intent of authorizing up to $50 million per fiscal year to carry out the pilot programs. We note that paragraph (d)(2) would not condition VA's obligation of more than $50 million upon approval of the Chairmen of the Committees on Veterans' Affairs of the House of Representatives and the Senate, as is contemplated in section 1703E(g)(2)(B)(iii). As noted in the President's Signing Statement, issued upon enactment of the VA MISSION Act of 2018, under the separation of powers, the Congress may not make the approval of Members of Congress a precondition to the execution of the law. See Statement of the President, June 6, 2018, available online: *https://www.whitehouse.gov/briefings-statements/statement-by-the-president-3/.* VA, accordingly, treats the section 1703E(g)(2)(B)(iii) approval requirement as advisory and non-binding, but may submit the required report to the appropriate Congressional Committees before exceeding the spending cap, if VA determines that the additional expenditure is necessary to carry out the pilot programs. For the public's awareness, coordination and approval of funding sources under section 1703E(d) for pilot programs will occur prior to public notice.

In proposed paragraph (e), we would define VA's waiver authority to conduct pilot programs. Section 1703E provides a unique ability for VA, temporarily and in certain locations, to amend effectively its statutory authority when carrying out pilot programs under this section. Specifically, section 1703E(f)(1) allows VA to waive any provisions of law in subchapters I, II, and III of chapter 17, title 38 U.S.C., *i.e.,* sections 1701 through 1730C, as VA determines necessary solely for the purposes of carrying out this section with respect to testing models. However, VA cannot unilaterally waive these authorities; it must propose a waiver and describe a proposed pilot program in a report to Congressional leadership, and only upon Congress' approval may VA carry out the pilot program. VA must submit the first request for a waiver by December 6, 2019, as required by section 1703E(g)(3).

Proposed paragraph (e) would clarify VA's authority regarding the waiver provisions in section 1703E(f). In proposed paragraph (e), we would state that VA's waiver authority includes both the authority to propose the removal of provisions of law or the addition of provisions of law. VA is a creature of law, and thus only has the authority granted to it by statute. Some statutes are restrictive, in that they provide a general authority and then place conditions upon the use of that authority. For example, section 1705 of title 38, U.S.C., defines VA's patient enrollment system and identifies those veterans who are eligible to enroll and in which priority group such veterans will be enrolled. Under this authority, VA could propose to waive some specific provision of law by proposing

to act as though such language that is in the statute were not there. At the same time, because VA is limited by its legal authority to only carry out those functions authorized by law, we propose to include in VA's waiver authority the ability to include additional language creating new authority for VA to act, or restricting language currently authorizing or requiring VA to act. For example, section 1708 of title 38, U.S.C., authorizes VA to provide temporary lodging in certain situations and for certain persons. VA could use this waiver authority to propose to include additional groups of eligible beneficiaries under this regulation.

We propose to allow VA to propose new or different standards under the waiver authority of section 1703E(f). We believe this is authorized by section 1703E(f)(1), which authorizes VA to waive such requirements in subchapters I, II, or III of chapter 17 of title 38, U.S.C. These requirements, as explained above, may either be explicit, which would require their removal, or implicit, which would require the addition of further language. Moreover, we believe this interpretation is further supported by section 1703E(f)(2)(B), which requires VA, in proposing the waiver of authority for a pilot program, to identify the standard or standards to be used in the pilot program in lieu of the waived authorities. We believe this language authorizes VA both to suggest additional standards or the removal of standards as well. We believe that if Congress or the public disagreed with the scope of this authority, Congress could simply choose to not approve VA's waiver request, so there is little to no risk associated with this interpretation.

We also would state that VA may propose to waive any provision of law in any provision codified in or included as a note to any section in subchapters I through III of chapter 17, title 38, U.S.C. Some laws are codified in a title of the United States Code. For example, section 1710 of title 38, U.S.C., defines eligibility for hospital, nursing home, and domiciliary care. Other laws are not codified but are included as notes to codified provisions when they deal with similar or general subject matters. For example, section 205 of Public Law 111–163 established a pilot program on assistance for child care for certain veterans receiving health care. Section 205 of Public Law 111–163 is included as a note to section 1710 of title 38, U.S.C. Proposed paragraph (e) would allow VA to propose to waive provisions in either the text of section 1710 (for example, relating to eligibility for hospital, nursing home, or domiciliary care) or a note to section 1710 (for example, relating to the pilot program on assistance for child care for certain veterans receiving health care). We believe this is authorized by section 1703E(f)(1), which authorizes VA to waive such requirements in subchapters I, II, and III of this chapter. When citing to a public law that appears as a note to a codified provision of law, we include the U.S.C. section and identify this as a note; public laws are assigned as notes to codified provisions of law by the Office of the Law Revision Counsel in the U.S. House of Representatives. This recognizes that these public laws are requirements in, or at least related to, the section of law. We also believe that if Congress or the public disagreed with the scope of this authority, Congress could simply choose to not approve VA's waiver request, so the risk associated with this interpretation is limited. In other words, if VA proposed to modify a note to a section of law and Congress did not think we had the authority to do that, or disagreed with VA on policy grounds, it would simply not approve the waiver request and the provision would not be waived.

Finally, in paragraph (e)(1), we propose, upon Congressional approval of a waiver of a provision of law under this section, that VA will also deem waived any applicable provision of regulation implementing such law as identified in VA's pilot program proposal. We believe this would be a necessary component to exercising the statutory authority granted by section 1703E(f)(1), which allows VA to waive ''such requirements'' in subchapters I, II, and III of chapter 17 as the Secretary determines necessary solely for the purposes of carrying out this section with respect to testing models. We believe regulations interpreting and implementing specific statutory provisions in subchapters I, II, and III are ''requirements'' within the context of this authority. It would be paradoxical for VA to test innovative approaches to payment and service delivery if VA could waive provisions of statute but not corresponding, and potentially more limiting, regulations promulgated by VA. For example, if VA proposed to waive a provision in section 1712 concerning dental care, and Congress approved such a proposal, VA could also waive any regulatory requirements (such as those found in 38 CFR 17.160) that implemented the provision of law waived by VA through the pilot program.

Under proposed paragraph (e)(2), VA would publish a document in the **Federal Register** with information about, and soliciting public comment on, each proposed pilot program so that the public has an opportunity to comment on VA's proposals while Congressional approval is pending. VA would then publish a document in the **Federal Register** to inform the public of any approved pilot programs, as required by section 1703E(e)(1). While this is not required by law, we believe this would be prudent practice to ensure that the public also has an opportunity to submit comments directly to VA regarding pending pilot program proposals and to inform their Members of Congress if they have any issues or concerns so that Congress can appropriately decide whether or not to approve a requested waiver of authority for the Center.

Under proposed paragraph (f), VA would establish procedures regarding notice of eligibility requirements. Specifically, we would state that VA would take reasonable actions to provide direct notice to veterans eligible to participate in pilot programs operated under this section and would provide general notice to other individuals eligible to participate in a pilot program. We would further state that VA also would announce methods of notice in the **Federal Register** document published by VA for each proposed and approved pilot program. While section 1703E(e)(2) directs VA to take reasonable actions to provide direct notice to veterans eligible to participate in such pilot programs, we note that other provisions in section 1703E refer more broadly to individuals that are eligible for benefits. See, *e.g.,* 1703E(a)(4)(B), (a)(5)(A)–(B), (j)(2). Consequently, we read the requirement in section 1703E(e)(2) to create an obligation to take reasonable actions to provide direct notice to veterans eligible to participate in pilot programs on the assumption that VA would have more information about veterans, while VA would provide general information to notify any other individuals eligible to participate in a pilot program. For example, one pilot program could expand access to benefits for family members or caregivers of veterans; in this case, VA would provide notice to the veterans in the area where the pilot program is operating and would provide other general information as well to reach the caregivers or family members. Another example would be a pilot program involving certain community providers or other private entities; VA would provide general information to the community so that interested parties could inquire or participate. The exact nature of the notice will vary depending upon the type of pilot program

involved, and so VA will announce how it intends to inform the public, in particular, other eligible individuals and entities, through the document it publishes in the **Federal Register** for each pilot program. Other forms of more direct communication could include mailed letters, emails, announcements to local Veterans Service Organizations, and posting of information on the websites of VA medical centers, the VA Innovation Center website, and other online sources.

In proposed paragraph (g), VA would describe generally how it would evaluate and report on the pilot programs. Specifically, VA would evaluate each pilot program operated under this section and report its findings. Section 1703E(h) requires VA to conduct an evaluation of each model tested, including at a minimum an analysis of the quality of care furnished and the changes in spending because of that model. VA is required to make the results of the tested model available to the public in a timely fashion. Once again, because each pilot program will vary in terms of the specific outcomes involved and how it will achieve those outcomes, VA is not proposing a discrete list of measures, but will include more specific information with each proposal for a pilot program. VA proposes to base its evaluation of pilot programs on quantitative data, qualitative data, or both, depending upon the nature of the pilot program. Different types of data may be more appropriate for different pilot program models, but each type of data is instructive and could help VA determine if VA is improving access to, and the quality, timeliness and patient satisfaction of care and services, as well as creating cost savings for VA. Whenever appropriate, such evaluation will also include a survey of participants or beneficiaries to determine their satisfaction with the pilot program; this participant feedback likely would be subject to the Paperwork Reduction Act and would provide direct input regarding the effects of the pilot program. We propose to make the evaluation results available to the public on the VA Innovation Center website at *https://www.innovation.va.gov/*. The schedule of the release will be indicated in the proposal for each pilot program. By law, VA is required to make the results of the tested model available to the public in a timely fashion, but we again note that each model will naturally have different lengths of time for data collection and analysis. Some pilot programs may allow for real-time, or close to real-time reporting of information (for example, costs or number of appointments), while others may experience lags between an action under the pilot program and health outcomes (for example, 6-month or 12-month morbidity or mortality data). VA will identify the measures and timelines for public reporting in its pilot program proposal submission to Congress and its document in the **Federal Register**.

In proposed paragraph (h), VA would establish a process in regulation for the expansion of pilot programs. Section 1703E(j) authorizes VA through rulemaking to expand in scope or duration, including nationwide implementation, pilot programs if the expansion is expected to reduce spending without reducing the quality of care, or to improve the quality of patient care without increasing spending. Furthermore, VA is only permitted to expand a pilot program if the pilot program does not deny or limit the coverage or provision of benefits for individuals under chapter 17. We propose to establish through regulation a general process for expanding the scope or duration of pilot programs instead of requiring separate rulemakings for each expansion for several reasons. First, the promulgation of regulations is a lengthy process, taking on average 18–22 months for a proposed and final rule to be published and effective. Given the limitations on the length of time a pilot program could operate under this authority of only 5 years, this would effectively require VA to decide at the halfway point of a pilot program, and possibly before that, as to whether or not to expand. This may not be enough time for VA as a practical matter, which could either lead to the expansion of pilot programs that ultimately prove unsuccessful or the inability to expand pilot programs that do prove to be successful. Second, if VA were required to publish new regulations for each pilot program it wished to expand, VA's regulations would become cluttered with rules that would only be applicable for limited periods of time and locations. This would likely result in confusion regarding these provisions. Finally, we believe that by regulating the process we would use to expand pilot programs, we are meeting the requirements of the law, which does not expressly require VA proceed through notice and comment rulemaking for each expansion, but merely states that VA may expand pilot programs ''through rulemaking''. This requirement merely obligates VA to allow the public to comment on how expansion would occur, which this proposal would do. Moreover, and as further discussed below, VA is taking other measures to provide the public and Congress an opportunity to review and comment on VA's proposal for expansion, which we believe would result in an opportunity for feedback similar to a subsequent notice and comment rulemaking.

Initially, we propose in paragraph (h)(1) that VA would only meet the statutory requirement of expecting a pilot program to reduce spending without reducing the quality of care or to improve the quality of patient care without increasing spending based upon an analysis of the data collected for the specific pilot and developed pursuant to proposed paragraph (g). VA also would have to provide such results to Congress through an interim report and to the public through a document in the **Federal Register**. This would be consistent with the general structure of the Center's authority, as any decisions regarding expansion would have to be based on publicly available data. Similarly, VA would have to decide that expansion would not deny or limit the coverage or provision of benefits for individuals under chapter 17. This is a statutory requirement, and VA's basis for making this determination would be available for public scrutiny prior to any expansion taking place. VA would propose that it would not expand a pilot program until 60 days after submitting an interim report to Congress and publishing a document in the **Federal Register** regarding its intent to expand a pilot program. This would provide Congress and the public 60 days to evaluate the data VA would be using as the basis for such an expansion. In the event the public or Congress do not believe the data support expansion, they would have this time to inform VA of such views. Upon the completion of the 60-day period, if VA still finds that the statutory prerequisites for expansion have been met, VA could expand a pilot program in either scope or duration, as noted below.

Proposed paragraph (h)(2) would define how VA could expand a pilot program in scope. Proposed paragraph (h)(2) would authorize VA to expand the scope of a pilot program by modifying, among other elements of a pilot program, the range of services provided, the qualifying conditions covered, the geographic location of the pilot program, or the population of eligible participants in a manner that increases participation in or benefits under a pilot program. These are the general dimensions that we believe could be expanded, as that term is used in section 1703E(j). Expansion is generally

defined to mean becoming larger or more extensive, and these are the likely areas of a pilot program that could become larger or more extensive. For example, if VA were conducting a pilot program related to mental health services in Alaska for homeless veterans, and VA proposed to expand the pilot under paragraph (h)(1), VA could expand to include new beneficiary populations (*e.g.,* non-homeless veterans), conditions (*e.g.,* additional health services), or geographic locations (*e.g.,* outside Alaska), among others. We would permit some flexibility in the forms that expansion could occur in case there are features of a pilot program that could be made larger or more extensive that do not fall within one of these categories. Again, without knowing exactly what pilot programs will be proposed, we are unable now to state definitively in what ways we could expand such a pilot program.

In proposed paragraph (h)(3), we propose the conditions under which VA could extend the duration of a pilot program. In general, section 1703E(b) limits pilot programs to 5 years of operation. Section 1703E(j)(1), however, authorizes VA to extend the duration of a pilot program if the conditions for expansion discussed above are also met. We propose to authorize VA to extend the duration of a pilot program for up to an additional 5 years. Such extension would be subject to the same requirements related to the evaluation and reporting of data that would apply to a pilot program within the first 5 years of operation under proposed paragraph (g). We propose limiting the expansion of a pilot program to an additional 5 years because Congress recognized the potential for making successful pilots permanent in section 1703E(f)(2)(G) when it required VA to report on the feasibility and advisability of making a pilot program permanent, but there is no indication Congress intended to allow for pilot programs to run in perpetuity. Moreover, the very nature of a pilot program is that it has a beginning and an end date. Finally, on a practical and legal level, because pilot programs under this section would involve the waiver of one or more provisions of law, we believe it would create confusion over time if a pilot program were operated indefinitely without express statutory authority. We believe the balance of powers is best preserved when Congress affirmatively establishes VA's parameters through law.

In proposed paragraph (i), VA would establish its authority to make minor modifications to pilot programs approved by Congress. Section 1703E(g)(5)(A) establishes VA's options (proposing a modification to Congress for approval or terminating the pilot program) when the Secretary determines that a pilot program is not improving the quality of care or producing cost savings, but it and the rest of section 1703E are silent in terms of VA's authority to modify pilot programs when VA has not made a determination regarding whether the pilot program is improving the quality of care or producing cost savings. We anticipate there may be pilot programs that we operationalize in a way that becomes administratively difficult to continue; alternatively, some pilot programs may be operationalized in a way that does not produce clear data that would allow VA to determine if the pilot program is improving the quality of care or producing cost savings. Under proposed paragraph (i), VA could modify the pilot program in a manner that is consistent with the parameters of Congressional approval without seeking further Congressional approval for the change. Modifications that would be consistent with the parameters of Congressional approval would vary based on each pilot program, but we offer a few examples for the public's understanding. For example, VA may plan to operate a pilot program in a particular location, but later determine that this location is unsuitable for reasons beyond VA's control. For example, an anticipated pilot site may be unavailable due to a natural disaster, or interest in participation in the pilot program may be inadequate to support valid results. In these cases, it would seem a poor use of government resources to continue attempting to operate the pilot program while waiting for a subsequent Act of Congress to allow VA to select another location. As another example, VA may want to conduct a pilot program offering a particular service, but VA may later determine this service is not appropriate while another similar service would be. VA plans to submit proposals to Congress that provide it enough information to know what it is authorizing, while still providing some flexibility for VA to address potential minor corrections without further Congressional approval. In identifying geographic locations for the pilot program under paragraph (c) of this section, for example, rather than identifying specifically the VA medical centers or facilities that would participate, we anticipate providing the general criteria VA will use to identify locations (*e.g.,* urban areas, rural areas, highly rural areas; areas near military bases; facilities with academic affiliates, etc.) and possibly a list of facilities that could meet those requirements. This would allow VA to select another suitable location if needed. Similarly, for services that VA might provide, or populations of beneficiaries that might be included, we would attempt to describe these generally enough to allow for further modification as needed to either specify another service or another population. We are sensitive to Congress' need to conduct oversight and to understand clearly what it is authorizing when it approves a waiver, and so we limit VA's ability to modify a pilot program to changes that are consistent with the parameters of Congress' initial approval. VA could not, for example, modify a Congressionally approved pilot program on beneficiary travel to become a pilot program on the provision of care to beneficiaries otherwise ineligible for VA care. Such a change would clearly be outside the parameters of Congress' initial approval.

In proposed paragraph (j), we would define the conditions for termination of pilot programs. As noted before, section 1703E(g)(5)(A) establishes that, when the Secretary determines that a pilot program is not improving the quality of care or producing cost savings, VA's options include proposing a modification to Congress for approval or terminating the pilot program. In proposed paragraph (j), we would use the terms quality enhancement and quality preservation to reflect the statutory language related to improving the quality of care, and we would use the term reduction in expenditures to reflect the statutory language related to producing cost savings. These substitutions would be consistent with the terms as they would be defined through paragraph (b) of this section. We would also clarify that a modification that can only be achieved through submission of a new waiver request to Congress would be distinct from a modification under paragraph (i) of this section, as just discussed. Congress specifically recognized that not all pilot programs will meet or exceed their primary goals of enhancing or preserving care while reducing costs. Under proposed paragraph (j), VA would, upon determining that a pilot program is not producing quality enhancement or quality preservation, or is not resulting in the reduction of expenditures, and that it is not possible or advisable to modify the pilot program either through submission of a new waiver request under paragraph (e) or

through modification under paragraph (i), terminate the pilot program within 30 days of submitting an interim report to Congress stating such determination. VA also would publish a document in the **Federal Register** regarding the pilot program's termination, and we would notify participants in the same manner that we notified them under paragraph (f) of their initial eligibility for the pilot program. This would ensure determinations regarding expansion and termination are made using the same methodology. This 30-day period is the maximum amount of time permitted by section 1703E(g)(5)(A)(ii).

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This rulemaking does not contain any provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not have a significant economic impact on qualifying non-VA entities or providers. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD. This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Executive Order 12866 also directs agencies to ''in most cases . . . include a comment period of not less than 60 days.'' This regulation aims to test innovative payment and service delivery models that will maintain or enhance the quality of care for beneficiaries while reducing cost. Providing a 30-day comment period will allow VA to begin pilot programs more quickly, thereby increasing opportunities for access to quality, cost-effective care to participating beneficiaries. The regulations proposed here are largely procedural, and will not, without Congressional approval of a pilot program proposal from VA, result in any change in benefits or services by themselves. Moreover, we believe that the requirement to receive Congressional approval for any waiver of authority, and VA's proposal to publish specific pilot program proposals in the **Federal Register** for public comment while Congressional approval is pending, should provide the public a more meaningful opportunity to comment on the actual pilot programs implemented under section 1703E. For these reasons, we believe that 30 days would be a sufficient period of time for the public to comment on this rulemaking. In sum, providing a 60-day public comment period instead of a 30-day public comment period would be against public interest. For the above reasons, VA issues this rule with a 30-day public comment period. VA will consider and address comments that are received within 30 days of the date this proposed rule is published in the **Federal Register**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 10, 2019, for publication.

Dated: July 23, 2019.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry for § 17.450 to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.450 is also issued under 38 U.S.C. 1703E.

* * * * *

■ 2. Add an undesignated center heading immediately following § 17.417 to read as follows:

Center for Innovation for Care and Payment

■ 3. Add a new § 17.450 to read as follows.

§ 17.450 Center for Innovation for Care and Payment.

(a) *Purpose and organization.* The purpose of this section is to establish procedures for the Center for Innovation for Care and Payment.

(1) The Center for Innovation for Care and Payment will be operationally independent from any of VA's administrations and will be responsible for working across VA to carry out pilot programs to develop innovative approaches to testing payment and service delivery models to reduce expenditures while preserving or enhancing the quality of care furnished by VA.

(2) For purposes of this paragraph (a), operational independence refers to the strategic, procedural, and tactical aspects of managing the pilot programs under this section.

(3) The Center for Innovation for Care and Payment will not operate within any specific administration but will operate in VA's corporate portfolio to ensure the limited number of concurrent pilot programs under this section are not redundant of or conflicted by ongoing innovation efforts within any specific administration.

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

Access refers to entry into or use of VA services.

Patient satisfaction of care and services refers to patients' rating of their experiences of care and services and as further defined in a pilot program proposal.

Payment models refer to the types of payment, reimbursement, or incentives that VA deems appropriate for advancing the health and well-being of beneficiaries.

Pilot program refers to a pilot program conducted under this section.

Quality enhancement refers to improvement or improvements in such factors as clinical quality, beneficiary-level outcomes, and functional status as documented through improvements in measurement data from a reliable and valid source, and as further defined in a pilot program proposal.

Quality preservation refers to the maintenance of such factors as clinical quality, beneficiary-level outcomes, and functional status as documented through maintenance of measurement data from an evidence-based source, and as further defined in a pilot program proposal.

Reduction in expenditure refers to, but is not limited to, cost stabilization, cost avoidance, or decreases in long- or short-term spending, and as further defined in a pilot program proposal. *Note:* VA will also consider the proposal's potential impact on expenditures for other related Federal programs; however, this potential impact will not count against the limitation in paragraph (d)(2) of this section.

Service delivery models refer to all methods or programs for furnishing care or services.

(c) *Geographic Locations.* VA will make decisions regarding the location of each pilot program based upon the appropriateness of testing a specific model in a specific area while taking efforts to ensure that pilot programs are operated in geographically diverse areas of the country. VA will include in its proposal to Congress and publish a document in the **Federal Register** identifying the geographic locations proposed for each pilot program, the rationale for those selections, and how VA believes the selected locations will address deficits in care for a defined population.

(d) *Limitations.* In carrying out pilot programs under this section, VA will not:

(1) Actively operate more than 10 pilot programs at the same time; and

(2) Consistent with section 1703E(d), obligate more than $50 million in any fiscal year in the conduct of the pilot programs (including all administrative and overhead costs, such as measurement, evaluation, and expenses to implement the pilot programs themselves) operated under this section, unless VA determines it to be necessary and submits a report to the appropriate Committees of Congress that sets forth the amount of, and justification for, the additional expenditure.

(e) *Waiver of authorities.* In carrying out pilot programs under this section, VA may waive statutory provisions by adding to or removing from statutory text in subchapters I, II, and III of chapter 17, title 38, upon Congressional approval, including waiving any provisions of law in any provision codified in or included as a note to any section in subchapters I, II, or III of chapter 17, title 38, U.S.C.

(1) Upon Congressional approval of the waiver of a provision of law under this section, VA will also deem waived any applicable provision of regulation implementing such law as identified in VA's pilot program proposal.

(2) VA will publish a document in the **Federal Register** providing information about, and seeking comment on, each proposed pilot program upon its submission of a proposal to Congress for approval. VA will publish a document in the **Federal Register** to inform the public of any pilot programs that have been approved by Congress.

(f) *Notice of eligibility.* VA will take reasonable actions to provide direct notice to veterans eligible to participate in a pilot program operated under this section and will provide general notice to other individuals eligible to participate in a pilot program. VA will announce its methods of providing notice to veterans, the public, and other individuals eligible to participate through the document it publishes in the **Federal Register** for each proposed and approved pilot program.

(g) *Evaluation and reporting.* VA will evaluate each pilot program operated under this section and report its findings. Evaluations may be based on quantitative data, qualitative data, or both. Whenever appropriate, evaluations will include a survey of participants or beneficiaries to determine their satisfaction with the pilot program. VA will make the evaluation results available to the public on the VA Innovation Center website on

the schedule identified in VA's proposal for the pilot program.

(h) *Expansion of pilot programs.* VA may expand a pilot program consistent with this paragraph (h).

(1) VA may expand the scope or duration of a pilot program if, based on an analysis of the data developed pursuant to paragraph (g) of this section for the pilot program, VA expects the pilot program to reduce spending without reducing the quality of care or improve the quality of patient care without increasing spending. Expansion may only occur if VA determines that expansion would not deny or limit the coverage or provision of benefits for individuals under chapter 17. Expansion of a pilot program may not occur until 60 days after VA has published a document in the **Federal Register** and submitted an interim report to Congress stating its intent to expand a pilot program.

(2) VA may expand the scope of a pilot program by modifying, among other elements of a pilot program, the range of services provided, the qualifying conditions covered, the geographic location of the pilot program, or the population of eligible participants in a manner that increases participation in or benefits under a pilot program.

(3) In general, pilot programs are limited to 5 years of operation. VA may extend the duration of a pilot program by up to an additional 5 years of operation. Any pilot program extended beyond its initial 5-year period must continue to comply with the provisions of this section regarding evaluation and reporting under paragraph (g) of this section.

(i) *Modification of pilot programs.* The Secretary may modify elements of a pilot program in a manner that is consistent with the parameters of the Congressional approval of the waiver described in paragraph (e) of this section. Such modification does not require a submission to Congress for approval under paragraph (e) of this section.

(j) *Termination of pilot programs.* If VA determines that a pilot program is not producing quality enhancement or quality preservation, or is not resulting in the reduction of expenditures, and that it is not possible or advisable to modify the pilot program either through submission of a new waiver request under paragraph (e) of this section or through modification under paragraph (i) of this section, VA will terminate the pilot program within 30 days of submitting an interim report to Congress that states such determination. VA will also publish a document in the **Federal Register** regarding the pilot program's termination.

[FR Doc. 2019–15891 Filed 7–26–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0140; FRL–9996–89–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Colorado and North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone NAAQS, revising the standard to 0.070 parts per million. Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance, and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to approve multiple elements and disapprove a single element of the following infrastructure SIP submissions with respect to infrastructure requirements for the 2015 ozone NAAQS: Colorado, submitted to the EPA on September 17, 2018; and North Dakota, submitted to the EPA on November 6, 2018. We are also proposing to approve a portion of North Dakota's May 2, 2019 submission of chapter 33.1–15–15, the air pollution control rules of the State of North Dakota, that updates the date of incorporation by reference (IBR) of Federal rules.

DATES: Written comments must be received on or before August 28, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0140, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, (303) 312–6103, *singh.amrita@epa.gov;* or Clayton Bean, (303) 312–6143, *bean.clayton@epa.gov.* Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

SUPPLEMENTARY INFORMATION: Throughout this document, ''reviewing authority,'' ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292). The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Under sections 110(a)(1) and (2) of the CAA, after the promulgation of a new or revised NAAQS states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007 guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011 ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, the EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

A. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements for Colorado and North Dakota is contained in section III of this document.

B. How did the states address the infrastructure elements of sections 110(a)(1) and (2)?

The Colorado and North Dakota 2015 ozone NAAQS infrastructure SIP submissions demonstrate how the states, where applicable, have plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The state submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.*

1. Colorado

The Colorado Department of Public Health and Environment (CDPHE) submitted a certification of Colorado's infrastructure SIP for the 2015 ozone NAAQS on September 17, 2018. The State's submission references the current Air Quality Control Commission (AQCC) regulations and Colorado Revised Statutes (C.R.S.). The AQCC regulations referenced in the submittal are publicly available at *https://www.colorado.gov/pacific/cdphe/aqcc-regs* and *http://www.lexisnexis.com/hottopics/colorado/.* Colorado's approved SIP can be found at 40 CFR 52.320.

2. North Dakota

The North Dakota Department of Health/Department of Environmental Quality (NDEQ) [1] submitted certification

[1] The EPA notes that the North Dakota state legislature created the North Dakota Department of Environmental Quality (NDEQ) in 2017. The EPA approved changes to the North Dakota SIP for

Continued

for North Dakota's infrastructure SIP for the 2015 ozone NAAQS on November 6, 2018. The State's submission references the North Dakota Century Code (NDCC) and the North Dakota Air Pollution Control Rules (APCR) contained in the North Dakota Administrative Code (NDAC). The NDCC and NDAC referenced in the submittals are publicly available at *http://www.legis.nd.gov/general-information/north-dakota-century-code* and *http://www.legis.nd.gov/cencode/t23c25.html.* North Dakota's approved SIP can be found at 40 CFR 52.1820.

II. What is the scope of this proposed rule?

The EPA is acting upon the SIP submissions from Colorado and North Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA finds that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[2] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[3] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. The EPA's Evaluation of the State Submittals

A. CAA Section 110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the Act.

1. Colorado

The State's submission and the EPA's analysis:

Multiple SIP-approved AQCC regulations cited in Colorado's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 NAAQS subject to the following clarification.

The EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2).). For the purposes of this action, the EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Colorado cited to rules in Regulation Number 7 that were submitted to meet the reasonably available control technology (RACT) requirements of part D. The EPA is approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D will be made separately, in an action reviewing those rules pursuant to the requirements of part D. Colorado also referenced other SIP provisions that are relevant, such as the motor vehicle inspection and maintenance program in Regulation 11 and the State's minor new source review (NSR) and Prevention of Significant Deterioration (PSD) Programs in Regulation 3. We propose to find these provisions adequately address the requirements of element (A), again subject to the clarifications made in this document.

2. North Dakota

The State's submission and the EPA's analysis:

Multiple SIP-approved State air quality regulations within the NDAC cited in North Dakota's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 ozone NAAQS, subject to the following clarification.

The EPA does not consider the SIP requirements triggered by the nonattainment area mandates in part D of Title 1 of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, North Dakota has no areas designated as nonattainment for the 2015 ozone NAAQS. North Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various

purposes of transferring authority from the North Dakota Department of Health (NDDH) to the NDEQ. We approved the transfer of authority to implement and enforce the EPA-approved SIP on February 5, 2019 (84 FR 1610). We also approved a recodification of the state's previously-approved APCR. Given this transfer of authority and change in numbering of North Dakota's codified regulations, the state's submittal for this proposed action references rules and regulations prior to the EPA's final approval, but under the new codification. *See also,* 84 FR 8260, March 7, 2019.

[2] The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/. Guidance on Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf),* as well as in numerous agency actions, including the EPA's prior action on South Dakota's infrastructure SIP to address 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 NAAQS (79 FR 71040, (December 1, 2014)).

[3] *See* U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (August 30, 2018).

programs, including major or minor source permit programs. This suffices, in the case of North Dakota, to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. CAA Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

1. Colorado

(i) The State's submission:

As discussed in Colorado's submission, the Colorado Air Pollution Control Division (APCD) periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data. The provisions for episode monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP (58 FR 49435, September 23, 1993). As part of the monitoring SIP, Colorado submits an Annual Monitoring Network Plan (AMNP) each year for the EPA's approval.

(ii) The EPA's analysis:

A comprehensive Annual Monitoring Network Plan (AMNP), intended to fully meet the Federal requirements, was submitted to the EPA by Colorado on June 29, 2018, and subsequently approved by the EPA. We propose to find that Colorado's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2015 ozone NAAQS; and therefore, propose to approve the infrastructure SIP for the 2015 ozone NAAQS for this element.

2. North Dakota

(i) The State's submission:

North Dakota references NDCC 23.1–06–04.1.1 as the provision that provides authority to conduct ambient air monitoring. Additionally, North Dakota's SIP (45 FR 53475, August 12, 1980) provides for the design and operation of its monitoring network, reporting of data obtained from the monitors, and annual network review including notification to the EPA of any changes, and public notification of exceedances of NAAQS.

(ii) The EPA's analysis:

The comprehensive 2018 Annual Monitoring Network Plan (AMNP), intended to fully meet Federal requirements, was submitted to the EPA by North Dakota on October 31, 2018 and subsequently approved by the EPA. In accordance with 40 CFR 58.10, beginning in July 2008, and every five years thereafter, North Dakota develops a periodic network assessment to ensure the effective implementation of an adequate ambient air quality surveillance system. The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including ozone monitoring.

North Dakota's SIP-approved regulations provide for the design and operation of its monitoring network, reporting of data obtained from the monitors, and annual network review including notification to the EPA of any changes, and public notification of exceedances of NAAQS. As described in its submission, North Dakota operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. Therefore, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

C. CAA Section 110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires each state to have a program that provides for the following three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA Title I part C (*i.e.,* the major source PSD program).

1. Colorado

(i) The State's submission:

The Colorado submission refers to the following SIP-approved Code of Colorado Regulations (CCR) which address and provide for meeting all requirements of CAA section 110(a)(2)(C):

- Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides
- Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements
- Regulation 4, Woodburning Controls
- Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides
- Regulation 11, Motor Vehicle Inspection
- Regulation 16, Street Sanding and Sweeping
- Common Provisions Regulation

(ii) The EPA's analysis:

With regard to the sub-element requirement of a program providing for enforcement of all SIP measures, we are proposing to find that Colorado's regulations provide broad authority to allow the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. Many of the AQCC regulations above address Colorado's program for enforcement of control measures.[4]

Turning to the second sub-element, regulation of new and modified minor sources and minor modifications of major sources, Colorado has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Regulation 3 of the Colorado SIP. The EPA originally approved Colorado's minor NSR program into the SIP as Regulation 3 (68 FR 37744, June 25, 2003), and over the years, the EPA has subsequently approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS.

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA Title I part C, a state is required to have PSD, NNSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS. The EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates

[4] We note also that, for element 110(a)(2)(E)(i), the state cited 25–7–111, C.R.S., as providing the general authority for the Division to enforce the SIP.

that the air agency has a complete PSD permitting program meeting the current requirements for *all* regulated NSR pollutants. To meet this requirement, Colorado cited its Colorado's SIP-approved PSD program codified at 5 CCR 1001–5, known as Regulation 3. We most recently approved revisions to Colorado's PSD (and NNSR) programs on May 3, 2019 (84 FR 18991). The EPA is proposing to approve Colorado's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a PSD program in the SIP that covers all regulated pollutants including greenhouse gases (GHGs).

In addition to these requirements, there are four other revisions to the Colorado SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); (2) the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (June 3, 2010, 75 FR 31514); (3) the NSR $PM_{2.5}$ Rule (May 16, 2008, 73 FR 28321); and (4) the final rulemaking entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864, Oct. 20, 2010).

On January 9, 2012 (77 FR 1027), we approved revisions to Colorado's PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Colorado PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) [5] contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.'' The EPA subsequently revised our PSD regulations to remove the vacated provisions. 80 FR 50199 (Aug. 19, 2015).

The EPA has subsequently revised our PSD regulations in response to the Court's decision and the subsequent amended judgment by the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015). We recently approved revisions to the Colorado PSD program that are consistent with our revised regulations. See 84 FR 6732 (Feb. 28, 2019) (proposal); 84 FR 18991 (May 3, 2019) (final). Thus, Colorado's PSD program is current with respect to regulation of GHGs.

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010, the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The Court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for PM nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR (NNSR)) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the decision. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Colorado's infrastructure SIP for elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the NNSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a NNSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring

[5] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado's PSD program up to date with respect to current requirements for $PM_{2.5}$. The EPA approved the necessary portions of Colorado's May 11, 2012 and May 13, 2013 submissions which incorporate the requirements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule on September 23, 2013 (78 FR 58186). Colorado's SIP-approved PSD program meets current requirements for $PM_{2.5}$.

The EPA therefore is proposing to approve Colorado's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Regulation 3 of the Colorado SIP, and was originally approved by the EPA as Regulation 3 of the SIP (*see* 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and the EPA have relied on the program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Therefore, based on the foregoing, the EPA is proposing to fully approve Colorado's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

2. North Dakota

(i) The State's submission:

The North Dakota submission refers to the following state rules and regulations which are also SIP-approved, that address and provide for meeting all provisions and requirements of CAA section 110(a)(2)(C):

- NDCC 23.1–06–04.1
- NDCC 23.1–06–09
- NDCC 23.1–06–14
- NDAC 33.1–15–01–17
- NDAC 33.1–15–14–02
- NDAC 33.1–15–14–03
- NDAC 33.1–15–14–06
- NDAC 33.1–15–02
- NDAC 33.1–15–15

(ii) The EPA's analysis:

With regard to the sub-element requirement to have a program providing for enforcement of all SIP measures, we concur with the State that NDCC 23.1–06–14, Enforcement—Penalties—Injunctions provides the authority for enforcement and specifies penalties for violations of all North Dakota APCR (NDAPCR). Additionally, we find that NDAC 33.1–15–01–17, Enforcement, (69 FR 61762, November 22, 2004) also provides a general interpretation of enforcement for the NDAPCR, thus North Dakota meets the first sub-element for enforcement for 110(a)(2)(C).

Turning to the second sub-element of the state-wide regulation of new and modified minor sources and minor modifications of major sources, North Dakota has a SIP-approved minor NSR program. The minor NSR program is found in NDAC 33.1–15–14–02, Permit to Construct; NDAC 33.1–15–14–03, Minor Source Permit to Operate; and NDAC 33.1–15–14–06.1, Title V Permit to Operate. The EPA previously approved North Dakota's minor NSR program into the SIP, with our most recent approved revision occurring on October 21, 2016 (81 FR 72718). The EPA has approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS, thereby meeting the second sub-element for regulation of minor sources and minor modifications for 110(a)(2)(C).

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C, a state is required to have PSD, NNSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS.

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to all regulated NSR pollutants. North Dakota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 3, 2010 (75 FR 31291), we approved a revision to the North Dakota PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). We most recently approved revisions to North Dakota's PSD program on October 21, 2016 (81 FR 72718). North Dakota's SIP approved PSD program is codified in NDAC 33.1–15–15 and incorporates by reference all Federal PSD regulations. As a result, the EPA-approved North Dakota PSD program meets the current requirements for ozone.

Similarly, on October 23, 2012 (77 FR 64736), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the Federal PSD program to July 2, 2010. As explained in the notice for that action, that revision addressed the PSD requirements related to GHGs provided in the EPA's June 3, 2010 ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (75 FR 31514). The approved North Dakota PSD program thus also meets current requirements for GHGs.

Based on the Supreme Court GHG decision discussion above, the EPA has determined that North Dakota's SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is due to the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The approved North Dakota PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment. Nevertheless, the presence of these provisions in the previously-approved

plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) prong 3 and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of North Dakota's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. Noting the $PM_{2.5}$ discussion above the EPA's proposed approval of North Dakota's infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the NNSR requirements promulgated by the 2008 Implementation Rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a NNSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On October 23, 2012 (77 FR 64736), the EPA approved SIP revisions that revised North Dakota's PSD program which incorporated the 2008 Implementation Rule. On July 30, 2013 (78 FR 45866), the EPA approved revisions to the North Dakota SIP to reflect the 2010 $PM_{2.5}$ Increment Rule. Therefore, North Dakota's SIP approved PSD program meets current requirements for $PM_{2.5}$.

Therefore, the EPA is proposing to approve North Dakota's infrastructure SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, originally approved by the EPA on August 21, 1995 (60 FR 43401). The minor NSR program is found in NDAC 33.1–15–14–02, Permit to Construct; NDAC 33.1–15–14–03, Minor Source Permit to Operate; and NDAC 33.1–15–14–06, Title V Permit to Operate. Since approval of the minor NSR program, the State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS.

Therefore, based on the foregoing, the EPA is proposing to approve North Dakota's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement of control measures in the SIP, and the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

D. CAA Section 110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) consists of four separate elements, or ''prongs.'' CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(i)(I).[6]

With regard to the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I), the EPA has addressed these requirements with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine PM standards, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).[7] These actions only addressed interstate transport in the Eastern United States[8] and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,[9] the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:[10] (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The EPA has released several documents containing information relevant to evaluating interstate

[6] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (2008).

[7] *See* 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[8] For purposes of the CSAPR and CSAPR Update actions, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

[9] Other regional rulemakings addressing ozone transport include the NO_X SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[10] The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. *See, e.g.,* 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.[11] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.[12] On October 27, 2017, we released a memorandum (October 2017 Memo) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[13] Although the October 2017 Memo released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. And, on March 27, 2018, we issued a memorandum (March 2018 Memo) indicating the same 2023 modeling data released in the October 2017 Memo could also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework). The March 2018 Memo included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.[14] The EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under interstate transport prong 2) at step 1 of the framework.[15]

The March 2018 Memo describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by state impacts on those concentrations. The March 2018 Memo also explains that the selection of the 2023 analytic year aligns with the 2015 NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the October 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 Memo presents design values calculated in two ways: First, following the EPA's historic ''3 x 3'' approach[16] to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured values[17] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 Memo.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.[18] The EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 Memo. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (August 2018 Memo) providing guidance concerning potential

[11] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[12] 82 FR 1735 (January 6, 2017).

[13] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[14] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[15] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[16] *See* March 2018 Memo, at 4.

[17] The EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 Memo, at B–1.

[18] As discussed in the March 2018 Memo, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

contribution thresholds that may be appropriate to apply with respect to the 2015 NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the August 2018 Memo included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 Memo indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[19]

While the March 2018 Memo presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

The prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[20]

To meet the prong 4 (visibility) requirement of CAA section 110(a)(2)(D)(i)(II) under the 2015 ozone NAAQS, a SIP must address the potential for interference with visibility protection caused by ozone, including precursors. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[21]

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a State may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

1. Colorado

(i) The State's submission:

Colorado's September 17, 2018 submission includes an interstate transport analysis for prongs 1 and 2 that focused on the modeling information provided in the EPA's March 2018 Memo. The State notes that its highest projected ozone contribution to any nonattainment or maintenance receptor outside of Colorado was 0.33 ppb at site ID 484392003 in Tarrant, TX. Colorado concludes that the modeling results from the March 2018 Memo indicate that Colorado sources do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

To address prong 3, Colorado references the PSD program in AQCC Regulation Number 3 of the Colorado SIP, which the State asserts meets all Federal requirements and applies to all regulated pollutants. Colorado's submission states that it cannot issue a PSD permit unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds any NAAQS. Colorado also asserts that it cannot issue a NNSR permit unless the source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is in nonattainment, consistent with reasonable further progress toward attainment. For these reasons, Colorado concludes that its SIP is sufficient to meet the prong 3 requirements of CAA section 110(a)(2)(D)(i)(II).

To address prong 4, Colorado references its EPA-approved Regional Haze SIP to demonstrate that the state does not interfere with visibility for the 2015 ozone NAAQS in any other state (77 FR 76871, December 31, 2012).

To address CAA section 110(a)(2)(D)(ii), Colorado states that there are no petitions or pending actions before the EPA under sections 115, 126(b) and 126(c) of the CAA regarding interstate or international transport. Colorado also states that its approved NSR program has a regulatory provision in place that requires notification of neighboring states of potential impacts from sources, specifically, AQCC Regulation Number 3, Part D, Section IV, provides for notice to any state, tribal governing body, Federal land manager (FLM) or local agency that may be affected by emissions from a major source or major modification subject to the PSD program. For these reasons, Colorado asserts that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

(ii) The EPA's Analysis:

Prongs 1 and 2: Significant Contribution to Nonattainment and Interference With Maintenance

The EPA primarily relied on the air quality results presented in our March 2018 Memo for our analysis of prongs 1 and 2 for Colorado. As previously discussed, the March 2018 Memo identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 x 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 75 potential nonattainment and maintenance receptors in the contiguous U.S.[22] The

[19] *See* August 2018 Memo, at 4.

[20] *See* 2013 Memo.

[21] *See* 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

[22] The number of receptors in the contiguous United states is 75. Of these, 73 are projected as nonattainment and/or maintenance receptors in 2023 irrespective of whether the ''3 x 3'' or ''no water'' approach is used. Two receptors, located in Richmond County, New York and Milwaukee County, Wisconsin, respectively, are projected as nonattainment and maintenance under one approach, but are projected as neither nonattainment nor maintenance under the second approach. Although the EPA has indicated that states may have flexibilities to apply a different

March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating Colorado's 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on Colorado's SIP with respect to the 2008 ozone NAAQS [23] and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 Memo indicates that Colorado's largest impact on any potential downwind nonattainment and maintenance receptor in the United States are 0.33 ppb and 0.27 ppb, respectively.[24] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[25] demonstrating that emissions from Colorado are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 Memo. Thus, Colorado will not impact downwind air quality problems at a level that warrants further review and analysis at step 2 of the 4-step interstate transport framework. Accordingly, we propose to conclude that emissions from Colorado will not contribute to any potential receptors, and thus, will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014–2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014–2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.[26] We therefore propose to find that emissions from Colorado will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

Prong 3: Interference With PSD Measures

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[27] As noted in Section III.(c)(1) of this proposed action, Colorado has such a program, and the EPA is therefore proposing to approve Colorado's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved NNSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved NNSR program that ensures regulation of major sources and major modifications in nonattainment areas.[28]

As Colorado's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved NNSR program, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

Prong 4: Interference With Measures To Protect Visibility

In our prong 4 review, the EPA primarily reviewed Colorado's regional haze SIP. Colorado submitted a regional haze SIP to the EPA on May 25, 2011. The EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). Colorado submitted an updated regional haze SIP to the EPA on May 26, 2017, to incorporate an updated Best Available Retrofit Technology (BART) limit for Craig Unit 1 and an updated reasonable progress determination to incorporate a new limit for the Nucla Station. The EPA approved these updates to the Colorado regional haze SIP in a final action published July 5, 2018 (83 FR 31332). Because Colorado has a fully approved regional haze SIP, we are proposing to approve the Colorado SIP as meeting the requirements of element 4 of CAA section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also proposing in this action that Colorado will have an insignificant impact on any potential receptors identified in its analysis, Colorado need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

[23] 81 FR 7706 (February 16, 2016).

[24] The EPA's analysis indicates that Colorado will have a 0.33 ppb impact at the potential nonattainment receptor in Tarrant County, Texas (Site ID 484392003), which has a 2023 projected average design value of 74.8 ppb, a 2023 projected maximum design value of 72.5 ppb, and had a 2014–2016 design value of 73 ppb. The EPA's analysis further indicates that Colorado will have a 0.27 ppb impact at a potential maintenance receptor in Denton County, Texas (Site ID 481210034), which has which has a projected 2023 average design value of 72 ppb, a 2023 projected maximum design value of 69.7 ppb, and had a 2014–2016 design value of 80 ppb. *See* the March 2018 Memo, attachment C.

[25] Because none of Colorado's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[26] In attachment A of the October 2017 Memo, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A–10.

[27] *See* September 2013 Guidance at 31.

[28] *See* Colorado Regulation No. 3, Part D, Section V, which was most recently approved by the EPA in a final rulemaking dated May 3, 2019 (84 FR 18991).

110(a)(2)(D)(ii): Interstate and International Transport Provisions

Regarding CAA section 110(a)(2)(D)(ii), Colorado's SIP approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD, as required by 40 CFR 51.166(q)(2)(iv).[29] This suffices to meet the notice requirement of section 126(a). Colorado also has no pending obligations under sections 126(c) or 115(b). Therefore, the Colorado SIP currently meets the requirements of those sections. In summary, the SIP satisfies the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

2. North Dakota

(i) The State's submission:

In its November 6, 2018 submission, North Dakota's transport analysis for prongs 1 and 2 focused on the modeling information provided in the EPA's March 2018 Memo. North Dakota notes that the maximum concentration of ozone that North Dakota sources are projected to contribute to any nonattainment or maintenance receptor in the March 2018 Memo is 0.23 ppb, substantially less than the one percent significant contribution level. North Dakota also states that it reviewed the modeled emissions inventory from the March 2018 Memo and determined that the 2011 base emissions inventory is correct, and the 2023 projected emissions are reasonable. For these reasons, North Dakota concludes that sources in its state do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

To address prong 3, North Dakota asserts that new major sources and modifications of existing major sources are subject to review for all regulated NSR pollutants in accordance with North Dakota's EPA-approved PSD program in the SIP. Specifically, North Dakota references its incorporation by reference of the Federal PSD program into the North Dakota SIP at 33.1–15–15, which it has incorporated through July 1, 2018. North Dakota notes that these rules incorporate all existing requirements for ozone.

To address prong 4, North Dakota points to existing portions in the North Dakota SIP to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i). North Dakota specifically references the North Dakota regional haze SIP as well as the EPA's regional haze FIP, asserting that together the SIP and FIP provide all measures necessary to achieve North Dakota's fair share of emissions reductions based on that regional process.[30] The State also references the PSD (NDAC 33–15–15.1) and Visibility Protection (NDAC 33–15–19.1) portions of its SIP, both of which address visibility impairment. North Dakota's submission also included analysis of regional haze 5-year progress reports for Federal Class I areas in neighboring states to which North Dakota was initially modeled to significantly contribute to visibility impairment.[31] North Dakota asserts that these Class I areas are either meeting their reasonable progress goals or, in the case of Medicine Lake in Montana, is not meeting its reasonable progress goals due to international sources rather than sources in North Dakota. North Dakota concludes that its sources are making reasonable progress in remedying visibility impairment in North Dakota's Class I areas and are not interfering with other states plans for visibility improvement in their Class I areas, and therefore the state meets the requirements of CAA section 110(a)(2)(D)(i)(II), prong 4, for the 2015 ozone NAAQS.

To address CAA section 110(a)(2)(D)(ii), North Dakota states that provisions in the PSD portion of its SIP, specifically NDAC–33.1–15–15–01.2.1(q)(2)(d), require notification of neighboring states whose land may be significantly affected by emissions from a new or modified source in North Dakota. North Dakota also states that no sources within North Dakota are the subject of an active finding under CAA section 126 with respect to any pollutant, and that there are no findings under CAA section 115 against North Dakota with respect to any pollutant. For these reasons, North Dakota concludes that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

(ii) The EPA's analysis:

Prongs 1 and 2: Significant Contribution to Nonattainment and Interference With Maintenance

The EPA primarily relied on the air quality results presented in our March 2018 Memo for our analysis of prongs 1 and 2 for North Dakota. As previously discussed, the March 2018 Memo identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 x 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 75 potential nonattainment and maintenance receptors in the contiguous U.S. The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating North Dakota's 2015 ozone NAAQS infrastructure SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on North Dakota's SIP with respect to the 2008 ozone NAAQS[32] and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 Memo indicates that North Dakota's largest impact on any potential downwind nonattainment and maintenance receptor in the United States are 0.23 ppb and 0.15 ppb, respectively.[33] These values are less than 0.70 ppb (one

[29] *See* Colorado AQCC Regulation Number 3, Part D. IV.A.1.

[30] *See* 77 FR 20894, April 6, 2012, and 78 FR 16452, March 15, 2013.

[31] The Five-Year Progress Reports that North Dakota included in its analysis, for South Dakota (*see https://denr.sd.gov/des/aq/aqnews/RH5YearReport.pdf*), Montana (*see https://deq.mt.gov/Portals/112/Public/Air/ProgressReport_DRAFT_7-2017.pdf*), and Minnesota (*see https://www.pca.state.mn.us/sites/default/files/aq-sip2-17.pdf*), respectively, are all available in the docket for this proposed action.

[32] 81 FR 7706 (February 16, 2016).

[33] The EPA's analysis indicates that North Dakota will have a 0.23 ppb impact at the potential nonattainment receptor in Milwaukee County, Wisconsin (Site ID 550790085). The Milwaukee County site has a 2023 projected average design value of 73 ppb, a 2023 projected maximum design value of 71.2 ppb, and had a 2014–2016 design value of 71 ppb. The EPA's analysis further indicates that North Dakota will have a 0.15 ppb impact at a potential maintenance receptor in New Haven County, Connecticut (Site ID 90099002), which has which has a projected 2023 average design value of 72.6 ppb, a 2023 projected maximum design value of 69.9 ppb, and had a 2014–2016 design value of 76 ppb. *See* the March 2018 Memo, attachment C.

percent of the 2015 ozone NAAQS),[34] and as a result, demonstrate that emissions from North Dakota are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 Memo. Accordingly, we propose to conclude that emissions from North Dakota will not contribute to any potential receptors, and thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014–2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014–2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.[35] We therefore propose to find that emissions from North Dakota will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

Prong 3: Interference With PSD Measures

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[36] As noted in Section III.(c)(2) of this proposed action, North Dakota has such a program, and the EPA is therefore proposing to approve North Dakota's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. North Dakota does not contain any nonattainment areas. The consideration of NNSR for prong 3 is therefore not relevant as all major sources locating in the state are subject to PSD. As North Dakota's SIP meets PSD requirements for all regulated NSR pollutants, and North Dakota does not contain any nonattainment areas, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

Prong 4: Interference With Measures To Protect Visibility

For the EPA's prong 4 analysis for North Dakota, the EPA reviewed several pieces of information including the North Dakota regional haze SIP and FIP. The 2013 Memo lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. One way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA-approved regional haze SIP in place. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[37]

North Dakota worked through its RPO, the Western Regional Air Partnership (WRAP), to develop strategies to address regional haze. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the WRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The WRAP states then relied on this modeling in setting their respective reasonable progress goals. As a result, we consider emissions reductions from measures in North Dakota's SIP that conform with the level of emission reductions the State agreed to include in the WRAP modeling to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

In this action, we are proposing to disapprove North Dakota's prong 4 infrastructure SIP submittal for the 2015 ozone NAAQS. The EPA's disapproval of the North Dakota regional haze SIP included the specific disapprovals of North Dakota's selection of nitrogen oxides (NO_X) BART for Great River Energy's Coal Creek Station and the state's reasonable progress determination for Basin Electric's Antelope Valley Station (77 FR 20894, April 6, 2012). Based on the EPA's disapproval of these portions of North Dakota's regional haze SIP, we propose to determine that North Dakota's SIP does not include measures needed to ensure that its emissions will not interfere with other states' plans to protect visibility from the effects of NAAQS pollutants impacted by NO_X. Specifically, NO_X is a precursor of ozone, and is also a term which refers to both nitrogen oxide (NO) and nitrogen dioxide (NO_2). The EPA is therefore proposing to disapprove prong 4 of North Dakota's infrastructure SIP with regard to the 2015 ozone NAAQS.

If the EPA disapproves an infrastructure SIP submission for prong 4, as we are proposing, a FIP obligation will be created. However, the EPA was previously under an obligation to promulgate a FIP for North Dakota that corrects all regional haze SIP deficiencies (77 FR 20894, April 6, 2012). Therefore, there will be no additional practical consequences from the disapproval for the State, the sources within its jurisdiction, or the EPA, as this disapproval will not add any new FIP obligation for the EPA (*See* 2013 Memo at 34–35). Additionally, since the infrastructure SIP submission is not required under CAA title I part D or in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply. *Id.*

[34] Because none of North Dakota's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[35] In attachment A of the October 2017 Memo, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A–10.

[36] *See* September 2013 Guidance at 31.

[37] *See id.* at 34, and also 76 FR 22036 (April 20, 2011) containing the EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

110(a)(2)(D)(ii): Interstate and International Transport Provisions

For the EPA's analysis of CAA section 110(a)(2)(D)(ii), we reviewed the sections of the North Dakota SIP referenced by the State in its 2015 Ozone infrastructure SIP submission. As required by 40 CFR 51.166(q)(2)(iv), North Dakota's SIP-approved PSD program requires notice of proposed new sources or modifications to states whose lands may be significantly affected by emissions from the source or modification (*see* NDAC 33–15–15–01.2.1(q)(2)(d)). This provision satisfies the notice requirement of section 126(a). North Dakota also has no pending obligations under sections 126(c) or 115(b). Therefore, the North Dakota SIP currently meets the requirements of those sections. On these bases, the EPA is proposing to find that the North Dakota SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

E. CAA Section 110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to ''provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

1. Colorado

The State's submission and the EPA's analysis:

Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

Colorado Revised Statutes, specifically the Colorado Air Pollution Prevention and Control Act (APPCA) Sections 25–7–105, 25–7–11, 42–4 301, to 42–4–414 and Article 7 of Title 25, provide adequate authority for the State of Colorado APCD and AQCC to carry out its SIP obligations with respect to the 2015 ozone NAQQS. The submission states the APCD has an annual budget to operate its six programs which employs 176 people, and for fiscal year 2018 the APCD had a budget of $18 million. The budget indicates that 50 percent of funding was derived from stationary source fees, 30 percent being from mobile source fees, 17 percent from Federal grants, and the remaining three percent coming from other cash sources.

The State also receives Sections 103 and 105 grand funds through its Performance Partnership Grant (PPG) along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado in their certifications and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Colorado's SIP as meeting the requirements of section 110(a)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

Sub-element (ii): State boards.

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.[38]

On April 10, 2012 (77 FR 21453) the EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the Colorado SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meet the requirements of section 128 are provided in our January 4, 2012 proposal document (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve Colorado's infrastructure SIP for the 2015 ozone NAAQS for this element.

2. North Dakota

The State's submission and the EPA's analysis:

Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

The North Dakota submission cites NDCC 23.1–06–04.1.1 which provides the NDEQ adequate personnel, funding, and legal authority to carry out its SIP and related issues. In addition, the NDEQ currently has 17 full time staff dedicated to permitting of new or modified sources of air pollution and the enforcement of the APCR. NDCC 23–25–03.1 provides adequate authority for the State of North Dakota and the NDEQ to carry out its SIP obligations with respect to the 2015 ozone NAAQS. North Dakota's resources meet the requirements of CAA section 110(a)(2)(E).

We propose to approve North Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

Sub-element (ii): State boards.

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcements orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. On July 30, 2013 (78 FR 45866) the EPA approved revised language in North Dakota's SIP, chapter 2, section 15, Respecting Boards that addresses conflict of interest requirements. Details on how this portion of chapter 2, section 15 meets the requirements of CAA section 128 are provided in the May 13, 2013 proposal document (78 FR 27888). North Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2015 ozone NAAQS for this element.

F. CAA Section 110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires the SIP to require, as may be prescribed by the EPA: (i) The installation, maintenance, and replacement of equipment, and the

[38] EPA's proposed rule document (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of CAA section 128.

implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

1. Colorado

The State's submission and the EPA's analysis:

The Colorado AQCC Regulations listed in the State's certifications (Regulations 1, 3, 7, and Common Provisions Regulation) and contained within this docket provide authority to establish a program for measurements and testing of sources, including requirements for sampling and testing. Air Pollutant Emission Notice (APEN) requirements are defined in Regulation 3 and requires stationary sources to report their emissions on a regular basis through APENs. Regulation 3 also requires monitoring to be performed in accordance with EPA-accepted procedures, and recordkeeping of air pollutants. Additionally, Regulation 3 provides for a permitting program that establishes emission limitations and standards. Emissions must be reported by sources to the state for correlation with applicable emissions limitations and standards. Monitoring may be required for both construction and operating permits.

Additionally, Colorado is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System (EIS). States report emissions data for six criteria pollutants and their associated precursors—NO_X, sulfur dioxide (SO_2), ammonia, Pb, carbon monoxide (CO), PM, and volatile organic compounds (VOCs). Colorado made its latest update to the NEI on March 5, 2019. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

2. North Dakota

The State's submission and the EPA's analysis:

The North Dakota statutory provisions listed in the State's certifications (NDCC 23–25–03) and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. North Dakota's SIP-approved minor source and PSD programs provide for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. The State cites several regulations (NDAC 33–15–14–02.9.1, 33–15–14–03.6.1, 33–15–14–06.5.1 and contained within this docket) requiring monitoring of emissions from stationary sources, recordkeeping, and reporting of emissions, monitoring date. Source surveillance is also addressed in Chapter 8 of the SIP. The chapter provides for the permitting of sources, inspection of the sources, recordkeeping and reporting by sources, and compliance determinations. Section 8.2 of the SIP commits the NDEQ of the correlation of data with the applicable requirements. All reports are available for public inspection in accordance with NDAC 33–15–01–16.1.1. Additionally, North Dakota is required to submit emissions data to the EPA for purposes of the NEI, as detailed above.

Based on the analysis above, we propose to approve North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. CAA Section 110(a)(2)(G): Emergency Powers

Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA Section 303] and adequate contingency plans to implement such authority.''

Under CAA section 303, the Administrator has authority to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

1. Colorado

The State's submission and the EPA's analysis:

APPCA Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. APPCA section 25–7–112(1) provides the Division of Administration in the CDPHE with the authority to maintain civil actions over the sources of air pollution discharges that constitute ''a clear, present, and immediate danger to the environment or to the health of the public.'' Specifically, the APCD can seek a ''temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure'' (C.R.S. section 25–7–112(1)(b)). This authority extends to discharges that constitute ''an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.'' (C.R.S. Section 25–7–113(1)).

These civil actions may be maintained ''in any district court of this state for the district in which the said activity or discharge is occurring.'' (C.R.S. Sections 25–7–112(1)(b); 25–7–113(1)(b)). Additionally, the action ''shall be given precedence over all other matters pending in such district court.'' (*Id*). As such, Colorado law provides statutory authority over sources of air pollution discharges that cause an ''immediate danger'' to public health, welfare, or the environment. This authority allows for the pursuit of immediate relief and provides precedence for such matters. Therefore, Colorado has comparable judicial authority to that provided to the Administrator in Section 303.

Similarly, APPCA section 25–7–112(1)(a) provides the APCD with the authority to issue ''cease-and-desist orders . . . requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere'' when the activity or discharge ''constitutes a clear, present, and immediate danger to the environment or to the health of the public.'' (C.R.S. Section 25–7–112(1)(a)). Further, ''upon receipt of such order, such person shall immediately discontinue such activity or discharge.'' (*Id*). This authority extends to discharges that constitute ''an immediate danger to the welfare of the public because such pollutants make

habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.'' (C.R.S. Section 25–7–113(1)).

These provisions also allow the APCD to ''both issue such a cease-and-desist order and apply for any such restraining order or injunction'' (C.R.S. Sections 25–7–112(1)(c); 25–7–113(c)). Colorado law provides administrative authority over sources of air pollution discharges that cause an ''immediate danger'' to public health, welfare, or the environment. Furthermore, C.R.S. Sections 25–7–112(2)(b) allows the Governor to declare a state of air pollution emergency and take any and all actions necessary to protect the health of the public. This authority is comparable to that provided to the Administrator in Section 303.

The SIP therefore meets the requirements of 110(a)(2)(G). Based on the above analysis, we propose approval of Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

2. North Dakota

The State's submission and the EPA's analysis:

Chapter 23–25 of the NDCC provides relevant language and authority for ''Air Pollution Control.'' The purpose of this chapter is ''to achieve and maintain the best air quality possible'' and to ''protect human health, welfare and property, [and] prevent injury to plant and animal life'' (NDCC 23–25–01.1(2)). NDCC 23–25–01.1 defines ''air pollution'' as ''the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.'' As such, the chapter aims to protect all three areas required by section 303; human health, welfare, and environment. The ''Air Pollution Control'' chapter provides general grants of authority to maintain actions in certain situations. We find these grants provide comparable authority to that provided in Section 303. Furthermore, the NDAC 33–15–01–15.1(1) makes it unlawful to ''permit or cause air pollution'' as defined in NDCC 23–25–01.1. A person causing or contributing to emissions that endanger public health, welfare, or the environment, would be causing ''air pollution'' within the meaning of North Dakota law, and would therefore be in violation of NDAC 33–15–01–15.1(1). This could occur in either an emergency or non-emergency situation.

NDCC 23–25–10.1(5) provides that ''the department has the authority to maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.'' Under NDCC 23–25–10.1(5), the NDEQ has the authority to bring an action to enjoin a violation of NDCC 23–25.1 or its rules. The NDEQ may seek a court order to restrain a source from causing or contributing to emissions that endanger public health, welfare, or the environment. In an emergency, this may take the form of an injunction or temporary restraining order (*see* NDCC 32–06–02.1). Therefore, the NDEQ has the authority to seek judicial actions during emergency situations.

North Dakota's statutes also provide the NDEQ with the authority to issue administrative orders and emergency rules to protect the public health, welfare, and the environment under certain circumstances. NDCC 23–25–08.1, as cited in North Dakota's SIP submittals, authorizes that in the event of ''an emergency requiring immediate action to protect the public health and safety,'' the NDEQ has the authority to ''issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary'' to meet the emergency. The emergency order is effective immediately. Any person who violates the order is subject to enforcement, penalties, and injunctions under NDCC 23–25–10.1.

Furthermore, as cited in North Dakota's SIP submittals, the NDEQ has the authority to ''use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare'' (NDCC 28–32–32.1). Accordingly, ''in an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare'' (NDCC–28–32–32.1.1). In the absence of a specific statute requiring other administrative action, ''the administrative agency shall issue an order'' (NDCC 28–32–32.1(4)).

Further supplemental authority is found in a broad provision, cited by the State in their SIP submittals, granting additional authority to the NDEQ. The NDEQ has the authority to ''[i]ssue such orders as may be necessary to effectuate the purposes'' of the ''Air Pollution Control'' chapter NDCC 23–25–03.5.1. These orders can be enforced ''by all appropriate administrative and judicial procedures'' (NDCC 23–25–03.5.1). Thus, this broad grant of authority includes the authority to issue administrative orders during air pollution emergencies which would disrupt protection of human health, welfare, and animal and plant life.

The combination of NDCC and NDAC provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency orders against, and use special rule adoption procedures for applicable emergencies to take prompt administrative action against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. We propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). Requirements for contingency plans are set forth in 40 CFR part 51, subpart H.

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. For example, if ambient concentrations of NO_2 in an area have exceeded 0.06 parts per million (ppm) (annual arithmetic mean), then the area is classified as a Priority I region, and the state must develop a contingency plan that meets the requirements of §§ 51.151.1 and 51.152.1 North Dakota has not monitored any values above the priority cut point for ozone or NO_2.

Prevention of air pollution emergency episodes is addressed in Section 5 of North Dakota's SIP, which was approved on May 31, 1972 (37 FR 10842). We find that North Dakota's air pollution emergency provisions establish stages of episode criteria (Section 5.2), provide for public announcement whenever any episode stage has been determined to exist (Section 5.3), and specify emission control actions to be taken at each episode stage (Section 5.5) consistent with the EPA emergency episode SIP requirements set forth at the 40 CFR part 51, subpart H (prevention of air pollution emergency episode) for ozone and NO_2.

Based on the above analysis, we propose approval of North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

H. CAA Section 110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

1. Colorado

The State's submission and the EPA's analysis:

The Colorado submission refers to the Colorado APPCA Section 25–7–105(1)(a)(I) which directs the AQCC to promulgate a comprehensive SIP that meets all Federal requirements and to revise the SIP whenever necessary or appropriate. In addition, the Colorado APPCA Section 25–7–109 C.R.S. gives the AQCC the authority to promulgate emissions control regulations.

Colorado's statutory provision at APPCA Section 25–7–105(1)(a)(I) directs the AQCC to promulgate a comprehensive SIP that meets all Federal requirements and to revise the SIP whenever necessary or appropriate. Therefore, we propose to approve Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(H).

2. North Dakota

The State's submission and the EPA's analysis:

The EPA approved section 1.14 of the North Dakota SIP on September 17, 2012 (77 FR 57029). Section 1.14 commits the State to revise the SIP in the circumstances covered by CAA section 110(a)(2)(H). North Dakota's statutory provision at NDCC 23–25–03.1 provides adequate authority for the NDEQ to carry out such revisions. Therefore, we propose to approve North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

I. CAA Section 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, Title I of the CAA, and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to NNSR or CAA section 110(a)(2)(I).

J. CAA Section 110(a)(2)(J): Consultation With Government Officials, Public Notification, PSD and Visibility Protection

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and FLMs pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances pursuant to CAA section 127. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, Title I of the CAA related to prevention of significant deterioration and visibility protection.

1. Colorado

(i) State's submission:

The Colorado submission references the following laws and regulations relating to consultation with identified officials on certain air agency actions; public notification; PSD; and visibility protection:

- APPCA 25–7–105(1)(d).
- APPCA 25–7–118.
- APPCA 25–7–128.
- AQCC Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements).
- AQCC Regulation 6 (Standards of Performance for New Stationary Sources).
- AQCC Regulation 10, Part III (Transportation Conformity Rule).
- Colorado's Regional Haze SIP.
- Colorado's Interstate Transport SIP.

(ii) The EPA's analysis:

Colorado has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the SIP applies, consistent with the requirements of CAA section 121. Moreover, the EPA previously addressed the requirements of CAA section 127 for the Colorado SIP and determined public notification requirements are appropriate (45 FR 53147, Aug. 11, 1980).

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, Title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to Colorado's PSD program on May 3, 2019 (84 FR 18991), updating the program for current Federal requirements. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of CAA 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

With regard to applicable visibility protection requirements, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Consequently, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Colorado SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

2. North Dakota

(i) State's submission:

The North Dakota submission references the following specific laws and regulations relating to consultation with identified officials on certain air agency actions, public notification, prevention of significant deterioration, and visibility protection:

- North Dakota SIP, Chapter 10
- North Dakota SIP, Section 6.9
- NDCC 23.1–06–12
- NDCC 23.1–06–13
- NDCC 28–32
- NDAC 33.1–15–11–03.1
- NDAC 33.1–15–14–02.6
- NDAC 33.1–15–15–01.2(k)(i)
- NDAC 33.1–15–15–01.2(p)
- NDAC 33.1–15–15–01.2(q)

(ii) EPA's analysis:

North Dakota has demonstrated that it has the authority and rules in place to provide for a process of consultation with local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the SIP applies, consistent with the requirements of CAA section 121. Moreover, the EPA previously

addressed the requirements of CAA section 127 for the North Dakota SIP and determined public notification requirements are appropriate (45 FR 53475, Aug. 12, 1980).

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, Title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to North Dakota's PSD program on June 3, 2010 (75 FR 31291), updating the program for current Federal PSD requirements. Additionally, the North Dakota's SIP-approved PSD program incorporates by reference the Federal program at 40 CFR 52.21. Accordingly, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

With regard to applicable visibility protection requirements, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Consequently, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

K. CAA Section 110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

The EPA's requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, appendix W, Guideline on Air Quality Models. On January 17, 2017 (82 FR 5182), the EPA revised appendix W, effective February 16, 2017. The **Federal Register** notice stated: ''For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018.''

1. Colorado

(i) State's submission:

The Colorado submission refers to Colorado's Regulation 3 Part A.VIII (Technical Modeling and Monitoring Requirements) which requires that estimates of ambient air concentrations are based on applicable air quality models approved by the EPA. Further, Regulation 3 Part D, Section VI.C. requires the APCD to transmit to the Administrator of the EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation and provide notice of every action related to the consideration of such permit. The State also references the following rules and regulations which require and provide authority for air quality modeling and submission of such data to the EPA Administrator:

- Regulation 3.
- Regulation 3 Part A, Section VIII.
- Regulation 3, Part D, Section X.A.4.
- Regulation 3, Part D, Section VI.C.
- AQCC Regulation 4.
- Denver PM_{10} SIP.

(ii) The EPA's analysis:

Colorado has broad authority and resources to model for all criteria pollutants. Air quality modeling is done for SIP revisions, transportation conformity, and permitting. AQCC Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements) requires stationary sources to predict the effect of air pollutants in attainment areas. Regulation 3 also details the State of Colorado's program regarding permitting as related to air quality modeling and data handling in predicting the effect of emissions of a pollutant with an established NAAQS.

Colorado Regulation 3 Part A, Section VIII, ''Technical Modeling and Monitoring Requirements,'' most recently approved by the EPA on January 25, 2016 (81 FR 3963), states that all estimates of ambient concentrations required under Regulation 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by the EPA and specifically approved by the APCD. Part A also requires all modeling data used to determine compliance to be appropriate given the topography, meteorology and other characteristics of the region. In previous actions, the EPA has interpreted Colorado's provisions on permit modeling to mean that the modeling is performed in accordance with appendix W of 40 CFR part 51. Because the provision requires use of EPA-approved models without setting any cutoff date for that approval, we interpret the provision to mean EPA-approved models as they are currently approved. As confirmation, Colorado's May 2018 draft modeling guidance (contained in the docket), ''Colorado Modeling Guideline for Air Quality Permits'' has been revised and updated to refer to the most recent version of appendix W described above.[39]

The state submits data to the EPA as required under Regulation 3, Part D, Section VI.C., most recently approved by the EPA on January 25, 2016 (81 FR 3963), requiring Colorado to transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification subject to the regulation, and provide notice of every action related to the consideration of such permit. Additionally, the State also has the authority to submit any modeling data to the EPA upon request under the Colorado Open Records Act.[40]

Based on the above information, we are proposing to approve the Colorado SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

2. North Dakota

(i) State's submission:

The North Dakota submission refers to the following rules and regulations that provide for NAAQS pollutant air quality modeling and the submission of such data to EPA:

- North Dakota SIP, section 7.7, Air Quality Modeling
- NDAC 33.1–15–14–02.4
- NDCC 23.1–06–04.1

(ii) EPA's analysis:

North Dakota's PSD program requires that estimates of ambient air concentrations are based on applicable air quality models specified in appendix W of 40 CFR part 51, and incorporates by reference[41] the provisions at 40 CFR 52.21(i)(2) requiring that modification or substitution of a model specified in appendix W must be approved by the Administrator (*see* NDAC 33.1–15–14–

[39] For our most recent Colorado infrastructure SIP approval, *see* 82 FR 39030, September 18, 2017. *See also https://www3.epa.gov/airquality/urbanair/sipstatus/reports/co_infrabypoll.html.*

[40] *See* 24–72–201 to 24–72–309, C.R.S.

[41] In this action, the EPA is also proposing to approve a revision to NDAC chapter 33.1–15–15 by updating the date of incorporation by reference to July 1, 2018. This proposed action thus will update the State's regulations to the most current version of appendix W found in 40 CFR part 51 as of July 1, 2018.

02.4 and NDAC 33.1–15–15–01.2). Section 7.7, Air Quality Modeling, last approved by the EPA on September 17, 2009 (77 FR 10842) of North Dakota's SIP commits the state to perform air quality modeling to predict the impact of a source on air quality, and to provide data to the EPA upon request. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

Based on the above information, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

L. CAA Section 110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

1. Colorado

(i) State's submission:

The Colorado submission refers to AQCC Regulation 3, Part A, Section VI; which requires owners or operators of major stationary sources to pay the APCD annual fees, based on total emissions, necessary to recover the direct and indirect costs incurred by CDPHE in processing permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program. Fees collected are used by Colorado to administer stationary source air pollution control programs.

(ii) The EPA's analysis:

The EPA-approved Regulation 3, Part A, Section VI adequately addresses requirements in CAA section 110(a)(2)(L) regarding construction (*i.e.,* NSR) permits. With respect to title V permits, on October 16, 2000, the EPA fully approved Colorado's part 70 title V operating permit program (65 FR 49919). The fully approved Colorado title V program and Colorado's Air Quality Control Commission Regulation 3 demonstrate that fees will be adequate to fund the title V and NSR programs, and that the State will collect fees above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Therefore, we are proposing that Colorado has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

2. North Dakota

(i) State's submission:

The North Dakota submission refers to its fully approved title V operating permit program and references the NDAC for permit processing and annual fees for reviewing, approving, implementing and enforcing a permit. The state references the regulations of NDCC as its authority for fees.

- NDAC 33.1–15–23.1.
- NDCC 23.1–06–10.1.

(ii) The EPA's analysis:

NDAC 33.1–15–23.1 requires applicants for permits to construct or modify stationary sources to pay fees. With respect to title V fees, on August 16, 1999, the EPA fully approved North Dakota's part 70 title V operating permit program (64 FR 32433). Therefore, we are proposing that North Dakota has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. CAA Section 110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

1. Colorado

(i) State's submission:

Colorado refers to the following rules and regulations, which require and provide authority for public hearings, notice of hearings, public comment periods, and the consultation and coordination between state and local governments:

- APPCA 25–7–105(1)(d).
- APPCA 25–7–110.
- APPCA 25–7–128.
- AQCC Reg. 3, Part D. Section IV.A.1.
- AQCC Reg. 10.

(ii) The EPA's analysis:

The rules and regulations cited by Colorado provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the Colorado SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

2. North Dakota

(i) State's submission:

North Dakota refers to the following NDAC and NDCC rules and regulations, which require and provide authority for public hearings, notice of hearings, public comment periods; and the advisement, consultation and cooperation with other public agencies and with affected groups and industries:

- NDCC 23.1–06–03.1.
- NDCC 23.1–06–04.1.d.
- NDAC 28–32.1.

(ii) The EPA's analysis:

The rules and regulations cited by North Dakota provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

N. Revisions to North Dakota Air Pollution Control Rules

On May 2, 2019, the EPA received revisions for the APCR for the State of North Dakota. The EPA is proposing to approve one portion of the submittal, a revision to chapter 33.1–15–15, the State's PSD program. For the most part, North Dakota incorporates by reference the Federal program at 40 CFR 52.21. However, the provision that we propose to approve replaces 40 CFR 52.21(l)(1) with a specific reference to 40 CFR part 51, appendix Was it existed on July 1, 2018. The revised provision is consistent with the parallel requirement for state PSD programs in 40 CFR 51.166(l). The submittal was signed by the Governor and received a public hearing on October 10, 2018. The EPA is proposing to approve this specific provision in chapter 33.1–15–15 at this time and will act on other portions of the submitted revisions to the North Dakota APCR in a separate notice.

IV. Proposed Action

In this rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Colorado and North Dakota and a proposed approval to chapter 33.1–15–15 of North Dakota's APCR, along with a proposed disapproval for one infrastructure element for North Dakota. Our proposed actions are contained in Table 1 below.

With respect to Colorado, the EPA is proposing to approve Colorado's September 17, 2018 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

With respect to North Dakota, the EPA is proposing to approve North Dakota's November 6, 2018 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(I) Prong 1 Interstate transport—significant contribution, (D)(i)(I) Prong 2 Interstate transport—interference with maintenance, (D)(i)(II) Prong 3 Interstate transport—prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also proposing to disapprove (D)(i)(II) Prong 4 Interstate transport—visibility. Additionally, the EPA is proposing to

approve a revision to chapter 33.1–15–15 of North Dakota's APCR.

TABLE 1—INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON

2015 Ozone NAAQS Infrastructure SIP Elements	Colorado	North Dakota
(A): Emission Limits and Other Control Measures	A	A
(B): Ambient Air Quality Monitoring/Data System	A	A
(C): Program for Enforcement of Control Measures	A	A
(D)(i)(I): Prong 1 Interstate Transport—significant contribution	A	A
(D)(i)(I): Prong 2 Interstate Transport—interference with maintenance	A	A
(D)(i)(II): Prong 3 Interstate Transport—prevention of significant deterioration	A	A
(D)(i)(II): Prong 4 Interstate Transport—visibility	A	D
(D)(ii): Interstate and International Pollution Abatement	A	A
(E): Adequate Resources	A	A
(F): Stationary Source Monitoring System	A	A
(G): Emergency Episodes	A	A
(H): Future SIP revisions	A	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A	A
(K): Air Quality and Modeling/Data	A	A
(L): Permitting Fees	A	A
(M): Consultation/Participation by Affected Local Entities	A	A
North Dakota APCR Chapter 33.1–15–15	NA	A

In the table above, the key is as follows:
A—*Approve*.
D—*Disapprove*.
NA—*No Action*.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference North Dakota's May 2, 2019 submission of chapter 33.1–15–15, the APCR of the State of North Dakota, that updates the date of incorporation by reference of Federal rules. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the persons identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 19, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–15797 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1992–0007; FRL–9997–22–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Cleburn Street Well Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete Operable Unit (OU)1 and OU4 of the Cleburn Street Well Superfund Site (Site) located in Grand Island, Nebraska from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Nebraska through the Nebraska Department of Environmental Quality (NDEQ), have determined that all appropriate response actions at these identified media and/or parcels under CERCLA, other than operations and maintenance, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to OU1—Contaminated sub-surface soil at the former One-Hour Martinizing and OU4—Soil and Groundwater at Ideal Cleaners. The remaining Operable Units: OU2, OU3, and OU5 will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by August 28, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1992–0007, by mail to David Wennerstrom or Pam Houston, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Wennerstrom, Remedial Project Manager, Environmental Protection Agency, Region 7,11201 Renner Boulevard, Lenexa, KS 66219, (913) 551–7996, email: *wennerstrom.david@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for Operable Unit (OU)1 and OU4 of the Cleburn Street Well Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 17, 2019.

David Cozad,

Acting Regional Administrator, Region 7.

[FR Doc. 2019–15857 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 320

[EPA–HQ–OLEM–2019–0085; FRL–9996–47–OLEM]

RIN 2050–AH03

Financial Responsibility Requirements Under CERCLA Section 108(b) for Facilities in the Electric Power Generation, Transmission, and Distribution Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA (or the Agency) is proposing to not impose financial responsibility (FR) requirements for facilities in the Electric Power Generation, Transmission, and Distribution industry under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 108(b) addresses the promulgation of regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.

DATES: Comments must be received on or before September 27, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2019–0085, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For more information on this document, contact Charlotte Mooney, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, Mail Code 5303P, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone (703) 308–7025 or (email) *mooney.charlotte@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I get copies of this document and other related information?

This **Federal Register** proposed rule and supporting documentation are available in a docket EPA has established for this action under Docket ID No. EPA–HQ–OLEM–2019–0085. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at EPA/DC, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (202) 566–0276. 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.

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I. Executive Summary

A. Overview

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) directs EPA to develop regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. The statute further requires that the level of financial responsibility be established to protect against the level of risk the President, in his discretion, believes is appropriate, based on factors including the payment experience of the Hazardous Substance Superfund (Fund). The President's authority under this section for non-transportation-related facilities has been delegated to the EPA Administrator.

In August 2014, the Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, and Communities for a Better Environment filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit, seeking a writ of mandamus requiring issuance of CERCLA Section 108(b) financial responsibility rules for the hardrock mining industry, and for the three additional industries identified by EPA in the 2010 Advance Notice of Proposed Rulemaking (ANPRM),[1] that is, Chemical Manufacturing; Petroleum and Coal Products Manufacturing; and Electric Power Generation, Transmission, and Distribution. Following oral arguments, EPA and the petitioners submitted a Joint Motion for an Order on Consent, filed on August 31, 2015, which included a schedule for further administrative proceedings under CERCLA Section 108(b). The court order granting the motion was issued on January 29, 2016. A copy of the order can be found in the docket for this rulemaking.

In addition to requiring EPA to publish a proposed rule on hardrock mining financial requirements by December 1, 2016, the January 2016 Order requires EPA to ''sign for publication in the **Federal Register** a determination whether EPA will issue a notice of proposed rulemaking on financial assurance requirements under Section 108(b) in the (a) chemical manufacturing industry; (b) petroleum and coal products manufacturing industry; and (c) electric power generation, transmission, and distribution industry by December 1, 2016.'' EPA signed the required determination on December 1, 2016; the document was published on January 11, 2017[2] and announced EPA's intent to proceed with rulemakings for all three of the classes.

B. Purpose of This Action

The purpose of today's action is to propose that financial responsibility requirements under CERCLA Section 108(b) at facilities in the Electric Power Generation, Transmission, and Distribution industry are not necessary, and solicit comments on this proposal. EPA has reached this conclusion based on the analyses described in Parts VI and VII of this proposal. The evidence

[1] *See* 75 FR 816.

[2] *See* 82 FR 3512.

provided in these analyses contributed to EPA's proposed finding that the degree and duration of risk posed by the Electric Power Generation, Transmission and Distribution Industry does not warrant financial responsibility requirements under CERCLA Section 108(b).

The analysis and proposed finding in this proposal are not applicable to and do not affect, limit, or restrict EPA's authority to take a response action or enforcement action under CERCLA at any facility in the Electric Power Generation, Transmission, and Distribution Industry, including any currently operating facilities or those described in this proposal and in the background documents for this proposal, and to include requirements for financial responsibility as part of such response action. The set of facts in the rulemaking record related to the individual facilities discussed in this proposed rulemaking support the Agency's proposal not to issue financial responsibility requirements under Section 108(b) for this class, but a different set of facts could demonstrate a need for a CERCLA response action at an individual site. This proposed rulemaking also does not affect the Agency's authority under other authorities that may apply to individual facilities, such as the Clean Air Act (CAA), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA).

C. Summary of the Major Provisions of the Regulatory Action

EPA is proposing to not require evidence of financial responsibility under CERCLA Section 108(b) at facilities in the Electric Power Generation, Transmission, and Distribution industry. Thus, there are no proposed regulatory provisions associated with this action.

D. Costs and Benefits of the Regulatory Action

EPA is proposing to not require evidence of financial responsibility under CERCLA Section 108(b) at facilities in the Electric Power Generation, Transmission, and Distribution industry. EPA, therefore, has not conducted a Regulatory Impact Analysis for this action.

II. Authority

This proposed rule is issued under the authority of Sections 101, 104, 108 and 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, 9604, 9608 and 9615, and Executive Order 12580. (52 FR 2923, January 29, 1987).

III. Background Information

A. Overview of Section 108(b) and Other CERCLA Provisions

CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), establishes a comprehensive environmental response and cleanup program. Generally, CERCLA authorizes EPA [3] to undertake removal or remedial actions in response to any release or threatened release into the environment of ''hazardous substances'' or, in some circumstances, any other ''pollutant or contaminant.'' As defined in CERCLA Section 101, removal actions include actions to ''prevent, minimize, or mitigate damage to the public health or welfare or to the environment,'' and remedial actions are ''actions consistent with [a] permanent remedy[.]'' Remedial and removal actions are jointly referred to as ''response actions.'' CERCLA Section 111 authorizes the use of the Hazardous Substance Superfund (Fund) established under title 26, United States Code, to finance response actions undertaken by EPA. In addition, CERCLA Section 106 gives EPA [4] authority to compel action by liable parties in response to a release or threatened release of a hazardous substance that may pose an ''imminent and substantial endangerment'' to public health or welfare or the environment.

CERCLA Section 107 imposes liability for response costs on a variety of parties, including certain past owners and operators, current owners and operators, and certain generators, arrangers, and transporters of hazardous substances. Such parties are liable for certain costs and damages, including all costs of removal or remedial action incurred by the Federal Government, so long as the costs incurred are ''not inconsistent with the national contingency plan,'' (the National Oil and Hazardous Substances Pollution Contingency Plan or NCP).[5] Section 107 also imposes liability for natural resource damages and health assessment costs.[6]

Section 108(b) establishes an authority to require owners and operators of classes of facilities to establish and maintain evidence of financial responsibility. Section 108(b)(1) directs EPA to develop regulations requiring owners and operators of facilities to establish evidence of financial responsibility ''consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.'' In turn, Section 108(b)(2) directs that the level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk that EPA in its discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. Section 108(b)(2) does not, however, preclude EPA from considering other factors in addition to those specifically listed. The statute prohibited promulgation of such regulations before December 1985.

In addition, Section 108(b)(1) provides for publication within three years of the date of enactment of CERCLA of a ''priority notice'' identifying the classes of facilities for which EPA would first develop financial responsibility requirements. It also directs that priority in the development of requirements shall be accorded to those classes of facilities, owners, and operators that present the highest level of risk of injury.

B. History of Section 108(b) Rulemakings

1. 2009 Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements

On March 11, 2008, Sierra Club, Great Basin Resource Watch, Amigos Bravos, and Idaho Conservation League filed a suit against former EPA Administrator Stephen Johnson and former Secretary of the U.S. Department of Transportation Mary E. Peters, in the U.S. District Court for the Northern District of California. *Sierra Club, et al.* v. *Johnson,* No. 08–01409 (N.D. Cal.). On February 25, 2009, that court ordered EPA to publish the Priority Notice required by CERCLA Section 108(b)(1) later that year. The 2009 Priority Notice and supporting documentation presented the Agency's conclusion that hardrock mining facilities would be the first class of facilities for which EPA would issue

[3] Although Congress conferred the authority for administering CERCLA on the President, most of that authority has since been delegated to EPA. *See* Exec. Order No. 12580, 52 FR. 2923 (Jan. 23, 1987). The executive order also delegates to other Federal agencies specified CERCLA response authorities at certain facilities under their ''jurisdiction, custody or control.''

[4] CERCLA Sections 106 and 122 authority is also delegated to other Federal agencies in certain circumstances. *See* Exec. Order No. 13016, 61 FR 45871 (Aug. 28, 1996).

[5] *See* CERCLA Section 107 (a)(4)(A).

[6] *See* CERCLA Section 107 (a)(4)(C)–(D).

CERCLA Section 108(b) requirements.[7] Additionally, the 2009 Priority Notice stated EPA's view that classes of facilities outside of the hardrock mining industry may warrant the development of financial responsibility requirements.[8] The Agency committed to gather and analyze data on additional classes of facilities and consider them for possible regulation. The court later dismissed the remaining claims.

2. Additional Classes 2010 Advance Notice of Proposed Rulemaking

On January 6, 2010, EPA published an Advance Notice of Proposed Rulemaking (ANPRM),[9] in which the Agency identified three additional industrial sectors for the development, as necessary, of proposed Section 108(b) regulation. To develop the list of additional classes for the 2010 ANPRM, EPA used information from the CERCLA National Priorities List (NPL) and analyzed data from the Resource Conservation and Recovery Act (RCRA) Biennial Report (BR) and the Toxics Release Inventory (TRI). As was discussed in the ANPRM, these sources were chosen because ''they are well-established, reliable sources of information on facilities associated with hazardous substances, and were readily available to the Agency.'' [10] As an additional factor for consideration, EPA looked at certain known cases where impacts to groundwater or surface water had been documented, as well as recent catastrophic releases, such as the 2008 release of coal ash from the Tennessee Valley Authority's (TVA) Kingston Plant. The result of this analysis is explained in the 2010 ANPRM in detail, with the conclusion that three industries—the Chemical Manufacturing industry (North American Industry Classification System (NAICS) 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211)—would be considered for financial responsibility requirements under § 108(b).

EPA specifically requested public comment in the 2010 ANPRM on whether to propose a regulation under CERCLA Section 108(b) for each of the three industries, or any class or classes within those industries, including information demonstrating why such financial responsibility requirements would or would not be appropriate for those particular classes. In addition, the Agency requested information related to the industry categories discussed in the ANPRM, including data on facility operations, information on past and expected future environmental response actions, use of financial responsibility mechanisms by the industry categories, existing financial responsibility requirements, and other information the Agency might consider in setting financial responsibility levels. Finally, EPA requested information from the insurance and the financial sectors related to instrument availability and implementation, and potential instrument conditions.[11] Comments received on the ANPRM are summarized in the Additional Classes 2017 Notice of Intent to Proceed with Rulemakings, section III.B.4 below.

3. 2014 Petition for Writ of Mandamus

Dissatisfied with the pace of EPA's progress, in August 2014, the Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, and Communities for a Better Environment filed a new lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit, seeking a writ of mandamus requiring issuance of CERCLA Section 108(b) financial assurance rules for the hardrock mining industry and for three other industries: Chemical manufacturing; petroleum and coal products manufacturing; and electric power generation, transmission, and distribution. Thirteen companies and organizations representing business interests in the hardrock mining and other sectors sought to intervene in the case.

Following oral argument, the court issued an Order in May 2015 requiring the parties to submit, among other things, supplemental submissions addressing a schedule for further administrative proceedings under CERCLA Section 108(b). The Order further encouraged the parties to confer regarding a schedule and, if possible, to submit a jointly agreed upon proposal. Petitioners and EPA were able to reach agreement on a schedule. The parties requested an Order from the court with a schedule calling for the Agency to sign a proposed rule for the hardrock mining industry by December 1, 2016, and a final rule by December 1, 2017. The joint motion also included a requested schedule for the additional industry classes, which called for EPA to sign by December 1, 2016, a determination on whether EPA will issue a notice of proposed rulemaking for classes of facilities in any or all of the other industries, and a signature schedule for proposed and final rules for the additional industry classes as follows:

EPA will sign for publication in the **Federal Register** a notice of proposed rulemaking in the first additional industry by July 2, 2019, and sign for publication in the **Federal Register** a notice of its final action by December 2, 2020.

EPA will sign for publication in the **Federal Register** a notice of proposed rulemaking in the second additional industry by December 4, 2019, and sign for publication in the **Federal Register** a notice of its final action by December 1, 2021.

EPA will sign for publication in the **Federal Register** a notice of proposed rulemaking in the third additional industry by December 1, 2022, and sign for publication in the **Federal Register** a notice of its final action by December 4, 2024.[12]

While the joint motion identified the other industries as being the Chemical Manufacturing industry, the Petroleum and Coal Products Manufacturing industry, and the Electric Power Generation, Transmission and Distribution industry, and set a rulemaking schedule, it did not indicate which industry would be the first, second or third. The Joint Motion specified that it did not alter the Agency's discretion as provided by CERCLA and administrative law.[13]

On January 29, 2016, the court granted the joint motion and issued an Order that mirrored the submitted schedule in substance. The Order did not mandate any specific outcome of the rulemakings.[14] The court Order can be found in the docket for this rulemaking. The signing of this proposed rule by July 2, 2019, will satisfy one component of the court Order. EPA has selected the Electric Power Generation, Transmission and Distribution industry as the first additional industry to meet the schedule laid out in the Order.

4. Additional Classes 2017 Notice of Intent To Proceed With Rulemakings

Consistent with the January 2016 court Order, EPA signed on December 1, 2016, a determination regarding rulemakings for the additional classes—a Notice of Intent to Proceed with

[7] *See* 74 FR 37214 (July 28, 2009).

[8] Id. at 37218.

[9] *See* 75 FR 816.

[10] *See* 75 FR 819.

[11] *See* 75 FR 830–831.

[12] *In Re: Idaho Conservation League,* No. 14–1149 (D.C. Cir. Jan. 29, 2016) (order granting joint motion).

[13] *See* Joint Motion at 6 (''Nothing in this Joint Motion should be construed to limit or modify the discretion accorded EPA by CERCLA or the general principles of administrative law.'')

[14] In granting the Joint Motion, the court expressly stated that its Order ''merely requires that EPA conduct a rulemaking and then decide whether to promulgate a new rule—the content of which is not in any way dictated by the [Order].'' *In re Idaho Conservation League,* at 17 (quoting *Defenders of Wildlife* v. *Perciasepe,* 714 F.3d 1317, 1324 (D.C. Cir. 2013).

Rulemakings for all three of the classes. The document was published in the **Federal Register** on January 11, 2017.[15]

The Notice of Intent to Proceed with Rulemakings formally announced EPA's intention to move forward with the regulatory process and publish a notice of proposed rulemaking for classes of facilities within the three industries identified in the 2010 ANPRM. The announcement in the Notice of Intent to Proceed with Rulemakings was not a determination that requirements were necessary for any or all of the classes of facilities within the three industries, or that EPA would propose such requirements. In addition, the document gave an overview of some of the comments received on the 2010 ANPRM and initial responses to those comments. The comments on the ANPRM which specifically addressed the need for CERCLA Section 108(b) regulation for the three additional classes fell into four categories: (1) Other laws that the industry complies with that obviate the need for CERCLA Section 108(b) regulation; (2) the sources of data EPA used to select the industries; (3) past versus current practices within each industry; and (4) the overall need for financial responsibility for each industry. In discussing the ANPRM comments in the 2017 Notice of Intent to Proceed with Rulemakings, the Agency stated its intent to use other, more industry-specific and more current sources of data to identify risk, and to consider site factors that reduce risks, including those that result from compliance with other regulatory requirements, and develop a regulatory proposal based on the record EPA would develop for each rulemaking.

At the time of the 2017 Notice of Intent to Proceed with Rulemakings, EPA had not identified sufficient evidence to determine that the rulemaking process was not warranted, nor had EPA identified sufficient evidence to establish CERCLA Section 108(b) requirements. The document described a process to gather and analyze additional information to support the Agency's ultimate decision, including further evaluation of the classes of facilities within the three industry sectors. The Notice of Intent to Proceed with Rulemakings stated that EPA would decide whether proposal of requirements was necessary and, accordingly propose appropriate requirements or propose not to impose requirements.

[15] *See* 82 FR 3512.

IV. Statutory Interpretation

CERCLA Section 108(b) provides general instructions on how to determine what financial responsibility requirements to impose for a particular class of facility. Section 108(b)(1) directs EPA to develop regulations requiring owners and operators of facilities to establish evidence of financial responsibility ''consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.'' Section 108(b)(2) directs that the ''level of financial responsibility shall be initially established and, when necessary, adjusted to protect against the level of risk'' that EPA ''believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction.'' Read together, the statutory language on determining the degree and duration of risk and on setting the level of financial responsibility confers a significant amount of discretion on EPA.

Section 108(b)(1) directs EPA to evaluate risk from a selected class of facilities, but it does not suggest that a precise calculation of risk is either necessary or feasible. Although the risk associated with a particular site can be ascertained only once a response action is required, any financial responsibility requirements imposed under Section 108(b) would be imposed before any such response action was identified. The statute thus necessarily confers on EPA wide latitude to determine, in a Section 108(b) rulemaking proceeding, what degree and duration of risk are presented by the identified class.

Section 108(b)(2) in turn directs that EPA establish the level of financial responsibility that EPA in its discretion believes is appropriate to protect against the risk. This statutory direction does not specify a methodology for the evaluation. Rather, this decision is committed to the discretion of the EPA Administrator. While the statute provides a list of information sources on which EPA is to base its decision—the payment experience of the Superfund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction—the statute does not indicate that this list of factors is exclusive, nor does it specify how the information from these sources is to be used, such as by indicating how these categories are to be weighted relative to one another.

For the electric power industry, EPA has investigated the payment history of the Fund, and enforcement settlements and judgments, to evaluate, in the context of this CERCLA Section 108(b) rulemaking, the risk from facilities that would be subject to CERCLA financial responsibility requirements. The statute also authorizes EPA to consider the existence of Federal and state regulatory requirements, including any financial responsibility requirements. Section 108(b)(1) directs EPA to promulgate financial responsibility requirements ''in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law.'' According to the 1980 Senate Report on legislation that was later enacted as CERCLA, Congress considered it appropriate for EPA to examine those additional requirements when evaluating the degree and duration of risk under what was later enacted as CERCLA Section 108(b):

> The bill requires also that facilities maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the production, transportation, treatment, storage, and disposal of hazardous substances. These requirements are in addition to the financial responsibility requirements promulgated under the authority of § 3004(6) of the Solid Waste Disposal Act. It is not the intention of the Committee that operators of facilities covered by § 3004(6) of that Act be subject to two financial responsibility requirements for the same dangers.[16]

While the Senate Report mentions RCRA Section 3004(6) specifically, it is consistent with Congressional intent for EPA to consider other potentially duplicative federal financial responsibility requirements when examining the ''degree and duration of risk'' in the context of CERCLA § 108(b) to determine whether and what financial responsibility requirements are appropriate. It is also consistent with Congressional intent for EPA to consider state laws before imposing additional Federal financial responsibility requirements on facilities.

Consideration of state laws *before* developing financial responsibility regulations is consistent with CERCLA Section 114(d), which prevents states from imposing financial responsibility requirements for liability for releases of the same hazardous substances *after* a facility is regulated under Section 108 of CERCLA. Just as Congress clearly intended to prevent states from imposing duplicative financial assurance requirements after EPA had acted to impose such requirements under Section 108, it is reasonable to also conclude that Congress did not mean for EPA to disrupt existing state programs that are successfully

[16] S. Rept. 96–848 (2d Sess, 96th Cong.), at 92.

regulating industrial operations to minimize risk, including the risk of taxpayer liability for response actions under CERCLA, and that specifically include appropriate financial assurance requirements under state law. Reviews of both state programs and other federal programs help to identify whether and at what level there is current risk that is appropriate to address under CERCLA Section 108.

EPA also believes that, when evaluating whether and at what level it is appropriate to require evidence of financial responsibility, EPA should examine information on electric power generation, transmission and distribution facilities operating under modern conditions, *i.e.,* the type of facilities to which financial responsibility regulations would apply. These modern conditions include state and federal regulatory requirements and financial responsibility requirements that currently apply to operating facilities. This reading of Section 108(b) is consistent with statements in the legislative history of the statute. The 1980 Senate Report states that the legislative language that became Section 108(b) ''requires those engaged in businesses involving hazardous substances to maintain evidence of financial responsibility commensurate with the risk which they present.'' [17]

This statutory interpretation is reflected in this proposal. Any financial responsibility requirements imposed under Section 108(b) would apply to currently operating facilities. EPA thus sought to examine the extent to which hazardous substance management at currently operating electric power generation, transmission and distribution facilities as a class continues to present risk. Moreover, the statutory direction to identify requirements consistent with identified risks guides EPA's interpretation that imposition of financial responsibility requirements under Section 108(b) would not be necessary for currently operating facilities that present minimal current risk. The interpretation in this proposal does not extend to any site-specific determinations of risk made in the context of individual CERCLA site responses. Those decisions will continue to be made in accordance with preexisting procedures.

EPA thus examined records of releases of hazardous substances from facilities operating under a current regulatory framework and data on the actions taken and expenditures incurred in response to such releases. The data collected do not reflect historical practices, many of which would be illegal under current environmental laws and regulations. Instead, EPA has considered current federal and state regulation of hazardous substance production, transportation, treatment, storage, or disposal applicable to facilities in the electric power industry.

V. Approach To Developing This Proposed Rule

Based on the statutory interpretation described above, EPA developed an analytical approach to determine whether the current risk under a modern regulatory framework within the Electric Power Generation, Transmission and Distribution industry rises to the level that warrants imposition of financial responsibility requirements under CERCLA Section 108(b). Specifically, EPA designed the analytical approach to determine the need for financial responsibility for this industry based on the degree and duration of risk associated with the industry's production, transportation, treatment, storage, or disposal of hazardous substances. The approach, described in detail below, looks at risks by examining records of releases of hazardous substances from facilities in the industry in combination with the payment history of the Fund, and enforcement settlements and judgments. To enable EPA to base its decision on risk posed by facilities operating under modern conditions, *i.e.,* the types of facilities to which financial responsibility requirements would apply, EPA developed an approach to identify and consider relevant state and Federal regulatory requirements and financial responsibility requirements that currently apply to operating facilities, as well as voluntary protective practices.

EPA sought to determine the level of risk at current Electric Power Generation, Transmission and Distribution operations. Relevant to this decision are requirements of existing regulatory programs and voluntary practices, including existing financial responsibility requirements, which can reduce costs to the taxpayer; EPA's experience with clean-ups in the Electric Power Generation, Transmission and Distribution industry; and enforcement actions, which may reduce the need for federally-financed response action at facilities in the Electric Power Generation, Transmission and Distribution industry.

As part of scoping the Electric Power Generation, Transmission and Distribution industry for this proposal, EPA sought to understand general characteristics of the industry that may be relevant to financial responsibility under Section 108(b). To do this EPA compiled industry features, including the types of activities undertaken and wastes handled or produced. Additionally, EPA looked at the financial condition of the industry to assess the ability of facilities in this class to pay for any environmental obligations they may incur. Discussion of these aspects of the industry is included in Section VI of this proposal.

Section VII.A. describes EPA's evaluation of cleanup cases at facilities in the Electric Power Generation, Transmission and Distribution industry. So-called ''cleanup cases'' are sites in the Electric Power Generation, Transmission and Distribution industry where releases and cleanup actions occurred. To perform this evaluation EPA developed an analytic approach that considered cleanup cases to identify risk at currently operating facilities and where taxpayer funds were expended for response action. EPA first examined each site to determine the nature and timing of release. EPA used this information to determine if releases occurred under current regulations. As an initial screen, releases that occurred prior to 1980 were deemed to be legacy releases that occurred prior to the advent of the modern environmental regulatory framework and were therefore screened out of our analysis. Once EPA identified those sites with more recent releases occurring under a modern environmental regulatory framework, EPA then focused on those response actions that were paid for by the taxpayer by looking at those sites with Fund-financed cleanup activity.

As described in Section VII.B., to understand the modern regulatory framework applicable to currently operating facilities within the Electric Power Generation, Transmission and Distribution industry, EPA compiled applicable Federal and state regulations. Specifically, EPA looked to regulations that address the types of releases identified in the cleanup cases. This review also considered industry voluntary programs that could reduce risk of releases. EPA also identified financial responsibility regulations that apply to facilities in the Electric Power Generation, Transmission and Distribution industry, Section VII.C., and compliance and enforcement history for the relevant regulations, Section VII.D.

In considering how to structure its analysis and what data sources to examine, EPA looked at prior analysis done for selection of industry classes in the 2010 ANPRM and public comments responding to EPA's approach. In the

[17] S. Rept. 96–848 (2d Sess, 96th Cong.), at 92.

public comment period for the ANPRM, EPA received a total of 67 comments from 30 commenters on the Chemical Manufacturing industry, Petroleum and Coal Products Manufacturing industry, and the Electric Power Generation, Transmission, and Distribution industry. In addition, EPA received five comments to the Hardrock Mining Proposed Rule related to the additional classes of facilities.

A large portion of the comments EPA received on the ANPRM were related to the Electric Power Generation, Transmission and Distribution industry. Commenters noted their view that this industry is distinct from other industries because it does not have a history of failing to cover remediation costs. Further, commenters stated that facilities in this industry are subject to multiple Federal environmental statutes and regulations and thus EPA should not duplicate existing financial assurance. In addition, commenters stated that EPA should focus on large electric power generation facilities that produce and release hazardous substances, not transmission or distribution facilities; wind, solar, nuclear, or hydro-electric plants; or natural gas-fired and oil-fired electric generation facilities. Lastly, some commenters believe that EPA placed too much emphasis on Toxics Release Inventory (TRI) data and RCRA Biennial Report (BR) data and expressed their opinions that these data sources are not risk based.

In its 2017 Notice of Intent to Proceed with Rulemakings [18] EPA acknowledged limitations on information that can be gained from TRI and BR data and announced its intention to use industry-specific and current sources of data to identify risk for the purposes of the rulemakings. In the analysis conducted to assess risk in the Electric Power Generation, Transmission and Distribution industry for this action, EPA chose not to rely on TRI and BR data. While the Agency found those data sources appropriate for identifying classes of facilities to examine further at the time of the 2010 ANPRM, it did not find them valuable for assessing current risk in the industry or the need for a response action.

[18] *See* 82 FR 3512.

V. Electric Power Generation, Transmission and Distribution Industry Overview

A. Identification of Electric Power Generation, Transmission and Distribution Industry

For this proposal and the associated analyses, EPA reviewed facilities classified under the North American Industry Classification System (NAICS) code 2211. Most recently available census data lists the size of the industry at 10,330 establishments nationally.[19] The Electric Power Generation, Transmission and Distribution (NAICS 2211) industry is defined as: Facilities primarily engaged in generating, transmitting, and distributing electric power. Establishments [20] in this industry group may perform one or more of the following activities: (1) Generate electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.

B. Current Industry Practices

Operational and decommissioning practices in industrial sectors and their associated firms can ultimately affect the ability of individual firms to responsibly minimize their impact on human health and the environment. To consider the potential for releases as part of its decision making, EPA prepared a high-level review [21] of industry practices and the environmental profile of the Electric Power Generation, Transmission and Distribution industry, which includes a summary of relevant operational and decommissioning materials and wastes.

Electric generating plants convert mechanical, chemical, and/or fission energy into electric energy. Within this population of electric generating plants, there are different types of processes employed to produce electricity (*e.g.,* coal-fired power plants, wind turbines). Electric power transmission is the bulk transfer of electrical energy between the point of generation and multiple substations near a populated area or load center. A distribution substation performs multiple functions, such as stepping down and stabilizing voltage going into distribution lines, splitting and routing distribution power in multiple directions, and disconnecting the transmission grid from the substation when necessary.

Operation of any power plant requires use of a variety of nonhazardous materials, including paper, cardboard, wood, aluminum, containers, packaging materials, office waste, food, municipal trash, and wastes from equipment assembly and maintenance crews. Potentially hazardous materials are also frequently used. These materials can include sandblast media, fuels, paints, spent vehicle and equipment fluids (*e.g.,* lubricating oils, hydraulic fluids, battery electrolytes, glycol coolants), among others. Hazardous materials may include, but are not limited to, asbestos or mercury containing materials, compressed gases used for welding and cutting, dielectric fluids, boiler bottom ash, and oils. Process fluids can be either hazardous or non-hazardous, and can include oily water, spent solvents, chemical cleaning rinses, cooling water, wash and makeup water, sump and floor discharges, oily water separator fluids, boiler blowdown, and water from surface impoundments. Other materials beyond those listed here may be used in the operation of power plants.

The types of hazardous substances that have been released from facilities in the Electric Power Generation, Transmission and Distribution industry include hydrogen fluoride; vanadium, zinc, copper, and lead compounds; ammonia; and arsenic, cobalt, barium, cadmium, and selenium compounds. Coal combustion residuals frequently contain arsenic, selenium, mercury, and other toxic metals. Other substances beyond those listed here may also have been released from facilities in the industry.

As detailed in the 2010 ANPRM, most environmental impacts of electric utilities relate to the fuel sources used to generate electric power. For example, burning coal at coal-fired power plants generates ash that contains contaminants like mercury, cadmium and arsenic. Without proper management, contaminants present in coal ash can pollute waterways, groundwater, and drinking water. The need for Federal action to help ensure protective coal ash disposal has been further highlighted by large spills such as those at the TVA Kingston Plant and Duke Energy's Dan River Steam

[19] United States Census Bureau, EC1222A1—Utilities: Geographic Area Series: Summary Statistics for the U.S., States, Metro Areas, Counties, and Places, 2012.

[20] Establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed. *www.census.gov/ces/dataproducts/bds/definitions.html.*

[21] *Electrical Power Generation, Transmission and Distribution Industry Practices and Environmental Characterization,* June 2019.

Station,[22] which caused widespread environmental and economic damage to nearby waterways and properties.

Electricity delivery can also affect the environment in several ways. High voltage power switches, inverters, converters, controller devices and other power electronics contain lead, brominated fire retardants, and cadmium in their printed circuit boards; these circuit boards must be managed properly to avoid posing risk to human health or the environment. Electrical substations and urban manhole facilities require periodic cleaning, which may yield hazardous waste. Additionally, insulating materials such as asbestos and polychlorinated biphenyls (PCBs) must also be managed properly.

Industry practices in certain subsectors, the Fossil Fuel Generation (221112), Transmission (221121) and Distribution (221122), of the Electric Power Generation, Transmission and Distribution industry use more hazardous substances and/or generate larger volumes of hazardous waste. Several generation subsectors use and generate lower amounts of hazardous substances or wastes, including Hydroelectric (221111), Nuclear (221113), Solar (221114), Wind (221115), Geothermal (221116) and Tidal (221118). Further information on industry practices is provided in EPA's document ''Electrical Power Generation, Transmission and Distribution Industry Practices and Environmental Characterization'' [23] available in the docket for this rulemaking.

Facilities in the electric power generation, transmission and distribution industry are subject to a wide range of environmental regulation and enforcement oversight as discussed in Sections VII.B. and VII.D. below.

C. Industry Economic Profile

Economic trends and financial health in industrial sectors and their associated firms can ultimately affect the ability of individual firms to responsibly address their environmental liabilities. Circumstances where firms face financial stress can potentially contribute to the abandonment of facilities and the creation of orphan wastes sites requiring cleanup. To consider the potential for firms to default on their financial obligations EPA prepared a high-level economic profile of the Electric Power Generation, Transmission and Distribution industry, which includes a summary of relevant financial metrics, market consolidation and diversification trends, industry default risks, and accounting standards for environmental liabilities of entities operating within this industry. This analysis, summarized in this section, looked at the industry as a whole and additionally focused on certain subsectors that might be most pertinent to evaluate for CERCLA 108(b) requirements, including facilities subject to the 2015 Disposal of Coal Combustion Residuals from Electric Utilities Final Rule (2015 CCR Rule).[24] The full analysis is found in the background document for this section available in the docket for this rulemaking.[25]

According to the U.S. Census Survey of Business Owners, firms under NAICS 2211 generated $430 billion in total value of sales, shipments, receipts, revenue, or business done in 2012. Of this $430 billion, 72 percent came from Electric Power Transmission, Control, and Distribution, while Electric Power Generation accounted for the remaining 28 percent. Within Electric Power Generation, fossil fuel power generation accounted for the largest portion of these values, at 68 percent.

The market structures under which Electric Power Generation, Transmission and Distribution industry firms operate are varied and unique to this industry. Firms, their owners/shareholders, and taxpayers may experience different risk profiles based on the companies' ownership (privately or publicly held), as well as the nature of the market in which they operate (regulated or deregulated). In addition, the Federal Government owns nine power agencies, accounting for seven percent of net generation and eight percent of transmission. These federally-owned utilities present an extremely low risk of default on environmental liabilities. Publicly-owned utilities also present a low risk of bankruptcy due to detailed financial reporting requirements and government oversight. Publicly-owned utilities may also have access to lower-cost forms of financing, such as tax-free bonds and local low-interest loans. More information on the numbers of publicly-owned utilities and investor-owned utilities, and their relative percentages across the industry, is provided in the background document available in the docket for this rulemaking.[26]

These utilities can operate in either regulated or deregulated markets, which also come with financial risk/stability tradeoffs. Regulated markets are characterized by vertically integrated monopolies that own and operate all infrastructure and essential components involved in the delivery of electricity to their customers. Regulated firms are given reasonable opportunity to recover necessary and prudent costs in their rates through rate regulation. This generally includes costs necessary to address environmental liabilities, which are ultimately covered by the rate-payers. On the other hand, deregulated, or merchant, markets allow for competition as generation plants sell wholesale electricity to retail suppliers, who set prices, making the performance of environmental cleanups more susceptible to market forces and a firm's ability to pay.

EPA assessed financial ratios, including cash flow-solvency, profitability, efficiency, and debt risk, for companies in the Electric Power Generation, Transmission and Distribution industry to examine trends over time and provide a deeper assessment of the industry's and companies' financial health. Generally, EPA research finds that the Electric Power Generation, Transmission, and Distribution industry remains financially stable. The industry is characterized by diversified fuel sources and vertical integration, reducing firms' dependency on any one subsector and strengthening long-term financial stability. Mergers and acquisitions in recent years have also enhanced financial stability in the long run by further diversifying large firms across subsectors. According to the 2018 U.S. Cost of Capital Valuation Handbook, in recent years the industry experienced less risk and volatility than the overall market.

Firms in the industry overall remain profitable and able to cover short-term debt. The data, however, also indicate that larger firms in the industry tend to be more highly leveraged. For some firms, long-term liabilities have risen relative to net worth ratios, resulting in a higher risk of default. While default risk remains relatively low industry-wide, the data suggest two key risk factors that may threaten financial stability for some firms: High dependency on coal and nuclear generation, and rapid market consolidation through mergers and acquisition.

[22] *https://www.epa.gov/tn/epa-response-kingston-tva-coal-ash-spill, https://www.epa.gov/dukeenergy-coalash.*

[23] *Electrical Power Generation, Transmission and Distribution Industry Practices and Environmental Characterization,* June 2019.

[24] *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities* (80 FR 21302, April 17, 2015).

[25] *CERCLA 108(b) Economic Sector Profile: Electric Power Generation, Transmission, and Distribution Industry,* June 2019.

[26] Id.

For example, some notable bankruptcies in recent years stemmed from a high dependency on coal and nuclear power generation. Firms more solely invested in coal or nuclear generation faced more difficulty, due to their lack of diversification into alternative fuel sources and lower profit margins.[27] Nevertheless, the occurrence of bankruptcies in this industry has historically been far lower than that of many other industries, and such occurrences remain relatively infrequent. Further evidence suggests that due in part to factors such as the significant amount of fixed infrastructure and consumer dependence on electricity, energy sector firms that default tend to emerge from bankruptcy and continue to operate rather than fully close. Such bankruptcies tend to proceed under Chapter 11 relief, for purposes of debt restructuring. Moreover, in most of these bankruptcies the debtors have retained their responsibility for environmental liabilities. Additionally, if the units are continuing to operate, the obligation to comply with applicable environmental regulations, including the 2015 CCR final rule and any final amendments, will still be required. Further discussion on bankruptcy experience of this industry, including evaluation of individual bankruptcy cases, can be found in the background document to this section found in the docket.[28]

Close examination of market structures and typical bankruptcy restructuring that exist within the Electric Power Generation, Transmission and Distribution industry suggest that the industry as a whole should retain the capacity and fiduciary responsibility to pay the costs of addressing their environmental obligations. In this industry, publicly-owned utilities subject to rate-setting regulations, as well as federally-owned utilities, are less likely to default on liabilities than in other industries. For investor-owned utilities and those that operate in deregulated markets, bankruptcy code provisions and legal precedents can provide other protections against the discharge of environmental liabilities in bankruptcy.

VII. Discussion of Cleanup Sites Analysis

A. Cleanup Site Evaluations

As described in the Approach to Developing the Proposed Rule, Section V above, to evaluate the need for financial responsibility regulations in the Electric Power Generation, Transmission and Distribution industry, EPA sought examples of pollution that occurred under a modern regulatory framework and that required a taxpayer-funded CERCLA cleanup. In its evaluation, EPA focused first on identifying response actions at Superfund National Priority List (NPL) sites and sites using the Superfund Alternative Approach (SAA),[29] as those are generally larger cleanups both in terms of amounts of contaminants removed and costs to carry out these cleanups. EPA also looked at Superfund removals at non-NPL sites. Beyond these sites in the Federal Superfund program, EPA included proven CCR damage cases [30] in its evaluation, given the prevalence and significance of the CCR damage cases reviewed for the 2010 ANPRM. Specifically, in that ANPRM, EPA assessed documented evidence of proven damage due to CCRs in 17 cases of groundwater contamination and 10 cases of surface water contamination. EPA noted an additional 40 cases of potential CCR-related groundwater or surface water contamination.

To identify the relevant cleanup cases, EPA included NPL sites, sites using the SAA, and non-NPL sites identified in EPA's Superfund Enterprise Management System (SEMS) database. EPA also included CCR damage cases identified as part of the 2015 CCR Rule.[31] EPA collected information on the timing and nature of releases or threatened releases at these sites. Specifically, EPA sought to identify, as applicable, facility operation end dates, release dates, sources of contamination, NPL proposal dates, contaminated media, type of contaminant, cleanup lead, and information on Superfund expenditures at the site. For this collection, EPA relied on information previously collected as part of the ANPRM, information available in Superfund site documents (*e.g.* NPL listing narratives, Records of Decision, Action Memos, Five-Year Reviews), and information in SEMS as of March 2018, as well as data for proven CCR damage cases, and associated site summaries developed for the 2015 CCR Rule.[32] The cleanup case identification and site information collection processes are described in greater detail in the relevant background documents.[33]

After compiling information about the risks and history of each site, EPA sought to identify instances where releases occurred under a modern regulatory framework and those releases that resulted in Fund-financed response actions. To do so, EPA's methodology applied sequenced screens to the identified sites. EPA first sought to screen out any NPL sites or sites using the SAA where the contaminant release or cleanup activity occurred before 1980. EPA chose 1980 as a cutoff point to initially screen out legacy issues because it was the year that CERCLA was enacted, as well as the date of the initial regulations under RCRA Subtitle C governing the generation, treatment, storage, and disposal of hazardous waste. EPA chose to give these significant RCRA and CERCLA milestones greatest consideration due to the large number of issues of waste management, land disposal, and soil contamination identified in the review

[27] For example, Energy Future Holdings Corp. filed for bankruptcy in 2014, followed by First Energy Solutions in 2018, after they struggled to make money from coal and nuclear plants in unfavorable market conditions.

[28] *CERCLA 108(b) Economic Sector Profile: Electric Power Generation, Transmission, and Distribution Industry,* June 2019.

[29] The ''Superfund Alternative Approach (SAA)'' uses the same CERCLA authority and investigation and cleanup process and standards that are used for NPL sites. The threshold criteria for using the SAA are: (1) The site must have contamination significant enough to make it eligible for listing on the NPL; (2) the site is anticipated to need remedial action; and, (3) there must be a cooperative, viable, capable PRP that will sign a CERCLA agreement with EPA to perform the necessary cleanup.

[30] CCR are byproducts of the combustion of coal at power plants by electric utilities and independent power producers. Fly ash, bottom ash, boiler slag, and flue gas desulfurization materials are types of CCR. On April 17, 2015, the EPA published a final rule establishing a comprehensive set of requirements for the disposal of CCR in landfills and surface impoundments. 80 FR 21302. These requirements were finalized under the solid waste provisions, subtitle D, of the Resource Conservation and Recovery Act.

[31] The same list of proven CCR Damage Cases used in promulgation of the 2015 CCR Rule, was also relied upon as the best available source of data on CCR damage cases at the time that these CERCLA 108(b) analyses were conducted. The 2015 CCR Rule requires groundwater monitoring as a first step in a process to monitor and assess contaminants from CCR units. Facilities must post groundwater monitoring data on a publicly available website. Utilities are required to initiate corrective actions should groundwater exceedances be detected. Any such responses being taken under the 2015 CCR Rule are in early stages, too early to discern if any impact to taxpayer may result. EPA, therefore, did not evaluate this data for this proposal.

[32] *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities* (80 FR 21302, April 17, 2015).

[33] *Identification and Evaluation of National Priority List (NPL) Sites, Sites Using the Superfund Alternative Approach (SAA), and Coal Combustion Residual (CCR) Cleanup Cases in the Electric Power Generation, Transmission, and Distribution Industry,* June 2019, and *Identification and Evaluation of CERCLA 108(b) Electric Power Generation, Transmission, and Distribution Industry non-National Priority List (NPL) Removal Sites,* June 2019.

of the NPL and SAA cases. EPA believes the 1980 cutoff point to be a conservative screen (*i.e.,* retains more sites in the analysis) in that only the initial RCRA regulations were in place in 1980 and they were refined, expanded and enhanced several times over the next decades. Moreover, the Agency's enforcement authorities expanded in the 1980s as the RCRA program matured. Notably, the passage in 1984 of Hazardous and Solid Waste Amendments (HSWA) resulted in many regulatory changes and enhanced enforcement mechanisms.

Next, EPA sought to remove sites where significant Fund expenditures had not occurred, because response actions that were paid for by private parties do not support the need for CERCLA Section 108(b) financial responsibility regulations. Using the ''Action Lead'' field in SEMS associated with each site, EPA screened out the Potentially Responsible Party (PRP) lead sites. This left only the Mixed Lead Construction or Government Performed Construction sites in the analysis, consistent with EPA's assessment that at PRP Performed Construction sites, responsible parties retain responsibility for the majority of costs. Therefore, PRP Performed Construction sites do not represent significant expenses to the Superfund.

EPA then reviewed the remaining sites (*i.e.,* those with both release dates of 1980 or later and Mixed Lead Construction or Government Performed Construction designation in SEMS) individually in greater detail. Specifically, EPA considered the site history and each of the contamination sources at the site in the context of the regulations that would be applicable to that facility today. A particularly relevant regulation is the 2015 CCR Rule, which added significant new requirements to the coal-fired electric utility plants that dispose of CCR in landfills and surface impoundments. The promulgation of the 2015 CCR Rule effectively establishes the introduction of the modern regulatory framework for coal-fired electric utilities. More information on the regulations EPA considered is available in Section VII.B. below.

Findings from EPA's analysis of the cleanup cases are discussed below, with more detailed information available in the ''Identification and Evaluation of National Priority List (NPL) Sites, Sites Using the Superfund Alternative Approach (SAA), and Coal Combustion Residual (CCR) Cleanup Cases in the Electric Power Generation, Transmission, and Distribution Industry'' background document and the ''Identification and Evaluation of CERCLA 108(b) Electric Power Generation, Transmission, and Distribution Industry non-National Priority List (NPL) Removal Sites'' background document in the docket for this rulemaking.[34] The background documents provide the list of sites identified as well as the information considered in the screening and review process. Also provided is the list of sites remaining at each stage of the analysis, as well as the Agency's rationale for each site's subsequent designation.

Using the data sources described above for the Electric Power Generation, Transmission, and Distribution industry, EPA identified 4 NPL sites and 1 site using the SAA, as well as 24 non-NPL CERCLA removal action sites,[35] and an additional 27 proven CCR-related damage cases [36] not tracked within Superfund data systems, to evaluate according to the methodology described above. As described further below, none of the NPL sites, sites using the SAA, or CCR damage cases were ultimately considered incidents that occurred under a modern regulatory framework nor were they incidents where taxpayer funds were relied upon. For the removal sites, 2 of the 24 cases showed releases of hazardous substances under a modern regulatory framework and required taxpayer expenditures, as described below.

The four NPL sites evaluated include two coal-fired power generation plants with serious CCR contamination, as well as one hydro-electric facility with PCB contamination and one nuclear power generator with radiation contamination. The one site using the SAA is a steam plant that generates electric power from oil-fired burners and natural gas turbines.

For the four NPL sites, either the dates of contaminant release were prior to 1980, or the power plants were Federal facilities owned and operated by the Federal Government. In the case of the one site using the SAA, no further remedial action is called for and costs for removal and cleanup were covered by the PRP under its CERCLA agreement with EPA. As a result, EPA did not undertake a more detailed review of these sites, as summarized in Table 1 below.

TABLE 1—EVALUATION RESULTS FOR NPL AND SAA SITES IN THE ELECTRIC POWER GENERATION, TRANSMISSION AND DISTRIBUTION INDUSTRY

Total NAICS 2211 NPL & SAA sites evaluated	Number of NAICS 2211 NPL & SAA sites screened out based on pre-1980, or PRP lead status	Detailed review concluded release occurred prior to modern regulation	Detailed review identified a possible modern regulation release but no taxpayer expenditures	Cases with release(s) under modern regulation that required taxpayer funded response
5	5	0	0	0

Given the small number of NPL and SAA cleanup cases and the consideration of CCR damage cases for the 2010 ANPRM, EPA chose to evaluate the potential risk from CCR damage cases. EPA evaluated the 27 proven CCR damage cases identified for the 2015 CCR Rule. Following the above methodology for identifying modern risk, 17 of the cases were screened from further consideration because the source of contamination was determined to

[34] *Identification and Evaluation of National Priority List (NPL) Sites, Sites Using the Superfund Alternative Approach (SAA), and Coal Combustion Residual (CCR) Cleanup Cases in the Electric Power Generation, Transmission, and Distribution Industry,* June 2019.

[35] None of these 24 removal sites are associated with NPL sites. Removal actions that have taken place at NPL sites or sites using the SAA, either before or after listing or designation, are tracked in SEMS as NPL or SAA level actions and not as separate removal records.

[36] These 27 proven CCR damage cases represent the final list of sites at Electric Power Generation, Transmission and Distribution industry facilities that are not in the Superfund program. Such sites were included in EPA's evaluation due to the known prevalence of ground and surface water damages associated with the management of CCRs. Proven damage cases were relied upon as the highest quality source of data, selected on the basis of strict criteria where the subject damages are confirmed as being attributable to Fossil Fuel Combustion Wastes, based on documented evidence from Scientific Results, Administrative Rulings, and/or Court Findings.

have occurred prior to 1980, or because the site was designated as a responsible party lead cleanup. Ten remaining cases were determined to have occurred after 1980. When these 10 remaining cases were assessed against today's modern regulatory framework, the releases were all found to have occurred prior to promulgation of the 2015 CCR Rule [37] and therefore they were screened from further consideration. As described in more detail in the Role of Federal and State Programs section below, the 2015 CCR Rule was specifically designed to contain requirements that address the risks from coal combustion residue disposal—leaking of contaminants into groundwater, blowing of contaminants into the air as dust, and the catastrophic failure of coal ash surface impoundments, *i.e.,* the sources of contamination identified in the CCR damage cases. Therefore, although there are examples of significant releases in more recent years (for example, as recent as 2014 in the case of the Duke Energy breach at Dan River, and 2008 in the case of a catastrophic dike failure at the TVA Kingston Plant), those cases still occurred prior to the advent of the new regulatory standards intended to prevent and remedy these types of incidents. Although not all provisions of the 2015 CCR Rule have been fully implemented, EPA believes the requirements in place and those to be implemented in the coming years sufficiently reduce the risk level at coal-fired power plants. The 2015 CCR Rule is described further in Section VII.B.

The summary results of the analysis of proven CCR damage cases are presented in Table 2 below.

TABLE 2—EVALUATION RESULTS FOR CCR DAMAGE CASES IN THE ELECTRIC POWER GENERATION, TRANSMISSION AND DISTRIBUTION INDUSTRY

Total proven CCR damage cases evaluated	Number of CCR damage cases screened out based on pre-1980, or responsible party lead status	Detailed review concluded release occurred prior to modern regulation	Detailed review identified a possible modern regulation release but no taxpayer expenditures	Cases with release(s) under modern regulation that required taxpayer funded response
27	17	10	0	0

Additionally, EPA chose to look at the major removal cases found in the SEMS database to supplement this analysis. For this sector, EPA identified 24 removal sites which were evaluated using the analytic methodology. Using the methodology, EPA screened out 19 sites because the environmental releases occurred before 1980 or PRPs led the response action. To assess the five sites that remained after those screens, EPA first conducted a detailed review to compare the environmental issues at the sites to the regulations applicable today. Based on the detailed review, EPA concluded that the environmental releases at three of the five remaining removal sites were caused by a one-time incident (*e.g.,* transformer fire, equipment failure), resulting in release of PCB transformer oil. Although not designated PRP-lead actions, according to EPA's record, PRPs financed and performed the response actions to the satisfaction of EPA at these sites, and no Fund expenditures occurred.

Regarding the other two removal sites that remained after the screens, EPA's detailed review indicated that both cases involved long-term PCB contamination resulting from inappropriate handling and storage of PCB waste. However, notwithstanding a government-lead designation in SEMS, neither of these sites required significant taxpayer expenditure. EPA considered all available history at each site to determine the level of Fund expenditure. According to EPA's SEMS expenditure data for English Station power plant in New Haven, Connecticut (an abandoned coal fired power plant, which operated from 1914 through 1992), the Fund incurred an estimated cost of $17,000, while the PRP signed a Partial Consent Order [38] with the state of Connecticut to spend $30 million to address site contamination potentially dating back to 1914. Similarly, EPA incurred an estimated cost of $374,000 for response actions at Commonwealth Utilities Corporation (CUC) site in the Northern Mariana Islands (a currently operating facility) after the territory-owned company informed EPA that it lacked the technical capacity to address the PCB contamination issues at the site. In this case, EPA did not pursue cost recovery due, in part, to the PRP's inability to pay. The Fund expenditures for response action at these two sites were not deemed significant for purposes of this analysis. More detailed information can be found in the background document and supporting spreadsheets available in the docket for this rulemaking. The background document includes the list of sites identified for analysis, as well as the data and information considered in the screening and review process. The summary results of the analysis are presented in Table 3 below.

TABLE 3—EVALUATION RESULTS FOR SUPERFUND REMOVAL SITES IN THE ELECTRIC POWER GENERATION, TRANSMISSION AND DISTRIBUTION INDUSTRY

Total NAICS 2211 superfund removal cases evaluated	Number of NAICS 2211 superfund removal cases screened out based on pre-1980, or PRP lead status	Detailed review concluded release occurred prior to modern regulation	Detailed review identified a possible modern regulation release, but no taxpayer expenditures	Cases with release(s) under modern regulation that required taxpayer funded response
24	19	0	3	2

[37] *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,* (80 FR 21302, April 17, 2015).

[38] *State of Connecticut* v. *The United Illuminating Company* Partial Consent Order Number COWSPCB 15–001.

Prevalent Sources of Risk

EPA's analysis of cleanup cases compiled information, where discernable, on the root cause of releases. Across the industry overall, the most prevalent issue was groundwater contamination from unlined or leaking CCR surface impoundments and landfills. Other sources of contamination observed at these sites include catastrophic failures/breaches of dikes, and collapse of dry ash stacks. The common issues observed at most removal sites were legacy PCB and asbestos contamination resulting from the handling and disposal of PCB-containing oil and asbestos-containing insulation materials at fossil fuel powered electric generation plants.

B. Role of Federal and State Programs and Voluntary Protective Industry Practices at Facilities in the Electric Power Generation, Transmission and Distribution Industry

In the January 6, 2010 ANPRM, EPA stated that it recognized that the NPL data reflect releases arising from activity that, in some cases, predates CERCLA, RCRA, and other legal requirements and, as such, the Agency welcomed information about current releases of hazardous substances to the environment to help inform EPA's future actions. As discussed in the Approach section of this proposal, to enable EPA to base its decision on risk posed by facilities operating under modern conditions, *i.e.,* the types of facilities to which financial responsibility requirements would apply, EPA developed an approach to identify and consider relevant state and Federal regulatory requirements and financial responsibility requirements that currently apply to operating facilities, as well as voluntary protective practices. EPA thus undertook an effort to gather information about Federal and state environmental programs and industry voluntary programs that have been implemented and are applicable to currently operating facilities within the Electric Power Generation, Transmission and Distribution industry today. EPA evaluated the extent to which activities that contributed to the risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances are now regulated. EPA recognizes that substantial advances have been made in the development of manufacturing, pollution control, and waste management practices, as well as the implementation of Federal and state regulatory programs to prevent and address such releases at these facilities. In part, EPA's proposed decision to not issue financial responsibility requirements for this industry was determined based on EPA's review and analysis of Federal regulations and complemented by state program regulations. Industry voluntary programs were considered as an additional factor in EPA's proposed decision. EPA's findings and conclusions about the impact of Federal and state environmental programs, along with industry voluntary programs, are discussed in the following section.

Overview of Federal and State Regulatory Programs and Industry Voluntary Practices Applicable to the Electric Power Generation, Transmission and Distribution Industry

EPA evaluated Federal and state regulations which address the potential for release of hazardous substances to the range of environmental media that may be affected by a release from a facility in the Electric Power Generation, Transmission and Distribution industry. EPA found that a comprehensive regulatory framework has developed since the enactment of CERCLA. Federal statutes such as the Clean Air Act (CAA), the Clean Water Act (CWA), and RCRA are applicable across the entire industry and lay the foundation for this regulatory framework. Specific regulations are discussed in the background document according to the environmental issues that the regulations address: Air pollution, water pollution, emergency planning and response, hazardous substances management, and hazardous and non-hazardous waste disposal and management. This background document is located in the docket for this rulemaking.[39]

Regulations Addressing Prevalent Sources Identified in Analysis of Cleanup Cases

EPA's analysis of the cleanup cases found that the most prevalent releases were:

- Groundwater contamination from unlined or leaking CCR surface impoundments and landfills, catastrophic failures/breaches of CCR containment dikes, and collapse of dry ash stacks;
- PCB contamination from the handling and disposal of PCB-containing oil; and
- asbestos contamination from handling and disposal of asbestos-containing insulation.

CCR is one of the largest industrial waste streams generated in the United States. CCRs are residuals from the combustion of coal at coal-fired power plants; they consist of fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. Approximately 110 million tons of CCR was generated in 2012.[40] The disposal of CCR is subject to recent regulation under the Agency's 2015 CCR Rule.[41] EPA promulgated the rules for CCR disposal under RCRA Subtitle D. The 2015 CCR Rule addresses risks from CCR disposal identified in these cases—leaking of contaminants into groundwater, blowing of contaminants into the air as dust, and the catastrophic failure of CCR surface impoundments such as what occurred at TVA's Kingston Plant—by adding new requirements for CCR landfills and surface impoundments. In any cases where releases might occur, the 2015 CCR Rule includes both closure and corrective action provisions that could be used to remedy those releases. These regulations establish minimum national criteria for existing and new CCR landfills, existing and new CCR surface impoundments, and lateral expansions of these units including: Location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure and post closure care requirements, as well as recordkeeping, notification, and internet posting requirements. These regulatory requirements are designed specifically to prevent the types of risks from CCR that have occurred in the past. EPA did not establish financial assurance requirements as part of the CCR rule.[42]

EPA recognizes that the 2015 CCR Rule is not yet fully implemented at this point, although rule implementation is ongoing. While the rule became effective in 2015, it established timeframes for the technical criteria

[39] *Summary Report: Federal and State Environmental Regulations and Industry Voluntary Programs in Place to Address CERCLA Hazardous Substances at Facilities in the Electric Power Generation, Transmission and Distribution Industry,* June 2019.

[40] *See* 80 FR 21303 (April 17, 2015).

[41] *See* 80 FR 21301.

[42] In the proposal for the 2015 CCR Rule the Agency stated that the RCRA subtitle D alternative did not include proposed financial responsibility requirements and that any such requirements would be proposed separately. The Agency solicited comment on whether financial responsibility requirements under CERCLA Section 108(b) should be a key Agency focus under a RCRA subtitle D approach. While the Agency received numerous comments urging the Agency to establish financial responsibility as part of the subtitle D option, the CERCLA Section 108(b) option did not receive significant support. EPA did not require financial assurance requirements as part of the 2015 CCR Rule and committed to continue to investigate the use financial responsibility requirements under other statutory authorities.

based on the amount of time needed to implement the requirement. Thus, for some requirements implementation is complete, and for other requirements, activities are ongoing. The implemented standards themselves have materially reduced risk by, for example, imposing structural integrity criteria on surface impoundments holding CCR to help prevent damages that would occur if the unit's embankment or dike failed structurally, such as the dike failure at the TVA Kingston Plant in 2008. One of these criteria is that the surface impoundment must be assessed to demonstrate that the unit design and operation meet minimum factors of safety, and if the unit does not, the surface impoundment must be closed. The deadline to complete this initial assessment was 2016 or 2108, depending on designations in the rule, and represents an important rule protection that has been implemented.[43]

An example of an important risk-reducing requirement of the 2015 CCR rule for which implementation is ongoing is the requirement for groundwater monitoring and corrective action. Owners and operators of landfills and surface impoundments holding CCR are required to install a system of monitoring wells to detect releases of hazardous constituents from the units. If this monitoring shows an exceedance of a groundwater protection standard for specific constituents, corrective action must be taken to remedy the contamination. The groundwater monitoring and corrective action program is an example of a requirement that is ongoing but has already provided meaningful protection by identifying issues and requiring corrective action. Based on information made publicly available by electric utilities, current groundwater monitoring results show that a significant percentage of the electric utilities will need to implement the rule's corrective action program. At this point, electric utilities are at the early stages of implementing the corrective action program.

The 2015 CCR Rule also established timelines and standards for closure and post-closure care. Specifically, the rule requires all CCR units to close in accordance with specified standards and to monitor and maintain the units for a period of time after closure, including the groundwater monitoring and corrective action programs. These criteria help ensure the long-term safety of closed CCR units. EPA expects, based on information made publicly available by the electric utilities, that a significant percentage of CCR surface impoundment will begin closing in the coming years. A small percentage of CCR units have already completed closure under the rule.

As described here, the 2015 CCR Rule is not yet fully implemented; however, the activities associated with the deadlines that have already passed have already reduced risk from coal-fired power plants, including that of a Superfund response being necessary. Moreover, EPA expects that activities associated with the ongoing CCR rule compliance will further reduce risk at these facilities as units are closed in accordance with the prescribed standards and corrective actions taken.

Contamination from PCBs and asbestos is largely addressed by toxic substances management regulations under the authority of the Toxic Substances Control Act (TSCA). TSCA provides EPA with authority to issue rules requiring reporting, record-keeping, and testing of specific chemicals and to establish regulations that restrict the manufacturing (including import), processing, distribution in commerce, use, and disposal of chemicals and mixtures. TSCA authorizes EPA to prevent unreasonable risks by regulating chemicals and mixtures, ranging from hazard warning labels to the outright ban on the manufacture, processing, distribution in commerce or use of certain chemicals and mixtures. TSCA and its amendments have also established specific programs for the management of certain chemicals—namely, PCBs, asbestos, radon, lead, mercury, and formaldehyde.

TSCA section 6(e) establishes a set of requirements that apply throughout the lifecycle of PCBs. Specifically, TSCA prohibits the manufacturing, processing, distribution in commerce, and use of PCBs, except under certain exclusions, exemptions, and authorizations. Regulations implementing TSCA section 6(e), found in 40 CFR part 761, contain certain criteria through which EPA may obtain additional knowledge of the PCB universe. For example, the regulatory use authorization for PCB Transformers generally require owners to register those transformers with EPA. TSCA also established EPA's authority to promulgate rules to prescribe methods for the disposal of PCBs. The TSCA PCB regulations include storage and disposal requirements for specific types of PCB waste which are designed to prevent unreasonable risk of injury to health or the environment. These regulations may dictate comprehensive requirements, such as verification sampling and financial assurance, or may provide for the issuance of an approval (permit) which takes into account factors specific to the facility and serves as an enforceable document that governs PCB activities at that facility. In particular, the PCB regulations provide for the cleanup and disposal of PCB remediation waste through self-implementing provisions, performance-based disposal requirements, and site-specific risk-based approvals. Cleanup and disposal requirements can include notification, sampling, approval requirements, and institutional controls. Regulatory notification provisions for PCB waste activities require facilities to notify EPA of specific PCB activities, including transportation, disposal, storage, R&D/treatment, and certain generation. All affected PCB waste is manifested from the generator to final disposal.

Regulation of asbestos is similarly rigorous. Numerous laws and regulations control the use of asbestos and direct procedures for asbestos abatement. Under TSCA, in 1989, EPA imposed a partial ban on the manufacture, import, processing, and distribution of some asbestos-containing products, and in the April 2019 Significant New Use Rule[44] ensured that other discontinued uses of asbestos cannot reenter the marketplace without EPA review. OSHA has promulgated standards for asbestos exposure in work under 29 CFR 1926.1101. This part sets permissible exposure limits, set standards for restriction of access to regulated areas and require employers to provide respirators for employees in those areas, implement monitoring and exposure assessment testing and frequency requirements, and prescribe engineering controls and work practices for operations to come into compliance. Additionally, EPA's Asbestos Worker Protection Rule, promulgated under the authority of the TSCA, extends these worker protections to state and local government employees involved in asbestos work who are not covered by OSHA's asbestos regulations. Asbestos demolition methods are separately regulated by the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation under the Clean Air Act. The Asbestos NESHAP established requirements that apply to asbestos removal, transportation, and disposal practices from a variety of sources, and is intended to minimize the release of

[43] The 2015 CCR Rule requires that operating surface impoundments must be re-assessed every five years to ensure that the unit remains structurally sound.

[44] *Restrictions on Discontinued Uses of Asbestos* (84 FR 17345, April 25, 2019).

asbestos fibers during activities involving the handling of asbestos.[45]

State Regulatory Programs

Some state regulations impose requirements on the Electric Power Generation, Transmission, and Distribution industry in addition to Federal regulatory requirements. The requirements of current state programs can reduce risk at facilities that manage hazardous substances. EPA researched key state environmental regulations relevant to the Electric Power Generation, Transmission and Distribution industry from states representative of the geographic distribution of facilities. In many cases, states have adopted Federal regulations or incorporate them by reference into state administrative codes. In other cases, states have promulgated their own regulatory regimes that expand on or are more stringent that analogous Federal regulations or implement standalone state regulations. A detailed discussion of state regulations, as well as the methodology EPA used in selecting the 25 states that it researched, is available in the regulation summary background document in the docket for this rulemaking.[46]

States regulations relevant to the Electric Power Generation, Transmission and Distribution industry primarily focus on air pollution. State air regulations are an example of state regulations that set standards that are stricter than Federal regulations. Specifically, states may set air emission standards for emissions other than the six criteria pollutants regulated under the CAA, such as mercury, volatile organic compounds, and visible air emissions. Some states, such as Wisconsin, have issued emission limitation and technology standards for facilities constructed before the implementation of Federal new source requirements; those sources are exempt from the Federal source performance standards.

In addition, state regulations relevant to the Electric Power Generation, Transmission and Distribution industry primarily focus on the management and disposal of CCR wastes. More than half of U.S. states had implemented some form of their own CCR-related monitoring, design/siting, and/or inspection requirements beyond those called for at the Federal level, prior to promulgation of the 2015 CCR Rule. Additionally, most states have been authorized to implement the RCRA Subtitle C program, which applies to certain facilities and waste streams in the Electric Power Generation, Transmission and Distribution industry. For specific substances and operational practices, some states with authorized RCRA programs have imposed requirements that are more stringent than the Federal regulations.

EPA's review of current Federal and state regulations indicates that a framework of requirements is being implemented, that reduces the risks posed by operating facilities in the Electric Power Generation, Transmission and Distribution industry. This risk reduction is critical to understanding ''the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances'' as well as the risk to taxpayers of being required to fund response activities under CERCLA, and thus is a primary factor leading to EPA's proposed decision to not issue financial responsibility requirements for this industry.

Industry Voluntary Practices

EPA reviewed facility Risk Management Plans, industry materials, government literature and academic literature to locate voluntary programs that: (1) Attempt to address CERCLA hazardous substance management, disposal and release prevention, mitigation and response; (2) are relevant to fossil fuel electric power facilities; and (3) in which fossil fuel electric power facilities participated. Industry voluntary programs fall into three categories: Those sponsored by Federal, state, or local governmental agencies; those fostered within industry associations or non-governmental organizations; and those implemented by individual firms. Some of these programs set discharge, emissions and safety standards that supplement Federal and state standards and may come with a certification from the government agency or industry group that promotes the standards. Other programs solicit reporting on emissions or other data in order to publish industry performance reports. EPA's review of available studies found that the industry voluntary programs can be effective at reducing both pollution and the frequency of government enforcement actions. A detailed discussion of industry voluntary practices, as well as the methodology used by EPA, is available in Section II. Industry Voluntary Programs of the regulation summary background document in the docket for this rulemaking.[47]

C. Existing State and Federal Financial Responsibility Programs

To help inform the level of risk associated with classes of facilities in the Electric Power Generation, Transmission and Distribution industry, EPA reviewed existing state and Federal financial responsibility (FR) programs that may be applicable to the industry and that cover a wide range of liabilities including, closure, post-closure care, corrective action, third-party personal injury/property damage, and natural resource damages. EPA focused on these types of FR programs for two reasons. First, these categories of damages, actions and costs are like those that could be covered by CERCLA Section 108(b) rulemaking and thus they help inform the need for CERCLA Section 108(b) FR for this industry. Secondly, the existence of FR requirements can help create incentives for sound practices, reducing the risk of releases requiring CERCLA response action. EPA also sought to identify state cleanup funds that are at least partially funded by industry (*e.g.,* through a tax on hazardous wastes generated), and that could cover future CERCLA liabilities that may arise at electric power facilities. EPA's report focused on the 25 states reviewed in EPA's reports on existing state regulatory and voluntary programs (excluding FR programs) that may be applicable to electric power facilities. Finally, EPA reviewed existing FR requirements in the following Federal programs: (1) RCRA Subtitle C Treatment, Storage, Disposal Facilities; (2) TSCA commercial PCB waste facilities; (3) EPA Safe Drinking Water Act Underground Injection Control wells; (4) U.S. Nuclear Regulatory Commission (NRC) requirements for decommissioning nuclear power reactors; and (5) NRC

[45] *See https://www.epa.gov/asbestos/overview-asbestos-national-emission-standards-hazardous-air-pollutants-neshap#was.*

[46] *Summary Report: Federal and State Environmental Regulations and Industry Voluntary Programs in Place to Address CERCLA Hazardous Substances at Facilities in the Electric Power Generation, Transmission and Distribution Industry,* June 2019. To summarize the state regulatory framework relevant to fossil fuel electric power generation facilities, EPA first determined the geographic distribution of fossil fuel power plants and determined which states contain over 50 percent of these facilities in the United States. Those states are: Pennsylvania, Michigan, Indiana, Illinois, Missouri, Texas, Kentucky, Iowa, Ohio, Wisconsin, Florida, Minnesota, and North Carolina. For a description of EPA's methodology in determining relevant state regulations, see Appendix I. For a comprehensive summary of the relevant state regulations that EPA located, see Appendix III.

[47] *Summary Report: Federal and State Environmental Regulations and Industry Voluntary Programs in Place to Address CERCLA Hazardous Substances at Facilities in the Electric Power Generation, Transmission and Distribution Sector,* June 2019.

insurance requirements for nuclear incidents. The report is available in the docket for this rulemaking.[48]

EPA identified a range of existing FR programs that may be applicable to facilities in the Electric Power Generation, Transmission and Distribution industry. These programs include the Federal programs mentioned above as well as state programs related to:

- Cleanup or corrective action financial assurance for discharges/releases of hazardous waste or hazardous constituents
- Facility remediation FR associated with transfer in ownership or facility closure
- FR for storage tanks containing hazardous substances
- FR included in enforcement orders to assure compliance
- FR specific to coal-fired electric generating facilities
- FR specific to facilities that process or dispose of coal combustion residuals, for example, in coal ash ponds and/or landfills
- FR found in land use/siting permit conditions

The applicability of these programs will depend on a variety of facility-specific factors, for example, use of a specific piece of equipment (*e.g.,* ownership of an underground storage tank that contains regulated substances) or engagement in a specified activity (*e.g.,* a release of a hazardous substance). Furthermore, state financial responsibility programs vary by state and some types of FR programs exist only in subsets of the states reviewed. However, a majority of the states reviewed, 20 of the 25, had financial responsibility programs in place that cover the processing or disposal of coal combustion residuals. EPA believes that state and Federal FR programs help reduce risk at facilities where they are applicable.

D. Compliance and Enforcement History

To understand the experience of courts settlements and judgments, EPA looked at compliance and enforcement in the Electric Power Generation, Transmission and Distribution industry. Compliance assistance, monitoring, and enforcement are important components of the regulatory framework discussed above. Through inspections, compliance monitoring can identify noncompliance at regulated facilities. Enforcement actions impose legal instruments to ensure correction of deficiencies and achieve compliance with environmental requirements. Compliance and enforcement actions have certain functions which EPA considers particularly pertinent to the risk determination for rulemaking under CERCLA Section 108(b). First, through negotiated agreements, EPA can ensure that the responsible party carries out or pays for the cleanup in the event that noncompliance causes release of a hazardous material. Second, enforcement actions can compel a responsible party to return to compliance through instruments such as settlements and orders. Third, the prospect of financial penalties that can accompany these enforcement instruments can encourage compliance. All of these functions support the regulatory structure in reducing risk of Fund expenditures. EPA looked at applicable enforcement authorities as well as historical enforcement and compliance data in the development of this proposal.

EPA obtained data from the EPA Enforcement and Compliance History Online (ECHO) system to provide a review of Federal enforcement from FY1973 through FY2017.[49] Facilities whose primary NAICS codes indicate Electric Power Generation, Transmission and Distribution industry activities (NAICS 2211) were included in EPA's review. ECHO data show that initiatives and normal review or inspection of facilities resulted in over 2000 enforcement cases in the Electric Power Generation, Transmission and Distribution industry from FY1974 through FY2017. CAA (62%) and CWA (12%) cases were the most common. There are a dramatically smaller number of cases in RCRA (6%), CERCLA (5%), and the Emergency Planning and Community Right-to-Know Act (EPCRA) (4%). Further description of this review, which includes details on the topics summarized in this section, is available in the background document ''Enforcement, Court Settlements and Judgments in the Electric Power Generation, Transmission and Distribution Industry'' in the docket for this rulemaking.

1. Relevant Industry-Specific Focused Federal Enforcement Initiatives

One way that EPA's Office of Enforcement and Compliance Assurance focuses enforcement and compliance resources on the most serious environmental violations is with enforcement initiatives that develop and implement national program priorities. Enforcement initiatives are an important tool for identification of noncompliance and subsequent actions to compel return to compliance. Additionally, these initiatives emphasize use of the full range of compliance assurance tools, not only enforcement, and can thereby reduce risk by helping facilities prevent releases that might otherwise be caused by noncompliance. In recent years, facilities in the Electric Power Generation, Transmission and Distribution industry were included in two initiatives:

a. Ensuring Energy Extraction Sector Compliance With Environmental Laws

This initiative focuses on significant public health and environmental problems, including exposure to significant releases of volatile organic compounds, reducing CAA non-attainment, and reducing water quality impairment. The background document[50] details some of the relevant initiative inspection and NAICS 2211 enforcement results from FY2011 through FY2017.

b. Reducing Air Pollution From the Largest Sources

This initiative focused on ensuring that large industrial facilities, like coal fired power plants, comply with the Clean Air Act when building new facilities or making modifications to existing ones. This initiative benefited human health and the environment with significant cuts in air emissions, especially from coal fired power plants, since it began in 2005.

2. Enforcement of Recent Electric Power Generation, Transmission and Distribution Industry Federal Requirements

At the time of promulgation, EPA lacked the authority to enforce the 2015 CCR Rule.[51] Enforcement was by citizen suits only, although the Agency could use its authorities under RCRA § 7003 to address conditions that may present an ''imminent and substantial endangerment.'' The Water Infrastructure Improvements for the

[48] *Review of Existing Financial Responsibility Laws Potentially Applicable to Classes of Facilities in the Electric Power Generation, Transmission, and Distribution Industry,* June 2019.

[49] ECHO does not include all of EPA's compliance and enforcement activity because regions are not required to report ''informal actions,'' and it does not consistently capture all state actions.

[50] *Enforcement, Court Settlements and Judgments in the Electric Power Generation, Transmission and Distribution Industry,* June 2019.

[51] The 2015 CCR Rule was promulgated under Subtitle D of RCRA, and at the time of rule promulgation in 2015, it did not require the states to adopt or implement the regulations or to develop a permit program. It also did not provide a mechanism for EPA to approve a state permit program to operate ''in lieu of'' the Federal regulations.

Nation (WIIN) Act [52] was signed in December of 2016 and expanded the enforcement authorities available to EPA. The Act states that EPA may use its information gathering and enforcement authorities under RCRA Sections 3007 and 3008 to enforce the 2015 CCR Rule or permit provisions.[53] At this time, no cases of Federal enforcement of this regulation have yet been concluded.

a. Review of Enforcement Response Actions

Enforcement cases can include instances where removal action, release reduction, or return to compliance include the removal of contaminated media by the responsible party. Measures to remove contamination may be required in enforcement orders under the range of environmental statutes and are negotiated to require activities aligned with return to compliance.[54] In this situation, taking an enforcement action directly reduces risks to human health and the environment. During the period FY2012 through FY2017, 14 settled Electric Power Generation, Transmission and Distribution industry enforcement cases were identified as those where removal of contaminated media occurred. Six of these are CERCLA cases and five are CWA cases. One CAA and two TSCA cases are also included.

The substances removed are generally categorized as metals, hydrocarbons, and hazardous chemicals. These cleanups arising from Federal enforcement actions mitigated risks to human health and the environment by removing soils, groundwater, and sediments contaminated by a variety of substances, and reduced likelihood of impact to the Fund.

b. Total Value of Enforcement Settlements and Judgments

Settlements and judgments in enforcement cases can result in financial penalties, supplemental environmental projects (SEPs), and activities required to return to compliance.[55] Enforcement settlements and judgments can ensure that the responsible party conducts or pays for cleanup, drive a return to compliance, and incentivize compliance. For all enforcement cases from FY1974 through FY2017 in the Electric Power Generation, Transmission and Distribution industry, the total penalties recovered are over $415 million, the total value of SEPs is over $129 million, and the total compliance activity estimates are over $34.2 billion, all in 2017 inflation-adjusted dollars.

3. Review of Major CERCLA and RCRA Cases

As stated in the cleanup site evaluations in Section VII.A., particular consideration was given to CERCLA and RCRA regulations as relevant components of the modern regulatory framework that applies to the Electric Power Generation, Transmission and Distribution industry. There have been over 224 CERCLA and RCRA cases brought in this industry, beginning in 1984. The ten largest CERCLA or RCRA enforcement settlements and judgments for the Electric Power Generation, Transmission and Distribution industry have 2017 inflation-adjusted values ranging from over $250,000 to $1.1 billion. Further discussion of the details on the Federal actions for these and additional criminal cases can be found in the background document ''Enforcement, Court Settlements and Judgments in the Electric Power Generation, Transmission and Distribution Industry.'' This document identifies facilities where noncompliance was identified and was addressed by means of formal Federal enforcement. The scope of the background document does not include either facilities where noncompliance was addressed through informal enforcement, facilities where noncompliance was addressed by a state, or facilities that are in compliance.

The compliance and enforcement actions documented here and in the background document show that where noncompliance is identified, the preponderance of industry responsible parties are conducting or paying for cleanups, returning to compliance, and improving public health and the environment. Although enforcement actions alone do not completely supplant the need for Fund-financed response actions in the Electric Power Generation, Transmission and Distribution (as discussed in section VIII, below), effective criminal, administrative and judicial enforcement demonstrates proper functioning of this component of the modern regulatory framework. Enforcement thus serves as a complementary element supporting the overall conclusion that CERCLA 108(b) financial assurance is not necessary.

VIII. Decision To Not Propose Requirements

Based on consideration of the analyses described in the previous sections, EPA has reached a conclusion that the degree and duration of risk posed by the Electric Power Generation, Transmission and Distribution industry does not warrant financial responsibility requirements under CERCLA Section 108(b) and thus is proposing to not issue such requirements. The analysis and proposed finding in this proposal are not applicable to and do not affect, limit, or restrict EPA's authority to take a response action or enforcement action under CERCLA at any facility in the Electric Power Generation, Transmission, and Distribution Industry, including any currently operating facilities or those described in this proposal and in the background documents for this proposal, and to include requirements for financial responsibility as part of such response action. The set of facts in the rulemaking record related to the individual facilities discussed in this proposed rulemaking support the Agency's proposal not to issue financial responsibility requirements under Section 108(b) for this class, but a different set of facts could demonstrate a need for a CERCLA response action at an individual site. This proposed rulemaking also does not affect the Agency's authority under other authorities that may apply to individual facilities, such as the CAA, the CWA, RCRA, and TSCA.

EPA believes the evaluation of the Electric Power Generation, Transmission and Distribution industry demonstrates significantly reduced risk at current Electric Power Generation, Transmission and Distribution operations. The reduction in risks due to the requirements of existing regulatory programs and voluntary practices combined with reduced costs to the taxpayer, demonstrated by EPA's cleanup case analysis, existing financial responsibility requirements, and enforcement actions, reduce the need for federally-financed response action at facilities in the Electric Power

[52] Public Law 114–322.

[53] Section 2301 of the WIIN Act, 42 U.S.C. 6945(d), amended RCRA to allow States to submit permit (or other system of prior approval and conditions) programs to EPA for approval. The Act states that if a state CCR permitting program is approved by the Agency (known as a participating state), those permits will operate ''in lieu of'' the Federal regulations in part 257. The Act states that EPA will develop permits for those units located in tribal lands and, if given specific appropriations, EPA will develop a permitting program for those units located in non-participating states.

[54] These ECHO enforcement removals are separate from the Superfund removals analyzed elsewhere. ECHO system data includes the combined value of total enforcement financial penalties, Supplemental Environmental Projects (SEPs), and associated compliance activity.

[55] Compliance actions ordered can include the removal of contaminated media, installation of new equipment, or implementation of compliant processes.

Generation, Transmission and Distribution industry. EPA looked at current industry practices, market structure and economic performance of the industry; analyzed cleanup cases and CCR proven damage cases for facilities in the industry to identify risk; evaluated the extent to which the industry and sources of releases are covered by a modern regulatory framework, the degree to which taxpayers have been called upon to pay for cleanup, and EPA enforcement history in the industry.

As discussed in Section VII.A., EPA identified a small number of cleanup cases that occurred under a modern regulatory framework and also entailed some Fund expenditure. Overwhelmingly, however, the industry was found to be practicing responsibly within the current regulatory framework, with just 2 sites out of the 10,330 establishments in the industry indicating a significant impact to the Fund under a modern regulatory framework. The language in Section 108(b) on determining the degree and duration of risk and on setting the level of financial responsibility confers a significant amount of discretion on EPA. It is EPA's assessment that the small set of federally-funded cleanup cases due to recent contamination does not warrant the imposition of financial responsibility requirements on the entire Electric Power Generation, Transmission and Distribution industry under CERCLA Section 108(b).

EPA's analysis of Superfund cleanup cases, supplemented by a review of CCR damage cases, found that the most prevalent source of contamination stemmed from unlined or leaking CCR surface impoundments and landfills. Requirements under the newly-imposed regulatory structure of the 2015 CCR Rule specifically target this CCR risk, minimizing the likelihood of future contamination from this source incurring liabilities to the Fund. EPA believes the 2015 CCR rule requirements, both those implemented and those with ongoing implementation, significantly reduce the risk of a Superfund response being necessary at these facilities. The Agency believes this risk reduction is particularly notable in light of coal fired power plant sector's minimal impact on Superfund resources to date as indicated by the review of NPL, SAA and removal sites associated with the sector.

The analysis of removal cases found PCB and asbestos contamination to be the leading causes of removal actions in the industry. The current regulatory framework, including application of the TSCA and RCRA regulations, limits the use of these contaminants and requires both proper disposal and cleanup of these contaminants when releases do occur.

EPA acknowledges that regulations do not always prevent releases, and the risk of a release is lessened but never eliminated by existing Federal and state environmental regulations. However, EPA believes that the network of Federal and state regulations creates a comprehensive framework that applies to prevent releases that could result in a need for future cleanup. In addition, enforcement settlements and judgments that force return to compliance are effective components of the applicable regulatory structure. EPA's analysis of enforcement history shows that enforcement of the applicable regulations provides a lever to monitor compliance, obtain responsible party cleanups, and recover financial penalties. Federal and state regulatory programs, backed up by effective enforcement and complemented by industry voluntary practices, have improved public health and the environment significantly since CERCLA's initial adoption over 40 years ago. EPA believes within the Electric Power Generation, Transmission and Distribution industry this framework provides effective controls which protect human health and the environment.

Examination of market structures for the Electric Power Generation, Transmission and Distribution industry further indicates comparatively low likelihood of default on environmental obligations at the expense of taxpayers and the government by companies in this industry. This economic performance combined with the low impact to the Fund by facilities with releases that happened under the modern regulatory framework, suggests that the degree of risk to the Fund by this industry does not rise to a level that warrants CERCLA Section 108(b) financial responsibility requirements.

For these reasons, EPA is proposing today to not issue financial responsibility requirements under CERCLA Section 108(b) for this industry.

A. Solicitation of Public Comment on This Proposal

EPA solicits comments on all aspects of this proposal. EPA is specifically interested in receiving comments on several issues and requests the following information:

- Examples of Electric Power Generation, Transmission and Distribution industry related response actions related to releases which took place under the modern regulatory framework where potentially responsible parties (PRPs) did not lead the response at the facility.
- Examples of Electric Power Generation, Transmission and Distribution industry related response actions related to releases which took place under the modern regulatory framework where PRPs have not taken financial responsibility for their environmental liabilities.
- Information on state-lead or other Federal agency cleanups or instances of natural resource damages associated with this industry that may supplement the information on cleanups gathered and analyzed for this proposal.
- Information about existing Federal, state, tribal, and local environmental requirements for the Electric Power Generation, Transmission and Distribution industry relevant to the prevention of releases of hazardous substances that were not evaluated as part of this proposal.
- Information about financial responsibility requirements applicable to the Electric Power Generation, Transmission and Distribution industry that were not evaluated as part of this proposal.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review, because it may raise novel legal or policy issues [3(f)(4)]. Any changes made in response to OMB recommendations have been documented in the docket for this rulemaking. EPA did not prepare an economic analysis for the proposed rule, since this action imposes no regulatory requirements.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because this proposed rule would not result in additional cost.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this action does not impose any regulatory requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments, because this action does not impose any regulatory requirements.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government, since this action imposes no regulatory requirements.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, because this action imposes no regulatory requirements. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, since this action imposes no regulatory requirements.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy, since this action imposes no regulatory requirements.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard, since this action imposes no regulatory requirements.

List of Subjects in 40 CFR Part 320

Environmental protection, Electric power, Financial responsibility, Hazardous substances.

Dated: July 2, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–15094 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2018–0332]

RIN 2126–AC23

Commercial Driver's License Out-of-State Knowledge Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The FMCSA proposes to allow driver applicants to take the commercial driver's license (CDL) general and specialized knowledge tests in a State (the testing State) other than the applicant's State of domicile. Under this proposed rule, a State would not be required to offer the knowledge tests to out-of-State applicants. However, if the testing State elects to offer the knowledge tests to these applicants, it would transmit the results to the State of domicile, which would be required to accept the results. Because this proposal would not change the existing standards for administration of the knowledge tests, the Agency concludes it would have no detrimental impact on safety.

DATES: Comments on this notice must be received on or before September 27, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2018–0332 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at 202–366–0831 or by email, *nikki.mcdavid@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2018–0332), indicate the specific section of this document to which each section applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0332, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is exempt from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0332, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America's Surface Transportation Act, Public Law, 114–94 (FAST Act), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule'' (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to lead to the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

Purpose of the Regulatory Action

To promote further flexibility in the CDL issuance processes, FMCSA proposes to allow driver applicants to take the CDL knowledge tests required by 49 CFR 383.25(a)(3), 383.25(a)(5), and 383.95(c)(1) and (4), in any State (the testing State), when that State is other than the applicant's State of domicile. Under this proposed rule, the testing State would transmit the driver applicant's knowledge testing results to the State of domicile. The NPRM applies to the general knowledge test for the CLP, as well as specialized knowledge tests for the passenger (P), school bus (S), tank vehicle (N), double/triple trailer (T), and hazardous materials (H) endorsements, therefore the testing state may be transmitting more than one test result. The State of domicile would be required to accept the results of the knowledge test(s) in fulfillment of the applicant's testing requirements, as long as all other requirements under 49 CFR 383.71 have been met. The purpose of the proposal is to facilitate a driver applicant's ability to take the knowledge test(s) outside the State of domicile, while maintaining the ''one driver/one license/one record'' requirement described below. It would also make the knowledge testing process more consistent with the skills testing process, which may already be conducted outside the State of domicile, with the test results required to be sent back to the domicile State (49 CFR 383.79(a)) and the license issued by the domicile State. Because this proposal would not change the standards for administration of the knowledge tests, the Agency concludes it would have no detrimental impact on safety.

Costs and Benefits

FMCSA evaluated the potential for the proposed rule to result in incremental costs and benefits. The Agency determined that the proposed rule is not a significant regulatory action as defined in Executive Order (E.O.) 12866 or within the meaning of DOT regulatory policies and procedures. The proposed rule may result in costs for States to adapt procedures or information systems to accept out-of-State knowledge test results. Increasing the flexibility of driver applicants to take a knowledge test in any State may reduce driver costs in terms of time and travel expenditures associated with returning to their State of domicile. Improving access to training programs that best suit drivers' needs may also increase the number of driver applicants and positively impact both the supply and skill level of CDL holders. However, the Agency is unable to quantify these potential impacts, for reasons which are discussed further below in section IX.

III. Legal Basis for the Rulemaking

This proposed rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984, as amended (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935, as amended (MCA) (chapter 498, 49 Stat. 543, 49 U.S.C. 31502).

The CMVSA, implemented in 49 CFR parts 383 and 384, provides that ''[a]fter consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses and learner's permits by the States . . .'' (49 U.S.C. 31308). More specifically, the statute requires that: An individual may have only one CLP at a time; applicants must first pass a knowledge test that complies with minimum standards prescribed by the Secretary; and the CLP document must have the same information and security features as the CDL (49 U.S.C. 31302, 31308(2)–(4)). Additionally, 49 U.S.C. 31309(b) requires that a driver's record must be created for each CLP holder in the Commercial Driver's License Information System (CDLIS). Section 31311(a)(12)(A) requires that the State issue a CDL only to drivers domiciled in that State. This NPRM proposes to establish procedures for the issuance of CLPs by the State of domicile when the applicant takes and passes the knowledge test required by 49 CFR 383.25(a)(3) in a State other than the applicant's State of domicile.

The MCSA, which confers authority to the Secretary of Transportation to

regulate drivers, motor carriers, and commercial motor vehicles (CMVs), requires the Secretary to ''prescribe regulations on commercial motor vehicle safety.'' (49 U.S.C. 31136(a)). At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) CMV drivers are not coerced to operate a CMV in violation of a regulation promulgated under 49 U.S.C. 31136(a) or chapters 51 and 313 of title 49. This proposed rule, like all of the Agency's CDL regulations, is based in part on the requirements of 49 U.S.C. 31136(a)(1) and (2) that CMVs be ''operated safely'' and that ''the responsibilities imposed on [CMV drivers] do not impair their ability to operate the vehicles safely.'' The changes to 49 CFR part 383 proposed in this rule are intended to facilitate drivers' ability to choose CMV training that best suits their needs. This NPRM does not directly address medical standards for drivers (49 U.S.C. 31136(a)(3)) or possible physical effects caused by operating a CMV (49 U.S.C. 31136(a)(4)). The Agency does not anticipate that this proposal would result in the coercion of CMV drivers (49 U.S.C. 31136(a)(5)).

The MCA authorized the Secretary of Transportation (Secretary) to prescribe requirements for the ''qualifications . . . of employees'' of for-hire and private motor carriers (49 U.S.C. 31502(b)). This rule, like all the Agency's CDL regulations, is based in part on that authority and is intended to ensure the qualifications of individuals who obtain a CLP.

Additionally, FMCSA is required to consider ''costs and benefits'' of any regulations prescribed under the authority of the MCSA or the MCA (49 U.S.C. 31136(c)(2)(A), 31502(d)). Those factors are addressed below.

Finally, the Administrator of FMCSA is delegated authority under 49 CFR 1.87(e)(1), (f) and (i) to carry out the functions vested in the Secretary by 49 U.S.C. chapters 313, 311, and 315, respectively, as they relate to CMV operators, programs, and safety.

IV. Background

The purpose of the CMVSA was twofold: (1) To improve highway safety by ensuring that drivers of large trucks and buses were qualified to operate those vehicles, and (2) to remove unsafe, unqualified drivers from our Nation's highways. As noted above, the CMVSA furthered these goals by imposing minimum CDL licensing standards and requiring States to comply with them in order to avoid the withholding of certain Federal funds (49 U.S.C. 31314). Central to this legal framework was the ''domicile requirement,'' which mandated that ''the State may issue commercial drivers' licenses only to those persons who operate or will operate commercial motor vehicles and *are domiciled in the State*'' [emphasis added] (49 U.S.C. 31311(a)(12)(A)). The implementing regulation provides that ''no person may legally operate a CMV unless such person possesses a CDL . . . issued by his/her State of jurisdiction or domicile.'' (49 CFR 383.23(a)(2)). Congress enacted the domicile requirement, referred to here as the ''one driver/one license/one record'' principle, as a means of preventing drivers from masking traffic violations or other disqualifying offenses in one State by applying for and receiving a ''new'' commercial license in another State.

Following Congress's enactment of amendments to 49 U.S.C. chapter 313, FMCSA published a final rule to implement those changes, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards,'' on May 9, 2011 (2011 Final Rule) (76 FR 26854). The 2011 Final Rule added 49 CFR 383.79 to the Federal Motor Carrier Safety Regulations (FMCSRs), which, as noted above, provides that a person who holds a CLP would be able to take the CDL skills test outside of his/her State of domicile. The testing State would then send the skills test results to the State of domicile, which would be required to accept the results. The issue of knowledge testing outside the State of domicile was not raised during the 2011 rulemaking.

On October 13, 2016, FMCSA published ''Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver's License Act of 2012'' (2016 Final Rule) (81 FR 70634). The 2016 Final Rule allows, but does not require, a State to accept applications from active duty military personnel who are stationed in that State, as well as administer the knowledge and skills tests for a CLP or CDL, including, as applicable, specialized knowledge tests for endorsements. States that choose to accept such applications are required to transmit the test results electronically to the State of domicile of the individual. The State of domicile may then issue the CLP or CDL on the basis of those test results.

In January 2017, the American Trucking Associations (ATA) requested regulatory guidance clarifying that State Driver Licensing Agencies (SDLAs) may accept the results of knowledge tests taken in another State to ease the travel burden on driver applicants attending a truck driver training school outside their State of domicile. The Agency responded to ATA's request by publishing ''Commercial Driver's License Standards: Regulatory Guidance Concerning the Issuance of Commercial Learner's Permits'' on August 3, 2017 (August 2017 Guidance) (82 FR 36101).

The August 2017 Guidance, which is consistent with the 2016 Final Rule, is predicated on the existence of an agreement between the testing State and State of domicile prior to the general knowledge test being administered by the testing State. It also emphasizes that the responsibility for compliance with all requirements of 49 CFR 383.71 and 383.73 remains with the State of domicile. FMCSA also stated that the guidance should not be construed to allow a State to issue a CLP or CDL to an individual who is not domiciled in that State. If this NPRM results in the publication of a final rule, the August 2017 Guidance would be obsolete at that point and would be rescinded.

The procedure for transmitting skills test results between States is already in place as a result of the 2011 Final Rule. To facilitate States' compliance with the 2011 Final Rule, the American Association of Motor Vehicle Administrators (AAMVA) developed two web-based systems for the electronic transmission of skills test results: The Commercial Skills Test Information Management System (CSTIMS) and the Report Out-of-State Test Results (ROOSTR). AAMVA continues to manage these systems and makes them available to the States at no charge. All States currently use one of these two systems to transmit or receive skills test results. After the publication of the August 2017 Guidance, AAMVA modified each of these systems to also allow transmission of the knowledge test results.

FMCSA's informal dialogue with SDLA personnel in early 2018 revealed that no State has yet opted to act pursuant to the August 2017 Guidance. Primary reasons cited were the need for enabling legislation by the individual State legislatures and the fact that such legislation was not likely to be forthcoming without definitive Federal regulatory requirements. Additionally, some States indicated they were

focusing their limited resources on implementing other Federal requirements.

In July 2018, Secretary of Transportation Elaine L. Chao received a letter from 19 members of Congress requesting that FMCSA enact regulations requiring a State of domicile to accept the results of a knowledge test administered by another State in which the applicant received training. The letter, which is available in the docket of this rulemaking, cited a growing trend within the motor carrier industry to develop in-house central training sites to recruit and train new drivers from across the country. The letter further explained that these applicants are often unable to afford the financial burden associated with the travel requirement back to the State of domicile, from the State in which training takes place, in order to take the knowledge test and obtain the CLP. Finally, the letter emphasized that such a rule would not undermine the ''one driver/one license/one record'' principle, as the State of domicile would still be required to issue the credential. This NPRM responds to the concerns raised in the July 2018 Congressional correspondence.

V. Discussion of Proposed Rulemaking

This proposal would modify 49 CFR 383.79(a)(1) and (2) by permitting a State to administer the knowledge test(s) to an out-of-State applicant, and by requiring the State of domicile to accept those knowledge testing results. Under the proposed rule, a State would not be required to offer knowledge testing to out-of-State applicants. This approach is consistent with the current language of 49 CFR 383.79(a)(1), which permits, but does not require, a State to administer the skills test to out-of-State driver applicants who obtain training in that State. The NPRM provides that, where a State does elect to administer a knowledge test to out-of-State applicants, the State must administer that test in accordance with the current standards set forth in subparts F, G, and H of 49 CFR part 383. These include: Testing requirements for specific vehicle groups and endorsements, general and specialized areas of knowledge that must be tested, and testing manuals and methods. However, under the proposal, out-of-State applicants would not be required to obtain knowledge training in the testing State.

The Agency proposes to include all required knowledge testing within the scope of this proposal, in order to avoid a situation in which a driver applicant may take the general knowledge test out of State, but must return to their State of domicile to take a specialized knowledge test for one or more endorsements. For example, an individual who wants to become a commercial bus driver must take the general knowledge test for the CLP, as well as the knowledge test for the P endorsement. Under the NPRM, the testing State could permit the driver applicant to take both knowledge tests. Additionally, current CDL holders may wish to upgrade their license by adding an endorsement; under this proposal, they could also take the applicable knowledge test(s) outside their Sate of domicile, if the testing State offers that option. When a driver applicant passes the knowledge test(s), the testing State would transmit the results to the State of domicile through a secure, safe, electronic means, which would be required to accept those results in fulfillment of the applicant's testing requirements.

FMCSA intends to simplify the task of obtaining a CLP or endorsement for applicants wishing to take the knowledge test(s) outside their State of domicile, while maintaining the ''one driver/one license/one record'' requirement. In the Agency's judgment, the NPRM would not adversely impact safety because the current standards for administering the knowledge test(s) would not change. All driver applicants are subject to the same pool of test questions, regardless of the State in which testing occurs. ''States must use the FMCSA pre-approved pool of test questions to develop knowledge tests for each vehicle group and endorsement'' (49 CFR 383.133(b)(1)). The pool of questions comes from AAMVA's ''2005 CDL Test System (July 2010 or newer Version) 2005 Test Item Summary Forms.'' Each test administered must have a set number of questions overall, with a prescribed number of questions from each of the knowledge topic areas described in 49 CFR 383.111. Under § 383.135(a), driver applicants must correctly answer at least 80 percent of knowledge test questions to achieve a passing score. A State of domicile, therefore, may accept knowledge test results from a testing State and issue the CLP without concern that different States may have different testing standards.

Additionally, this proposal would reduce travel time and other associated costs for applicants who choose to obtain CMV driver training outside their State of domicile and would otherwise have to return to their State of domicile for knowledge testing and issuance of the physical CLP or upgraded CDL. To the extent that reducing travel costs associated with out-of-State training increases the number of applicants or applicant access to high-quality training programs, there could be positive impacts on driver safety. However, the Agency does not have data indicating such an effect. FMCSA invites qualitative or quantitative information addressing the potential benefits of the NPRM.

FMCSA anticipates that this proposal would require States to modify their current CLP and CDL upgrade issuance processes to some extent. For example, because the State of domicile would remain responsible for ensuring compliance with 49 CFR 383.71 and 383.73, the SDLA would need to permit the driver applicant to apply for a CLP before completing the knowledge test in the testing State.

After accepting knowledge test results from the testing State, the State of domicile would issue the CLP or endorsement to the applicant in accordance with current requirements set forth in 49 CFR part 383. Under the ''one driver/one license/one record'' requirement, a State could not issue a CLP or endorsement to an individual who is not domiciled in that State; only the State of domicile may create the Commercial Driver's License Information System (CDLIS) driver record and issue the physical CLP (with a P, S, or N endorsement, if applicable [1]), or add an endorsement to a driver's existing CDL. The State of domicile would need to establish a process for delivering the physical CLP, or upgraded CDL, to the driver applicant in other than the State of domicile. It would be up to the State of domicile to determine method(s) of delivery that would allow the applicant to receive the CLP or upgraded CDL.

As noted above, the process for transmitting knowledge test results between States, through either CSTIMS or ROOSTR, is already in place. States will need to integrate this capability into their own systems and procedures. The Agency notes, however, that transmission of test results through either CSTIMS or ROOSTR does not require any changes to CDLIS.

Finally, the Agency typically allows three years for the States to come into compliance with regulatory changes. Would a three-year compliance date allow sufficient time for States to accomplish changes in their laws and procedures necessary to implement the proposed requirements? Given that the

[1] Under 49 CFR 383.25(a)(5)(iv), the P, S, and N endorsements are the only endorsements permitted on a CLP. Note that a CLP does not require an endorsement.

functionality to transmit knowledge test results currently exists in CSTIMS and ROOSTR, could the proposed requirements be implemented within two years? FMCSA seeks comment and supporting data addressing the length of time States would need to comply with the changes proposed in the NPRM.

VI. Questions

The Agency requests that commenters address the questions below, but also welcomes comments or questions on any other issues related to this proposal.

1. To what extent will SDLAs need to adapt existing procedures and processes to receive out-of-State knowledge testing results and remotely deliver the physical CLP or upgraded CDL? What are the costs associated with making these changes?
2. What additional State implementation concerns are raised by today's proposal?
3. Would two years, or three years, allow SDLAs sufficient time to achieve compliance with the proposed requirement to accept any out-of-State knowledge test results? Please explain the basis for your preferred compliance date.
4. If this proposal is finalized, would your SDLA offer knowledge testing to out-of-State CLP applicants or CDL holders wishing to add an endorsement to their license? Why or why not?
5. Would the proposed changes allow applicants who take driver training outside their State of domicile to obtain a CLP or upgraded CDL more efficiently? If so, please provide specific examples of time or cost savings that may accrue if the proposed changes were adopted.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VIII. Section-by-Section Analysis

The text of 49 CFR 383.79 would be revised by adding new paragraph (a)(1) permitting a State to administer the general knowledge test, and/or specialized knowledge tests, to a CLP or endorsement applicant who is to be licensed in his or her State of domicile and requiring the testing State to transmit the knowledge testing results to the applicant's State of domicile. New paragraph (a)(2) would require the CLP applicant's State of domicile to accept knowledge testing results from the testing State in fulfillment of the applicant's testing requirements under § 383.71 and the State's test administration requirements under § 383.73. Current paragraph (a) would be re-designated as new paragraph (b); current paragraph (b) would be re-designated as new paragraph (c). Section 383.79 would be re-titled ''Knowledge and driving skills testing of out-of-State applicants; knowledge and driving skills testing of military personnel'' to reflect the proposed revisions to the current regulatory text, as summarized above.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA evaluated the potential impacts of the proposed rule and determined that it is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). Accordingly, the Office of Management and Budget has not reviewed it under that Order. The proposed rule also is not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6 dated December 20, 2018). The Agency's analysis follows.

Baseline

The Agency's previous regulatory guidance on 49 CFR part 383—Commercial Driver's License Standards Section 383.73 State Procedures (82 FR 36101 (Aug. 3, 2017)) clarifies that Section 383.73 does not prohibit States from accepting and processing CLP applications from out-of-State applicants (*e.g.,* individuals who are not domiciled in the State but who receive training there) and administering the general knowledge test to such applicants, provided there is agreement between the testing State and the applicant's State of domicile. In September 2018, AAMVA made available to States the capability to receive knowledge test results from other States within CSTIMS and ROOSTR. As noted above, to date, no States are using the capability to transmit out-of-State knowledge test results under the existing guidance.

The new capability allows the testing State to enter knowledge testing results in the web-based system. States that opt to receive email notifications will receive notification that an applicant in their State has taken a knowledge test. The State of domicile is then responsible for posting the results to the driver record.

States currently access CSTIMS and ROOSTR through different platforms and use different procedures to receive the results of skills tests taken out of State. These existing systems and procedures will impact the manner in which States comply with the proposed rule and receive out-of-State knowledge test results.

Impact of the Proposed Rule

If this proposed rule results in a final rule, FMCSA would rescind the current guidance, which otherwise expires on August 3, 2022. The proposed rule would allow, but not require, States to administer general and specialized knowledge tests to out-of-State drivers applying for a CLP, and specialized knowledge tests to CDL holders wishing to upgrade their license by adding an endorsement. However, the proposed rule would require the State of domicile to accept results from the testing State. Therefore, all States would have to be capable of accepting knowledge testing results transmitted from the testing State. FMCSA also notes that, as explained above, the proposed rule would permit out-of-State knowledge testing for all endorsements, in contrast to the current guidance, which addresses only the general knowledge test required under 49 CFR 383.25(a)(3). That guidance was issued in response to stakeholders' request for clarification that the general CLP knowledge test could be taken out of State.

The State of domicile would need to allow the individual to apply for a CLP or endorsement prior to taking the applicable knowledge test(s) in the testing State. States also may have to develop procedures for receiving results of the knowledge test(s) from out of State. The extent of changes needed will depend on the existing platform and current processes for accepting the skills test results. For example, States that implemented a manual process for receiving skills test results may use a similar process to receive knowledge test results. On the other hand, States that currently receive skills test results automatically may need only minor incremental programming changes to add the ability to receive knowledge test results in the same manner.

Costs

Costs to implement changes to State licensing procedures and information technology (IT) systems may include upfront (onetime) and ongoing costs (or

cost savings) for each entity. Onetime costs may involve State personnel time to plan, develop practices, implement system changes, revise outreach materials, and train staff. Associated onetime IT system changes may involve programming, testing, and training costs which may include State or contractor personnel time. The extent to which these activities would be incremental costs attributable to the rule will depend in part on the ability of States to coordinate changes with other needed maintenance and revisions.

Once able to receive results of out-of-State knowledge testing States may also incur ongoing incremental costs (or cost savings) associated with the new procedures, depending on the specific changes. For example, a manual procedure would impact State personnel time in the State of domicile each time a testing State transmits test results. There may also be some transfer of costs from one State to another depending on the specific procedures that States adopt for remote delivery of the physical CLP or upgraded CDL. These effects would depend on the extent to which States elect to administer knowledge tests to out-of-State drivers, thus necessitating that the State of domicile receive the test results and issue a CLP or upgraded CDL.

Given the interest from members of Congress and the ATA, the Agency expects that at least some States would allow out-of-State drivers to take the knowledge test(s) to better accommodate truck and bus driver schools operating a centralized training model within their boundaries. In comments submitted on the Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012 (Docket number: FMCSA–2016–0051), ATA discussed training schools that use a centralized training model. According to ATA, under this model, these schools incentivize students through discounted tuition and potential employment to travel to another State for CDL training. The July 2018 Congressional letter to Secretary Chao, discussed above, also noted a trend toward central training sites to recruit and train new drivers from across the country.

For the 34 States that have fully adopted CSTIMS, FMCSA estimates that on average approximately 22,000 applicants take the skills test out of State annually (out of an approximate 205,000 who take the test and pass in these States). The number of skills tests taken in States that use limited CSTIMS functions or that use ROOSTR are not tabulated or reported. Some States may also elect to offer out-of-State knowledge testing to these applicants. However, since ongoing costs are likely to be highly State-specific and the Agency has no basis to estimate how many States would allow out-of-State drivers to take the knowledge test(s), the Agency is unable to quantify these costs. The Agency invites comments on the level of interest among the States in permitting out-of-State drivers to take the knowledge test(s) and anticipated State-level costs.

Finally, potential driver applicants may experience minor cost savings (*e.g.,* opportunity costs of time and travel) depending on how they would obtain knowledge training, take the knowledge test, and obtain a CLP in the absence of the proposed rule. For example, the ATA comments and the 2018 Congressional letter note that centralized training schools recruit candidates from all over the nation who then must incur the time and expense of returning to their State of domicile to take the knowledge test and obtain their CLP. However, the Agency does not have data on the amount and value (opportunity cost) of that time and travel expense in comparison to the baseline level of expenditures.

Benefits

As noted above, all States must use the FMCSA preapproved pool of test questions to develop knowledge tests for each vehicle group and endorsement. Because the State in which a driver takes the knowledge test does not change the potential content covered, the Agency does not anticipate that this NPRM would adversely impact safety. The Agency does not have data on the impact the flexibility to take the knowledge test(s) out of State will have on the pool or skill level of CDL holders. In their 2016 comments, ATA touts the success of the centralized training model in terms of favorable knowledge and skills test pass rates. To the extent this proposal would further accommodate the centralized training model, the Agency invites comment and supporting data addressing the safety impact of the NPRM.

Uncertainties

There are a number of uncertainties associated with the Agency's regulatory evaluation, primarily related to data limitations. Due to the variety of State-based CDL IT systems and procedures, the extent to which these would need to be modified to comply with the proposed rule will vary by State. The Agency does not have data on either the approach each State will take to interface with the CSTIMS/ROOSTR capability to receive knowledge test results or their intent to offer knowledge tests to out-of-State applicants. In addition, the number of applicants who will take knowledge tests out of State, and the costs saved from reducing travel time and cost under the proposed rule, is not known.

In considering these data limitations, the Agency determined that more or better information to quantify costs and benefits would not likely change its selection of the regulatory alternative (compared to the ''no action'' alternative). Also, the proposed rule represents a logical extension to the existing requirement to accept skills test results administered out of State and, given the capabilities already in place, only relatively minor changes may be needed for compliance. Therefore, in the interest of providing flexibility to the CDL program in a relatively short timeframe, the Agency has not pursued a data collection effort to obtain estimates from the States to fill in these data gaps.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This proposed rule is considered an E.O. 13771 deregulatory action. The Agency cannot estimate the cost savings; however, the cost savings are discussed qualitatively in the rule's economic analysis.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

As described above, this proposal, if issued as a final rule, may result in necessary expenditures by States to receive knowledge testing results from applicants who take the knowledge test(s) outside their State of domicile. Neither States nor applicants are small entities. In addition, the CDL Program Implementation (CDLPI) grant program

provides financial assistance to States to achieve compliance with the requirements of 49 CFR parts 383 and 384. Allowable costs under the CDLPI grant awards include, but are not limited to, expenses for computer hardware and software, publications, testing, personnel, training, and quality control.

As discussed above, FMCSA has considered whether the proposed rule would have a significant economic impact on a substantial number of small entities. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning the provisions or options for compliance, please consult the FMCSA point of contact, Ms. Nikki McDavid, listed in the For Further Information Contact section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule in this preamble.

F. Paperwork Reduction Act

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

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''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.'' This proposal would amend the requirements in 49 CFR part 383 for the issuance of CLPs under specified circumstances. The Agency's commercial licensing regulations and requirements for State compliance, set forth in parts 383 and 384, do not have preemptive effect. States' participation in the CDL program is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal aid highway funds pursuant to 49 U.S.C. 31314. Because this proposal would not significantly amend requirements already in effect for participating States, FMCSA has determined that it would not have a substantial direct effect on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

However, the Agency recognizes that, as a practical matter, this NPRM could have some impact on the States' current processes for issuing CLPs. Accordingly, by letters sent on January 8, 2019, FMCSA offered officials of the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), and AAMVA the opportunity to meet with FMCSA to discuss any questions or concerns about the impact of the proposal on current SDLA processes. Copies of those letters are available in the docket of this rulemaking. None of the groups requested a meeting in response to the Agency's invitation.

H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the effect of the regulation on the environmental health and safety of children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. The Agency completed a Privacy Threshold Assessment (PTA) to assist in analyzing the new rulemaking to determine if it creates privacy risk for individuals that could require other entities to collect, use, store or share personally identifiable information (PII), or deploy technologies as a result of this rulemaking implementation. The PTA is also used to identify programs and systems that are privacy sensitive and help determine whether additional privacy compliance, such a PIA or System of Records Notice (SORN), is required for a particular rulemaking or system. Based on the preliminary adjudication of the PTA by the FMCSA Privacy Officer, this rule does not require the collection of PII and the Agency is not required to conduct a PIA. The PTA will be submitted to the Department of Transportation's Privacy Officer for review and final adjudication.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

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

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (s)(6) and paragraph (t)(2). The Categorical Exclusion (CE) in paragraph (s)(6) covers regulations concerning the requirement for States to give knowledge and skills tests to all qualified applicants for a CDL; the CE in paragraph (t)(2) covers regulations concerning State policies and procedures and information systems concerning the qualification and licensing of persons who apply for a CDL. The proposed requirements in this rule are covered by these CEs and the NPRM does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter 3, part 383 to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.79 by:
■ a. Revising the section heading;
■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c); and
■ c. Adding new paragraph (a).

The addition and revision to read as follows:

§ 383.79 Knowledge and driving skills testing of out-of-State applicants; knowledge and driving skills testing of military personnel.

(a) *CLP applicants tested out-of-State*—(1) *State that administers knowledge testing.* A State may administer general and specialized knowledge tests, in accordance with subparts F, G, and H of this part, to a person who is to be licensed in another United States jurisdiction (*i.e.,* his or her State of domicile). Such test results must be transmitted electronically directly from the testing State to the State of domicile in a direct, efficient and secure manner.

(2) *The State of domicile.* The State of domicile of a CLP applicant, or CDL holder, must accept the results of knowledge tests administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73, if the applicant has satisfied all other requirements of § 383.71.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Dated: July 23, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–15963 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2018–0348]

RIN 2126–AC24

Hours of Service of Drivers; Definition of Agricultural Commodity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FMCSA seeks public comment to assist in determining whether, and if so to what extent, the Agency should revise or otherwise clarify the definitions of ''agricultural commodity'' or ''livestock'' in the ''Hours of Service (HOS) of Drivers'' regulations. Currently, during harvesting and planting seasons as determined by each State, drivers transporting agricultural commodities, including livestock, are exempt from the HOS requirements from the source of the commodities to a location within a 150-air-mile radius from the source. This ANPRM is prompted by indications that the current definition of these terms may not be understood or enforced consistently when determining whether the HOS exemption applies.

DATES: Comments on this notice must be received on or before September 27, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System Docket ID (FMCSA–2018–0348) using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Submissions Containing Confidential Business Information (CBI): Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information concerning this ANPRM, contact Mr. Richard Clemente, Driver and Carrier Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4325, *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0348), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these methods. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number (FMCSA–2018–0348) in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act (5 U.S.C. 552), CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this ANPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI meeting the definition noted above will not be placed in the public docket of this ANPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments not specifically designated as CBI will be placed in the public docket for this rulemaking. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov* and insert the docket number (FMCSA–2018–0348) in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the U.S. Department of Transportation (DOT) West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—FDMS), which can be reviewed at *https://www.transportation.gov/privacy/.*

II. Legal Basis

Section 204(a) of the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, 546, Aug. 9, 1935), as codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (Secretary) to ''prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This ANPRM specifically addresses the maximum HOS of drivers transporting agricultural commodities by commercial motor vehicle (CMV).

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, CMVs, and vehicle equipment. Section 206(a) of that act (98 Stat. 2834), codified at 49 U.S.C. 31136(a), grants the Secretary broad authority to issue regulations ''on commercial motor vehicle safety.'' The regulations must ensure that ''(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . .; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.'' (49 U.S.C. 31136(a)(1)–(5)).

The provisions this ANPRM addresses are connected primarily with 49 U.S.C. 31136(a)(1)–(2) relating to safety of the vehicle and driver and secondarily with (a)(4) relating to the health of the driver. This ANPRM does not directly address medical standards for drivers (section 31136(a)(3)). This ANPRM does not propose any specific regulatory requirements; therefore, FMCSA does not anticipate that drivers would be coerced (section 31136(a)(5)) as a result of this notice.

More specifically, this ANPRM is based on a statutory exemption from HOS requirements for drivers transporting ''agricultural commodities'' ''during planting and harvesting periods, as determined by each State.'' The exemption was initially enacted as Sec. 345(a)(1) of the National Highway System (NHS) Designation Act of 1995 [Pub. L. 104–59, 109 Stat. 568, 613, Nov. 28, 1995].

Section 4115 of the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1726, Aug. 10, 2005] retroactively amended the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999] by transferring Sec. 345 to new Sec. 229 of MCSIA [113 Stat. 1773]. Section 4130 of SAFETEA–LU then revised Sec. 229, as transferred by Sec. 4115, mainly by adding the current definitions of ''agricultural commodity'' and ''farm supplies for agricultural purposes'' [119 Stat. 1743], as discussed further below. This definition is codified at 49 CFR 395.2.

Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 778, July 6, 2012] revised Sec. 229 again, mainly by expanding the 100 air-mile radius of the exemption to 150 air miles. This change is reflected in 49 CFR 395.1.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87(f) and (i) to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315, respectively, as they relate to CMV operators, programs, and safety.

III. Background

A. HOS Regulations

The HOS rules, set forth in 49 CFR part 395, limit property-carrying CMV drivers to 11 hours of driving time within a 14-hour period after coming on duty following 10 consecutive hours off duty (except that drivers who use sleeper berths may combine a period of 2 hours of off-duty time with a period of 8 consecutive hours in the sleeper berth). Drivers must take at least 30 consecutive minutes off duty if more than 8 hours have passed since their last off-duty period of at least 30 minutes, if they wish to drive or continue driving. Drivers may not drive after accumulating 60 hours of on-duty time in any 7 consecutive days, or 70 hours in any 8 consecutive days, however, drivers of property-carrying CMVs may restart the 60- or 70-hour clock by taking 34 consecutive hours off duty (or 24 hours off duty for some industries). The Agency is currently preparing an NPRM (RIN 2126–AC19) which will propose revisions to certain HOS requirements to provide greater flexibility for drivers, without adversely affecting highway safety.

As discussed further below, these limits on maximum driving and on-duty time do not apply during harvest and planting periods, as determined by each State, to drivers transporting agricultural commodities (and farm supplies for agricultural purposes) from the source of the commodities to a location within a 150-air-mile radius from the source.

B. June 2018 Regulatory Guidance—Application of the 150-Air-Mile HOS Exemption

On June 7, 2018, FMCSA issued regulatory guidance on the transportation of agricultural commodities as defined in § 395.2 (83 FR 26374). The guidance addressed various issues related to the statutory term ''source of the commodities,'' but it did not directly address the scope or meaning of the term ''agricultural commodity.'' Specifically, the June 2018 guidance addressed: Drivers operating unladen CMVs enroute to pick up an agricultural commodity or returning from a delivery point; drivers engaged in trips beyond the 150 air miles from the source of the commodity; determining the ''source'' of agricultural commodities for purposes of the exemption; and how the exemption applies when agricultural commodities are loaded at multiple sources during a trip.

C. Statutory Definition of ''Agricultural Commodity''

Although the HOS exemption enacted by Sec. 345(a)(1) of the NHS Designation Act did not define the term ''agricultural commodities,'' Sec. 4130 of SAFETEA–LU enacted a definition now codified at 49 CFR 395.2. In that definition, ''*Agricultural commodity*'' refers to any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects). FMCSA added to § 395.2 the definition of ''livestock'' as set forth in the Emergency Livestock Feed Assistance Act of 1988, defining ''*Livestock*'' as cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the Emergency Livestock Feed Assistance Act of 1988, as amended.

Congress recently amended the definition of ''livestock'' in the Emergency Livestock Feed Assistance Act of 1988 (Section 12104 of the Agriculture Improvement Act of 2018 [Pub. L. 115–334, 132 Stat. 4490, December 20, 2018]). Among other things, the 2018 amendment revised the definition of ''livestock'' by removing the term ''fish used for food'' and adding ''llamas, alpacas, live fish, crawfish, and other animals that'' are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits [under the Emergency Livestock Feed Assistance Act of 1988]''. The 2018 amendment also removed the Secretary of Agriculture's discretion to designate animals in addition to those specifically listed.

As explained above, the current definition of the term ''livestock'' in § 395.2 restates, without change, the definition of ''livestock'' as set forth in the Emergency Livestock Feed Assistance Act of 1988 when FMCSA initially implemented this statutory provision in 2007. The Agency intends to conform the current text of the definition of ''livestock'' in § 395.2 to the change made by to the text of the 2018 amendment to the Emergency Livestock Feed Assistance Act of 1988, as discussed above. That conforming change, adding llamas, alpacas, live fish and crawfish, deleting the term ''fish used for food,'' and removing the reference to the Secretary of Agriculture's discretion to designate additional animals, will be made at a later date. The Agency notes, however, that a primary sponsor of the 2018 amendment stated her intention that transporters of these additional species be included within the scope of the HOS exemption set forth in § 395.1(k)(1).[1] FMCSA therefore concludes that the 2018 changes to the definition of ''livestock'' in the Emergency Livestock Feed Assistance Act of 1988 are self-executing for that purpose, becoming effective on December 20, 2018.[2] The Agency intends to issue guidance addressing FMCSA's implementation of this statutory change in the near future.

IV. Discussion of the ANPRM

A. Ambiguities in the Definition of ''Agricultural Commodity''

Although the statutory definition of ''agricultural commodity,'' set forth in § 395.2, is quite detailed in some respects, it is also circular and ambiguous. For example, ''agricultural

[1] Senator Deb Fischer, the primary sponsor of the 2018 amendment, noted her intention that transporters of llamas, alpacas, live fish, and crawfish be covered by the HOS exemption for agricultural commodities. *https://www.fischer.senate.gov/public/index.cfm/2018/6/bipartisan-farm-bill-clears-senate-agriculture-committee-with-senator-fischer-s-support.*

[2] President Trump signed the Agriculture Improvement Act of 2018 into law on December 20, 2018.

commodity'' is defined in part as ''any agricultural commodity. . .'' The definition is thus susceptible to multiple interpretations, resulting in potentially inconsistent application of the HOS exemption set forth in § 395.1(k)(1). The Agency therefore seeks comment, along with relevant quantitative or qualitative data, addressing how FMCSA could define or interpret the term ''agricultural commodity'' in § 395.2 more clearly, while remaining consistent with Congress's intent to provide a limited HOS exemption for CMV drivers who transport agricultural commodities. FMCSA is specifically interested in knowing what else should be added to the definition of ''agricultural commodity.'' The purpose of the definition is to determine which agricultural commodities are eligible for the HOS exemption provided in § 395.1(k)(1), which is designed to allow additional driving and working hours for drivers transporting these commodities. The exemption gets the agricultural commodities to market with fewer delays ''during planting and harvesting periods, as determined by each State.'' Keeping that in mind, and the statutory limitation of using this exemption during ''planting and harvesting periods, as determined by each State,'' should the Agency establish more specific, but still broad, categories of eligible commodities falling within the definition of ''any agricultural commodity''? Alternatively, should the Agency adopt a list of individual commodities (either by name or specified agricultural classification) that would fall within the definition?

In addition to the ambiguous term ''any agricultural commodity,'' the definition of ''agricultural commodity'' in § 395.2 also refers to ''non-processed food, feed, fiber, or livestock.'' Although FMCSA has not issued formal regulatory guidance addressing how the term ''non-processed'' should be defined or applied, in its June 2018 guidance concerning the transportation of agricultural commodities the Agency provided some guidance by stating that: ''The source may be any intermediate storage or handling location away from the original source at the farm or field, *provided the commodity retains its original form and is not significantly changed by any processing or packing*'' [emphasis added].[3]

The Agency requests comments on how the term ''non-processed'' is currently understood and applied. How can the Agency best determine the point at which an agricultural commodity, such as food, feed, or fiber, becomes ''processed?'' The Agency welcomes specific examples of agricultural commodities that should be considered ''non-processed'' within the meaning of § 395.1(k)(1). FMCSA also requests comment on the definition of the term ''livestock,'' as discussed further below.

B. USDA's Classification of ''Agricultural Commodities''

The Agency notes that the U.S. Department of Agriculture's (USDA) statutes and regulations classify and define the term ''agricultural commodity'' in a variety of ways, depending on the underlying statutory and regulatory framework. The extent to which USDA definitions of the term are consistent with the definition in § 395.2 may become relevant when transporters of agricultural commodities by CMV are subject to certain USDA requirements. For example, USDA administers the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 449a(1)), which establishes a code of fair trading practices for the benefit of growers, shippers, distributors, retailers, and others. The PACA is a remedial statute, designed to protect those who deal in perishable agricultural commodities from unfair and fraudulent practices. The USDA enforces PACA through a licensing system. The PACA implementing regulations, set forth in 7 CFR subchapter B, part 46, require perishable agricultural commodity grocery wholesalers, retailers, commission merchants, processors, brokers, and truckers under specified circumstances,[4] to obtain a PACA license. Those agricultural transporters subject to PACA requirements are also subject to the Federal Motor Carrier Safety Regulations (FMCSRs), including HOS regulations.

The PACA defines ''perishable agricultural commodity'' as ''any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character. . .'' (7 U.S.C. 499a(b)(4)(A)). The PACA regulations state that the term ''fresh fruits and vegetables'' ''does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character'' (7 CFR 46.2(u)).

To avoid confusion for both transporters of agricultural commodities and enforcement personnel, FMCSA is considering whether it would be feasible and desirable to revise the definition of ''agricultural commodity'' in § 395.2 to make the term more compatible with applicable USDA rules and practice. The Agency notes, however, that any revisions to its definition of ''agricultural commodity'' must remain consistent with statutory intent to allow an exemption tailored to the needs of a specific segment of CMV drivers—those transporting agricultural commodities ''during planting and harvesting periods, as determined by each State.'' One possible implication of that restriction is that the exemption should apply to commodities subject to relatively short-term perishability. Accordingly, to the extent that PACA's definition of ''agricultural commodity'' includes ''frozen'' fruits and vegetables, it is inconsistent with FMCSA's definition of the term. The Agency concludes that, because frozen fruits and vegetables are processed and packaged, Congress did not intend to include frozen commodities within the scope of the definition as codified in § 395.2. On the other hand, there may be many non-frozen fruits and vegetables that fall within the scope of both FMCSA's definition of ''agricultural commodity'' and USDA's definition of ''fresh fruits and vegetables'' set forth in 7 CFR 46.2(u). One approach might be for FMCSA to cross-reference or otherwise incorporate applicable PACA or other USDA definitions or interpretations, many of which are already familiar to some transporters of agricultural commodities. The Agency requests feedback on this approach, particularly from stakeholders subject to regulation by both USDA and FMCSA. The Agency would also like to know whether enforcement officials would find helpful cross-references to, or incorporation of, specified USDA rules and practices.

C. Definition of ''Livestock''

Finally, the Agency is aware that some stakeholders believe the current definition of ''livestock,'' as set forth in § 395.2, is incomplete. For example, transporters of animals not currently included in the definition have argued that they should be eligible for the HOS exemption in § 395.1(k)(1) because such animals are subject to risks to health and safety in transit as are cattle, sheep, swine, and other ''covered'' animals. FMCSA notes that the NHS Designation Act's definition of ''agricultural commodity,'' as discussed above, includes, but is not limited to, livestock as defined in the Emergency Livestock Feed Assistance Act of 1988. The Agency solicits comments on whether the current definition of ''livestock'' in

[3] 83 FR 26374, 26376 (June 7, 2018).

[4] Under 7 CFR 46.2(gg)(3), ''trucker/dealer'' is ''a branch or additional business facility'' subject to the PACA licensing requirement if ''the driver is authorized to buy, sell, or otherwise contract for commodities on behalf of the firm.''

§ 395.2 should be expanded beyond the animals identified in the Emergency Livestock Feed Assistance Act (including, for purposes of this discussion, the animals added by Section 12104 of the Agriculture Improvement Act of 2018, as discussed above). Another possible approach would be to adopt a definition of ''livestock'' broad enough to include all eligible animals, including those covered by the Emergency Livestock Feed Assistance Act (as amended), without listing them individually.

V. Questions

FMCSA requests that commenters respond to the questions below, but the Agency also welcomes comments or questions on any other issues related to the definitions of ''agricultural commodity'' and ''livestock'' as those terms are used in § 395.1(k)(1). Please provide specific examples and, to the extent practicable, quantitative or qualitative data to support your answers.

1. The statute and regulation define a term with the same term: ''*Agricultural commodity* means ''any agricultural commodity . . . .'' Does that lack of detail cause compliance or enforcement problems? Should FMCSA consider adopting a list of specific agricultural commodities, or clarify its current approach utilizing the more general definition? If you wish to suggest that specific commodities (*e.g.,* sod or other types of horticulture) be included in the definition, please explain how they fit within the statutory definition, and provide information about the average and maximum transportation times and the extent to which the commodities are perishable.

2. Should FMCSA define or otherwise clarify the term ''non-processed,'' as applied in the definition of ''agricultural commodity?'' If so, given the context of harvesting and planting seasons referenced in the applicable statute, how should that term be defined? Please provide examples of ''non-processed'' agricultural commodities that should be included and discuss the distinction between ''processed'' and ''non-processed.''

3. Would clarification or definition of other terms used in the definition of ''agricultural commodity,'' such as ''food,'' ''feed,'' or ''fiber,'' be helpful? Please provide recommendations and data to support your suggested definition.

4. Should the definition of ''livestock'' be revised to include aquatic animals in addition to live fish and crawfish? Please provide data to support your answer, such as how far aquatic animals are typically transported and why you believe the HOS exemption would be appropriate for the transportation of specific aquatic animals.

5. Is the list of animals in the definition of ''livestock'' in § 395.2 adequate? As noted above, the Agency intends to add llamas, alpacas, live fish, and crawfish to the definition, consistent with Agricultural Improvement Act of 2018 amendment to the Emergency Livestock Feed Assistance Act of 1988. Should other animal species be included? Please provide data on the average and maximum transportation times for additional livestock you believe should be included in the definition of ''livestock'' in § 395.2 and the impacts of longer transportation times.

6. Are there cost or safety implications of adding specific agricultural commodities or livestock to the current definitions of ''agricultural commodity'' and ''livestock''? Please provide data to support your answer.

7. Are there benefits of adding specific agricultural commodities or livestock to the current definitions of ''agricultural commodity'' and ''livestock''? Please provide data to support your answer.

8. USDA regulations define ''agricultural commodity'' in a variety of ways, depending on the underlying statutory authority and regulatory purpose. For transporters of agricultural commodities subject to both USDA and FMCSA regulations, what are the practical implications of *not* having consistent definitions of that term? Should FMCSA adopt or cross-reference any of the definitions applied by USDA, to the extent they are compatible with the statutory definitions of ''agricultural commodity'' and ''livestock'' incorporated in § 395.2?

9. If the definitions of ''agricultural commodity'' or ''livestock'' in § 395.2 were more consistent with applicable USDA definitions of the terms, would use of the definition for purposes of § 395.1(k)(1) result in cost or benefit impacts to CMV drivers who transport such commodities, the motor carriers who employ them, growers or distributors of those commodities, or enforcement personnel? Please provide data to support your answer.

10. Are motor carriers being exposed to financial liability in situations where their drivers complied with HOS regulations and (1) the receiver refused delivery because the shipment did not meet contract specifications requiring the driver to deliver to an alternative location; and/or (2) the freight claim was not paid or was reduced because the grade standard of quality and condition, or temperature at destination, was not acceptable due to the driver's compliance with HOS regulations; (3) the receiver refused delivery because the shipment was late due to the driver's compliance with HOS regulations; (4) the receiver made the driver wait to unload because the shipment was late and charged a late delivery fee due to the driver's compliance with HOS regulations?

11. Do you believe ambiguities in the current definition of the terms ''agricultural commodity'' or livestock,'' as applied to the HOS exemption in § 395.1(k)(1), impact highway safety? If so, how?

Issued under the authority of delegation in 49 CFR 1.87.

Dated: July 23, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–15960 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2019–0036]

RIN 2127–AM00

Removing Regulatory Barriers for Vehicles With Automated Driving Systems; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM); Extension of comment period.

SUMMARY: In response to a request from the public, NHTSA is announcing a 30-day extension of the comment period on the ANPRM on Removing Regulatory Barriers for Vehicles with Automated Driving Systems. The comment period for the ANPRM was originally scheduled to end on July 29, 2019. It will now end on August 28, 2019.

DATES: The comment period for the ANPRM published on May 28, 2019 at 84 FR 24433 is extended. Written comments on the ANPRM must be received on or before August 28, 2019 in order to be considered timely.

ADDRESSES: Comments must be submitted by one of the following methods:

• *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Regardless of how you submit your comments, they must include the docket number identified in the heading of this notice.

Not that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

You may call the Docket Management Facility at 202–366–9324.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. We will continue to file relevant information in the docket as it becomes available.

Privacy Act: 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 the comment, if 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: David Hines, Director, Office of Crash Avoidance Standards, Telephone: (202) 366–1810. Facsimile: (202) 366–7002. Sara Bennett, Attorney-Advisor, Vehicle Rulemaking and Harmonization, Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On May 28, 2019, NHTSA published an ANPRM to obtain public comments on the near- and long-term challenges of testing and verifying compliance with existing crash avoidance (100-series) Federal Motor Vehicle Safety Standards for Automated Driving System-Dedicated Vehicles that lack traditional manual controls necessary for a human driver to maneuver the vehicle and other features intended to facilitate operation of a vehicle by a human driver, but that are otherwise traditional vehicles with typical seating configurations. The ANPRM stated that the closing date for comments is July 29, 2019.

On July 15, 2019, NHTSA received a request from the American Public Transportation Association (APTA) for a 60-day extension of the comment period. The request can be found in the docket for the ANPRM identified in the heading of this notice. NHTSA has considered this request and believes that a 30-day extension beyond the original due date appropriately balances NHTSA's interest in providing the public with sufficient time to comment on the complex and novel questions raised in the ANPRM, with its interest in safely addressing regulatory barriers in a timely manner. This is to notify the public that NHTSA is extending the comment period on the ANPRM, and allowing it to remain open until August 28, 2019.

We note that, in addition to requesting an extension of the ANPRM comment period, APTA also requested NHTSA hold a public meeting or webinar on the issues raised in the ANPRM. NHTSA is considering whether to hold a public meeting or webinar on the issues raised in the ANPRM, and will decide whether to do so once the agency has considered the comments received during the full extended comment period.

Authority: Delegation of authority at 49 CFR 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2019–16040 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 84, No. 145

Monday, July 29, 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

Farm Service Agency

Commodity Credit Corporation

Notice of Funds Availability (NOFA); Market Facilitation Program (MFP) Payments to Producers

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: MFP provides payments to producers with commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. This NOFA announces the availability of MFP funds for eligible producers of specified agricultural commodities for 2019 that include certain non-specialty crops, specialty crops, dairy, and livestock as specified in this NOFA. On behalf of the Commodity Credit Corporation (CCC), the Farm Service Agency (FSA) will administer MFP. MFP dairy and livestock payments will be calculated on the eligible production amount multiplied by the participant's share in the commodity multiplied by the MFP payment rate. MFP participants of non-specialty and specialty crops will receive an MFP payment based upon the participant's ownership interest in the 2019 crop that was planted and reported to FSA for the 2019 crop year, including cover crops that are planted for harvest following a prevented planted non-specialty crop. The payment rate used by CCC to issue payments for non-specialty crops will be on a county-by-county basis and reflects the amount of damage incurred in a county by producers of the non-specialty crops from the imposition of tariffs by other countries on U.S. agricultural products. The payment rate for specialty crops will be on a state-by-state basis if sufficient data is available, otherwise payments will be on a national basis. This NOFA also announces the availability of 2018 MFP payments for a limited number of producers who are now eligible for assistance as the result of a provision of the Additional Supplemental Appropriations For Disaster Relief Act, 2019 (2019 Disaster Relief Act).

DATES:

Application period: July 29, 2019 through December 6, 2019.

Comment Date: We will consider comments on the Paperwork Reduction Act that we receive by: September 27, 2019.

ADDRESSES: We invite you to submit comments on the information collection requirements for MFP. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of this notice. You may submit comments by any of the following methods, although FSA and CCC prefer that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID CCC–2019–0003. Follow the online instructions for submitting comments.
- *Mail:* William L. Beam, Deputy Administrator, Farm Programs, Farm Service Agency, USDA, 1400 Independence Ave. SW, Washington, DC 20250.

All comments received, including those received by mail, will be posted without change and publicly available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William L. Beam, Deputy Administrator for Farm Programs, telephone: (202) 720–3175.

SUPPLEMENTARY INFORMATION:

Background

CCC revised 7 CFR part 1409 in a final rule published in the Rules and Regulations section of this issue of the **Federal Register** specifying the eligibility requirements, payment calculations, and application procedures for MFP. MFP provides assistance to producers with commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. This NOFA announces the availability of MFP payments for 2019 agricultural commodities.

For the purposes of MFP for 2019, agricultural commodities referred to as ''non-specialty crops'' include the following row crops: Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra-long staple cotton, flaxseed, lentils, long grain and medium grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat. Specialty crops are: Almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts.

Section 103 of Title I of the 2019 Disaster Relief Act (Pub. L. 116–20) provides that if the average adjusted gross income of a person or legal entity is greater than $900,000 the person or entity is not eligible to receive a MFP payment unless at least 75 percent of the adjusted gross income of the person or entity is derived from farming, ranching, or forestry related activities. This provision is applicable to 2018 and 2019 MFP payments and is less restrictive than the 2018 MFP eligibility provisions established by CCC. Accordingly, CCC will reopen the 2018 MFP program application process for just those producers affected by this statutory mandate and that application period will run concurrently with the 2019 MFP application period. All other provisions of the 2018 MFP apply to these newly eligible producers.

Application Process

Each eligible producer applies for MFP participation once by completing a ''Market Facilitation Program 2019 (MFP 2019) Application'' (form CCC–913). Each applicant must submit a complete form CCC–913 either in person, by mail, email, or facsimile to an FSA county office, or online through *www.farmers.gov.* Producers may submit form CCC–913 in any county office nationwide for all crops for which they have an interest. Payments will not be issued until a producer certifies, as applicable, the:

- Quantity of production of dairy or hogs; and
- For non-specialty and specialty crops, the producer's ownership share interest of the crop as specified on the ''Report of Acreage'' (form FSA–578) filed with FSA for each farm that is the

subject of the request for payment under MFP.

Payment Rates

The MFP payment rates will be as determined by CCC and will be in effect July 29, 2019.

The non-specialty crop payment rates have been established as a single rate per acre basis for each county. These rates will be posted to FSA's website *www.fsa.usda.gov.* A nationwide MFP payment rate of $15 per acre will be used to provide MFP assistance to producers who were prevented from planting a 2019 non-specialty crop on a farm but were able to plant a CCC approved cover crop intended for harvest. This will assist in the marketing of the anticipated lesser production of the cover crop. Prevented planting is the inability to plant the intended crop acreage with proper equipment by the USDA recognized final planting date for the crop because of a natural disaster. Cover crops that are planted for harvest following a prevented planted crop must be planted no later than August 1, 2019. Cover crops and non-specialty crops planted after August 1, 2019, are not eligible for assistance under MFP.

The total number of acres used to calculate a MFP payment on a farm is equal to 2019 planted acres of non-specialty crops, not to exceed 2018 planted acres and prevented planted acres of non-specialty crops as adjusted for acreage that is available for planting as the result of 2018 expired Conservation Reserve Program contracts.

For specialty crops, the payment will be calculated by multiplying the state per acre payment rate if sufficient data is available for the specific commodity by the producer's reported share interest in the specialty crop as reported to FSA on a FSA–578, or according to the applicable crop insurance policy. If sufficient data is not available, national data will be used. For specialty crops, only acreage with fruit or nut bearing plants will be eligible under MFP. State per acre payment rates by specific commodity will be posted to FSA's website *www.fsa.usda.gov.*

The payment rates and units of measure for hogs and milk will be posted to FSA's website *www.fsa.usda.gov.*

The payment rate will apply to the producer's total production of hogs and milk, as defined below. The MFP payment will be made after a producer certifies the amount of production for hogs and milk.

The actual production used to calculate an MFP payment under this NOFA is for 2019 production in which the applicant had an ownership share for livestock commodities. Specifically, required production information is as follows:

- For hogs, the number of head of live hogs owned on a day selected by the applicant between April 1, 2019 and May 15, 2019; and
- For milk, the historical production reported for the Dairy Margin Coverage (DMC) Program.

The ownership share for milk will be as reported to FSA for the DMC Program for dairy operations that were in business as of June 1, 2019. Dairy operations that are not in business as of June 1, 2019, are ineligible for MFP. Ownership for live hogs will be reported to FSA on form CCC–913; if a person or legal entity has a contract to grow the hogs, but does not own the hogs on a day between April 1, 2019 and May 15, 2019, the person or legal entity is ineligible for MFP.

Producers must comply with the provisions of:

- 7 CFR part 1409;
- This notice of funding availability; and
- Form CCC–913.

Production Evidence

On the application for hogs and milk, the producer will certify the amount of production and note the source of production evidence. If requested, the producer must also provide supporting documentation as determined by CCC for the amount of production. For non-specialty crops, if requested, the producer must provide supporting documentation as determined by CCC to support the reported acreage reported on form FSA–578. For specialty crops, if requested, the producer must provide supporting documentation as determined by CCC to support the reported acreage reported on form FSA–578 or as reported to the producer's crop insurance provider.

CCC may require a producer to supply documentation that can be used to verify the actual production of hogs and milk and the producer's share in non-specialty and specialty crops. Examples of acceptable documentation include evidence provided by the participant that is used to substantiate the amount of production reported, custom harvesting records, production costs records, contemporaneous measurements, truck scale tickets, or other records that are determined acceptable by the FSA county committee.

MFP Payments

As stated in the final rule published in this issue of the **Federal Register** and in 7 CFR 1409.105(d), the payments will be provided in up to 3 payments. The first payment will be up to 50 percent of the total calculated payment. CCC will determine if any further payments are warranted. If CCC determines that a second payment is warranted, it will be up to 75 percent of the total calculated payment less the amount received in the first payment and the second payment period will begin in November 2019. If CCC determines that a final payment is warranted, it will be for the remaining amount of the total calculated payment, unless otherwise adjusted by CCC, and the last payment period will begin in January 2020.

Payment Limitation

For 2019 MFP payments, there will be 3 separate payment limitations for each person or legal entity:

1. $250,000 for non-specialty crops announced in this NOFA;
2. $250,000 for specialty crops announced in this NOFA; and
3. $250,000 for hogs and milk.

No person or legal entity can receive more than $500,000 under 2019 MFP.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection activities related to MFP. The burden hours in this NOFA cover the additional respondents, and still use the approved numbers in the request of 0560–0292 for MFP.

To start the MFP information collection approval, FSA received emergency approval from OMB for 6 months. Upon receiving the emergency approval with a new temporary OMB control number, this information collection request will be merged with an approved information collection request of 0560–0292 to update the numbers and forms.

Title: Market Facilitation Program (MFP).

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: This information collection is required to support all MFP information collection activities (applicable NOFAs and the regulation in 7 CFR part 1409) to provide eligible producers payments with respect to agricultural commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibility

and assist in producer's payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to average 0.39 hours per response.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 780,000.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 1,445,400.

Estimated Average Time per Response: 0.39 hours.

Estimated Total Annual Burden on Respondents: 519,067.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden 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.

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 for Office of Management and Budget approval.

Environmental Review

The environmental impacts for MFP have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As stated in the MFP final rule, the implementation of MFP and the participation in MFP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. The final rule served as documentation of the programmatic environmental compliance decision for this federal program; therefore, CCC will not prepare additional environmental compliance documentation for this NOFA.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this NOFA applies is 10.123—Market Facilitation Program.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2019–15767 Filed 7–25–19; 11:15 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Stakeholder Listening Sessions on Heirs' Property

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is hosting two listening sessions for public input about the heirs' property relending program and heirs' property issues for landowners or farm operators providing proper documentation as the owner of the farm or land in order to obtain a farm number to be eligible for the FSA programs, as required by the Agriculture Improvement Act of 2018 (2018 Farm Bill). FSA is interested in your input and comments in resolving ownership and succession on farmland and undivided interest that has multiple owners. We invite you to participate in the listening session. The listening session is open to the public.

DATES:

Listening session: July 31, 2019, in Jackson, Mississippi beginning at 1:30 p.m. Central Standard Time; and August 14, 2019, in Washington, DC beginning at 1:30 p.m. Eastern Standard Time.

Registration: You must register by July 26, 2019, to attend the listening session in Jackson, Mississippi; and by August 9, 2019, in Washington, DC. You are encouraged to provide written comments prior to the listening session.

Oral comments (in writing): Submit your written comments by July 26, 2019 for Jackson, Mississippi attendances; and August 9, 2019 for Washington, DC attendances at *www.regulations.gov.*

Comments: For those orally presenting comments at the listening session, written comments are encouraged by July 26, 2019, for Jackson, Mississippi attendees and by August 9, 2019, for Washington, DC attendees.

Additional written comments will be accepted through August 31, 2019.

ADDRESSES:

Listening session: The meetings will be held at two locations:

a. *Jackson, Mississippi:* In the Farm Bureau Auditorium of the MS FSA State Office at 6311 Ridgewood Road, Jackson, MS 39211. Entry to the Farm Bureau Building is through the gates to the Main Visitor Entrance; visitor sign in is required.

b. *Washington, DC:* In Room 107–A of the Whitten Building at 1400 Independence Avenue SW, Washington, DC 20250. Entry to the Whitten Building for the listening session is through the front building entrance on Jefferson Drive; valid photo identification is required.

Registration: To register, click the registration link on *https://www.fsa.usda.gov/programs-and-services/outreach-and-education/meeting-registration/index* and follow the instructions.

Comments: We invite you to submit comments on this notice. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of the notice.

You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FSA–2019–0010. Follow the online instructions for submitting comments.
- You may submit your written comments at the listening session.

All written comments received will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: J. Latrice Hill, phone (202) 690–1700 or email: *fsaoutreach@wdc.usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: The listening session will provide an opportunity for stakeholders and interested members of the public to share their thoughts about how FSA can streamline and improve program delivery, as well as enhance outreach on FSA programs that address heirs' property issues. Heirs' property refers to land that has been passed down

informally from generation to generation and is owned ''in common'' by all heirs, absent a will, regardless of whether they live on the land, pay the taxes or have ever visited the land. An heir is a person legally entitled to the property.

The listening session will begin with brief opening remarks from FSA. Individual speakers providing oral comments will be limited to 3–5 minutes each; however, if all speakers can be accommodated within the allotted time for the session, individual speaking times may be adjusted at the written request of the stakeholder (use the contact information above). As noted above, we request that speakers providing oral comments also provide a written copy of their comments by July 26, 2019, for the Mississippi listening session and August 9, 2019, for the DC listening session. All stakeholders and interested members of the public are welcome to register to provide oral and written comments; however, based on the session time or topic area constraints, FSA may not be able to allocate time for all registered attendees to provide oral comments during the sessions.

The purpose of the listening sessions is for FSA to hear from stakeholder organizations, producers and other interested members of the public about heirs' property issues and programs that are being implemented or revised by FSA as required by the 2018 Farm Bill (Pub. L. 115–334). Please refer to the name of the FSA program in your comment and the relevant section number in the 2018 Farm Bill. In your comments, provide your input about the program(s), changes, and anything else that may be helpful to FSA. We welcome public input that we can factor into decisions that need to be made to implement the provisions on heirs' property issues.

Date	Time	Location information
July 31, 2019	1:30 p.m. CST	MS FSA State Office, in the Farm Bureau Building, Farm Bureau Auditorium, 6311 Ridgewood Rd., Jackson, MS 39211.
August 14, 2019	1:30 p.m. EST	USDA headquarters, in the Whitten Building, Room 107–A, 12th Street and Jefferson Drive SW, Washington, DC 20250.

The following are specific program sections related to heirs' property issues in the 2018 Farm Bill (Agricultural Improvement Act of 2018, Pub. L. 115–379) (see listing below for complete section-by-section names):

- Relending programs to resolve ownership and succession of farmland (2018 Farm Bill section 5104, Title V Credit).
- Eligibility for operators on heirs' property land to obtain a farm number (2018 Farm Bill section 12615; Title XII Miscellaneous).

FSA is interested in all comments, but, requests input on:

1. What are some outreach methods FSA can implement to inform landowners of existing proof of ownership options available for heirs' property landowners?
2. What are additional proof of ownership options that FSA should consider accepting that are not currently allowed?
3. What changes to the process of obtaining a farm number would improve or simplify the process for individuals who may not able to provide certification?
4. What have been the greatest barriers to obtaining a farm number with FSA?
5. What are the potential challenges of an intermediary lender implementing the proposed Heirs' Property Relending Program?
6. What eligibility criteria should be considered when evaluating a potential intermediary lender?
7. Should there be a minimum or maximum amount of funds an intermediary lender can receive?
8. Should there be restrictions for the use of funds under the proposed Heirs' Property Relending Program?
9. What eligibility criteria should be considered for individual applicants in the proposed Heirs' Property Relending Program?
10. What are suggestions for how a lender might address minimum loan collateral requirements?

Instructions for Attending the Meeting

For Jackson, Mississippi attendance: Space for attendance at the listening session is limited. All persons wishing to attend the listening session must register at *https://www.fsa.usda.gov/programs-and-services/outreach-and-education/meeting-registration/index* by July 26, 2019. To register, information will be required including, but not limited to:

- Attendee contact information;
- Organization representation information; and
- If you would like to speak, provide written comments.

Upon arrival in the Visitor's Entrance of the Farm Bureau Building, registered persons must sign in to enter the building. Please allow extra time to get through security.

All written comments received will be publicly available on *www.regulations.gov.*

If you require special accommodations, such as a sign language interpreter, use the contact information above. The listening session location is accessible to persons with disabilities.

For Washington, DC attendance: Space for attendance at the listening session is limited. All persons wishing to attend the listening session must register at *https://www.fsa.usda.gov/programs-and-services/outreach-and-education/meeting-registration/index* by August 14, 2019. To register, information will be required, including, but not limited to:

- Attendee contact information;
- Company or organization representation information; and
- If you would like to speak, provide written comments.

Upon arrival at the front entrance of the USDA Whitten Building, registered persons must provide valid photo identification to enter. Please allow extra time to get through security.

All written comments received will be publicly available on *www.regulations.gov.*

If you require special accommodations, such as a sign language interpreter, use the contact information above. The listening session location is accessible to persons with disabilities.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2019–15996 Filed 7–25–19; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the Illinois Advisory Committee will hold a meeting on Thursday, August 8, 2019, at 12:00 p.m. Central Time for the purpose of discussing the Committee's report on fair housing issues.

DATES: The meeting will be held on Thursday, August 8, 2019, at 12:00 p.m. Central Time.

Public Call Information: Dial: 800–353–6461, Conference ID: 9658662.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura, Designated Federal Official, at *aventura@usccr.gov* or 213–894–3437.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the call in information listed above. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement to the Committee as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 South Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Discussion of Briefing Report on Fair Housing Issues
  A. Materials in the Record and Summaries of Testimony
  B. Structure of Briefing Report
  C. Discussion of Themes and Recommendations
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: July 24, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–16033 Filed 7–26–19; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on Thursday, August 8, 2019. The purpose of the meeting is to vote on the labor trafficking report.

DATES: Thursday, August 8, 2019, at 12:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–800–353–6461 and conference ID: 4560227.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–353–6461 and conference ID: 4560227. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–353–6461 and conference ID: 4560227.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzllAAA,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Thursday, August 8, 2019 at 12:00 p.m. (EDT)

I. Roll Call
II. Vote on Labor Trafficking Report
III. Other Business
IV. Open Comment
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: July 24, 2019.

David Mussatt,

Supervisory Chief, Regional Programs.

[FR Doc. 2019–16032 Filed 7–26–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–888]

Carbon and Alloy Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of carbon and alloy steel threaded rod (steel threaded rod) from India for the period of investigation (POI) January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 29, 2019.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen, 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) 482–3251.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 19, 2019.[1] On April 25, 2019, in accordance with section 703(c)(1)(A) of the Act, Commerce postponed the preliminary determination in this investigation to July 22, 2019.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The merchandise covered by the scope of this investigation is steel thread rod from India. For a complete description of the scope of this investigation, *see* Appendix I to this notice.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the initiation notice.[7] *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] In making these findings, Commerce relied, in part, on facts available and because one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[9] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,[10] Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of carbon and alloy steel threaded rod from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 3, 2019, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Daksh Fasteners (Daksh). Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Mangal Steel Enterprises Limited (Mangal). Consequently, the rate calculated for Mangal is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Net subsidy rate (percent)
Daksh Fasteners	155.03
Mangal Steel Enterprises Limited	6.07

[1] *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 84 FR 10040 (March 19, 2019) (*Initiation Notice*).

[2] *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 84 FR 17379 (April 25, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated July 22, 2019.

[7] *Id.* at 3–4.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* sections 776(a) and (b) of the Act.

[10] *See* Petitioners' letter, ''Carbon and Alloy Steel Threaded Rod from India: Request to Align Determinations,'' dated July 8, 2019.

Company	Net subsidy rate (percent)
All Others	6.07

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for submitting non-scope related case briefs.[11] The deadlines for scope-related comments and rebuttals are set in the Preliminary Scope Decision Memorandum.[12]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury, to the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 22, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of this investigation is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this investigation whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this investigation are: (1) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this investigation is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* Preliminary Scope Decision Memorandum.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidies Valuation
VIII. Benchmarks and Discount Rates
IX. Analysis of Programs
X. ITC Notification
XI. Recommendation

[FR Doc. 2019–16037 Filed 7–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable July 29, 2019.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*e.g.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v).

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[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to Commerce no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2020.

	Period to be reviewed
Antidumping Duty Proceedings	
GERMANY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–428–845	11/22/17–5/31/19
Benteler Distribution International GmbH	
Benteler Steel Tube GmbH	
Mubea Fahrwerksfedern GmbH	
Salzgitter Mannesmann Line Pipe GmbH	
Salzgitter Mannesmann Precision GmbH	
Vsmpo Tirus GmbH	
INDIA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–533–873	11/22/17–5/31/19
APL Apollo Tubes Ltd.	
Automotive Steel Pipe	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Goodluck India Limited	
Hyundai Steel Pipe India Pvt., Ltd.	
ISMT Limited	
Jindal (India) Ltd.	
Jindal Saw Ltd.	
Khanna Industries Pipes Pvt. Ltd.	
KLT Automotive Tubular Products Ltd.	
Patton International Ltd.	
Sandvik Asia Pvt. Ltd.	
Surya Global Steel Tubes Ltd.	
Surya Roshni Ltd.	
Tata Steel Bsl Ltd. (fka Bhushan Steel Ltd.)	
Tube Products of India, Ltd., a unit of Tube Investments of India Limited (collectively, TPI)	
Zenith Birla Steels (India) Pvt., Ltd.	
ITALY: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–475–838	11/22/17–5/31/19
Alessio Tubi S.p.A	
Arvedi Tubi Acciaio S.p.A	
Dalmine S.p.A.	
Italsempione S.p.A	
Marcegaglia Novero S.p.A	
Metalfer, S.p.A.	
Pipex Italia S.p.A	
JAPAN: Carbon and Alloy Seamless Standard, Line and Pressure (over 4½ inches), A–588–850	6/1/18–5/31/19
Denka Company Limited	
Ebara Corporation	
JFE Steel Corporation	
Kaneka Corporation	
Kawasaki Steel Corporation	
Maruichi Kohan Ltd.	
Metal One Tubular Products Inc.	
Nippon Steel & Sumitomo Metal Corporation	
Nippon Steel Corporation	
NKK Tubes	
Okaya & Co., Ltd.	
Sumitomo Corporation	
Sumitomo Metal Industries, Ltd.	
Taiheiyo Cement Corporation	
Vallourec & Sumitomo Tubos do Brasil Ltda.	
Vallourec Solucoes Tubulares do Brasil	
Yamashin Industry Co., Inc.	
JAPAN: Carbon and Alloy Seamless Standard, Line and Pressure (under 4½ inches), A–588–851	6/1/18–5/31/19
Denka Company Limited	
Ebara Corporation	
JFE Steel Corporation	
Kaneka Corporation	
Kawasaki Steel Corporation	
Maruichi Kohan Ltd.	
Metal One Tubular Products Inc.	
Nippon Steel & Sumitomo Metal Corporation	
Nippon Steel Corporation	
NKK Tubes	
Okaya & Co., Ltd.	
Sumitomo Corporation	
Sumitomo Metal Industries, Ltd.	
Taiheiyo Cement Corporation	
Vallourec & Sumitomo Tubos do Brasil Ltda.	
Vallourec Solucoes Tubulares do Brasil	
Yamashin Industry Co., Inc.	
REPUBLIC OF KOREA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–580–892	11/22/17–5/31/19
Dong A Steel Co., Ltd.	
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
Sang Shin Ind. Co., Ltd.	
Seah Steel Corporation	
Sic Tube	
Tgs Pipe Co., Ltd.	

	Period to be reviewed
Tpc Co., Ltd.	
Yulchon Co., Ltd.	
SPAIN: Chlorinated Isocyanurates, A–469–814	6/1/18–5/31/19
Ercros S. A.	
SPAIN: Finished Carbon Steel Flanges, A–469–815	6/1/18–5/31/19
Ateaciones De Metales Sinterizados S.A	
Central Y Almacenes	
Farina Group Spain	
Friedrich Geldbach Gmbh; and its Spanish affiliate	
Grupo Cunado	
Transglory S.A.	
Tubacero, S.L.	
ULMA Forja, S. Coop	
SWITZERLAND: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–441–801	11/22/17–5/31/19
Benteler Rothrist AG	
Jansen AG	
Mubea Präzisionsstahlrohr AG	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–570–058	11/22/17–5/31/19
Benteler Distribution Ltd.	
Anji Pengda Steel Pipe Co., Ltd.	
Changshu Fushilai Steel Pipe Co., Ltd.	
Changshu Special Shaped Steel Tube Co., Ltd.	
Changshu Walsin Specialty Steel Co., Ltd.	
Hengyang Steel Tube Group International Trading Inc.	
Hubei Xinyegang Steel Co., Ltd.	
Huludao City Steel Pipe Industrial Co., Ltd.	
Hunan Standard Steel Co., Ltd.	
Jiangsu Chengde Steel Tube Share Co., Ltd.	
Jiangsu Huacheng Industry Pipe Making Corporation	
Jiangsu Liwan Precision Tube Manufacturing Co., Ltd.	
JW Steel Ltd.	
Suzhou Foster International Co., Ltd.	
Tianiin Longshenghua Imp. & Exp.	
TPCO International	
Wuxi Dajin High-Precision Cold-Drawn Steel Tube Co., Ltd.	
Wuxi Huijin International Trade Co., Ltd.	
Wuxi P&C Machinery Co., Ltd.	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Zhangjiagang Huacheng Import & Export Co., Ltd.	
Zhangjiagang Precision Tube Manufacturing Co., Ltd.	
Zhangjiagang Salem Fine Tubing Co., Ltd.	
Zhangjiagang ShengDingYuan Pipe-Making Co., Ltd.	
Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, A–570–898	6/1/18–5/31/19
Heze Huayi Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A–570–601	6/1/18–5/31/19
BRTEC Wheel Hub Bearing Co., Ltd.	
Changshan Peer Bearing Co., Ltd.	
GGB Bearing Technology (Suzhou) Co., Ltd	
Hangzhou Feiwang Auto Parts Co., Ltd.	
Ningbo Xinglun Bearings Import & Export Co., Ltd.	
Shanghai General Bearing Co., Ltd.	
Taizhou Zson Bearing Technology Co., Ltd.	
Zhejiang Sihe Machine Co., Ltd.	
Zhejiang Sling Automobile Bearing Co., Ltd.	
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, C–570–978	1/1/18–12/31/18
Beijing Tianhai Industry Co., Ltd.	
Tianjin Tianhai High Pressure Container Co., Ltd.,	
Langfang Tianhai High Pressure Container Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Flanges, C–570–065	1/23/18–12/31/18

	Period to be reviewed
Activa Inc.	
Advanced CAE, Ltd.	
AP Alloy Industries	
Beijing Kang Jie Kong International Cargo Agent Co. Ltd.	
Cheonseng Precision Foundry Co., Ltd.	
Dalian Lianmei Machinery Co., Ltd.	
Dalian Newshow Pipeline Industry Co., Ltd.	
DK Logistics Co. Ltd.	
Dongtai QB Stainless Steel Co., Ltd	
EN Corp.	
Felix Metal Tech Co., Ltd.	
Felix Technology Co., Ltd.	
Highlight Tech Corp.	
Hydro-Fluid Controls Limited	
J&C Industrial Co. Ltd.	
Jiangsu Huayang Metal Pipes Co., Ltd.	
Jiangyin Ganghui Packing Co. Ltd.	
Jiangyin Huaxi Flange Co., Ltd.	
Jiangyin Huaxin Electrical Equipment Co. Ltd.	
Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd	
Jiangyin Tianhong Decoration Material Co., Ltd.	
Jiaxing MT Stainless Steel Co., Ltd.	
King Compass Logistics Ltd.	
Linde Engineering Dresden	
New Youngmart Corp.	
Ni Fang Co., Ltd.	
Ningbo Kexing Pipe Industrial Co., Ltd.	
Qingdao Hongyang Wooden Co., Ltd.	
Qingdao Sunmac International Co., Ltd.	
Rankam Group Ltd.	
Scytek International (Sii) Inc.	
Shanghai Jiawen Performance Industries Co., Ltd.	
Shanghai Yume International Trading Co., Ltd.	
Shanxi Guanjiaying Flange Forging Group Co., Ltd,	
Shenzhen Rock Hardware Co., Ltd.	
Songhai Flange Manufacturing Co., Ltd.	
Sunoble International Logistics, Ltd.	
VIO Co., Ltd.	
Wenzhou Good Fittings Co., Ltd.	
Wenzhou Welsure Steel Co., Ltd.	
Wholelucks Industrial Ltd.	
World Steel Asia Co., Ltd.	
Yih Kuang Metal Corp.	
Yuhong Group Co. Ltd.	
Zhejiang Good Fittings Co., Ltd.	
Zhejiang Wangbin Decorative Material Co., Ltd.	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[5] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[6] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. *See* 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 24, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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BILLING CODE 3510–DS–P

[5] *See* section 782(b) of the Act.

[6] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 29, 2019.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anticircumvention determinations made between Apri1 1, 2018, and June 30, 2018, inclusive. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on July 16, 2019.[2] This current notice covers all scope rulings and anticircumvention determinations made by Enforcement and Compliance between April 1, 2018, and June 30, 2018, inclusive.

Scope Rulings Made Between April 1, 2018 and June 30, 2018

Canada

A–122–857 and C–122–858: Softwood Lumber From Canada

Requestor: Produits Matra, Inc. (Matra); rectangular and profiled Primelock-branded trim boards with a width of 8, 10 or 12 inches that have been edge-glued are not covered by the scope of the antidumping and countervailing duty orders on softwood lumber from Canada because Commerce has determined that edge-glued lumber products constitute finished goods that are excluded from the orders. Rectangular and profiled Primelock-branded trim boards that are not edge-glued are covered by the scope of the antidumping and countervailing duty orders on softwood lumber from Canada.; June 14, 2018

Italy

A–475–832 and C–475–833; A–570–026 and C–570–027: Corrosion-Resistant Steel Products From Italy and the People's Republic of China

Requestor: Trendium Pool Products, Inc; Chinese and Italian CORE components of the pool kits and pool walls exported by Trendium to the United States are within the scope of the antidumping and countervailing duty orders, because they meet the

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 84 FR 33915 (July 16, 2019).

measurement and compositional criteria; May 10, 2018.

Mexico

A–201–805: Certain Circular Welded Non-Alloy Steel Pipe From Mexico

Requestor: Maquilacero, S.A. de C.V.; the 176 types of non-galvanized tubing produced to ASTM A–513 specifications produced and imported by the requestor are not within the scope of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico because they are mechanical tubing; June 18, 2018.

People's Republic of China

C–570–057: Certain Tool Chests and Cabinets From the People's Republic of China

Requestor: Quality Craft Industries, Inc; certain tool chests and cabinets imported from the People's Republic of China (China) packaged in either wooden crates or corrugated boxes with packaging marking codes 5607CH, 5611TC, 4108CH, 4111TC, 3608CH, and 3606TC are within the scope of the antidumping duty order; May 21, 2018.

A–570–937 and C–570–938: Citric Acid and Certain Citrate Salts From the People's Republic of China

Requestor: Innua Petrochem, Ltd. (Innua); tributyl citrate (TBC) imported by Innua is not within the scope of the antidumping and countervailing duty orders because TBC does not meet the language of the scope; May 21, 2018.

A–570–900: Diamond Sawblades and Parts Thereof From the People's Republic of China

Requestor: Lyke Industrial Tool, LLC; finished diamond sawblades imported from China (regardless of the Rockwell hardness level of cores) are within the scope of the antidumping duty order; cupwheels with segments attached to the bottom of the cores are outside the scope of the antidumping duty order; May 17, 2018.

A–570–914 and C–570–915: Light-Walled Rectangular Pipe and Tube From the People's Republic of China

Requestor: Carlson AirFlo Merchandising Systems; certain finished components of refrigerated merchandising and display structures imported from China with part numbers R10447, P0228321, 250172, and 250355 are within the scope of the antidumping duty orders; May 29, 2018.

A–570–016 and C–570–017: Passenger Vehicle and Light Truck Tires From the People's Republic of China

Requestor: Maxxis; Certain radial spare tires by Cheng Shin Rubber USA, Inc., doing business as Maxxis International (Maxxis), are outside the scope of the antidumping and countervailing duty orders; May 1, 2018.

A–570–016 and C–570–017: Passenger Vehicle and Light Truck Tires From the People's Republic of China

Requestor: Yokohama Corporation of North America, Hangzhou Yokohama Tire Company, Ltd. and Yokohama Rubber Company, Ltd.; new pneumatic rubber tires of a size listed in the passenger vehicle section of the Tire and Rim Association Year Book, but which do not have a DOT symbol stamped on their sidewalls, are outside the scope of the antidumping and countervailing duty orders; May 18, 2018.

A–570–890: Wooden Bedroom Furniture From the People's Republic of China

Requestor: Bassett Mirror Company, Inc.; a chest is not covered by the antidumping duty order on wooden bedroom furniture from China because it has certain characteristics which distinguish it from bedroom chests; May 14, 2018.

A–570–890: Wooden Bedroom Furniture From the People's Republic of China

Requestor: Bassett Mirror Company, Inc.; two chests are not covered by the antidumping duty order on wooden bedroom furniture from China because they have certain characteristics which distinguish them from bedroom chests; June 29, 2018.

Anticircumvention Determinations Made Between April 1, 2018 and June 30, 2018

The People's Republic of China

A–570–029 and C–570–030: Certain Cold-Rolled Steel Flat Products From the People's Republic of China

Requestors: Steel Dynamics, Inc. (SDI), California Steel Industries (CSI), ArcelorMittal USA LLC (AMUSA), Nucor Corporation (Nucor), United States Steel Corporation, and AK Steel Corporation; Commerce determines that cold-rolled steel produced in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel substrate manufactured in China is circumventing the order on cold-rolled steel from China. Commerce determines that the cold-rolled steel produced in Vietnam from hot-rolled steel substrate manufactured in China falls within the orders covering cold-rolled steel from China; May 23, 2018.

A–570–026 and C–570–027: Certain Corrosion Resistant Steel Products From the People's Republic of China

Requestors: ArcelorMittal USA LLC, Nucor Corporation, United States Steel Corporation, and AK Steel Corporation, as well as Steel Dynamics, Inc. and California Steel Industries, (collectively, CORE Domestic Producers) following anti-circumvention inquiries, which were initiated in response to requests submitted by CORE Domestic Producers, Commerce determined that imports of certain corrosion-resistant steel products (CORE), produced in the Vietnam using carbon hot-rolled steel or cold-rolled steel flat products manufactured in China, are circumventing the antidumping duty and countervailing duty orders on CORE from China. (May 23, 2018).

Interested parties are invited to comment on the completeness of this list of completed scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: July 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–16039 Filed 7–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–105]

Carbon and Alloy Steel Threaded Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of carbon and alloy steel threaded rod (steel threaded rod) from the People's Republic of China (China) for the period of investigation (POI) January 1, 2018

through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 29, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0410 or (202) 482–2805, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 19, 2019.[1] On April 19, 2019, in accordance with section 703(c)(1)(A) of the Act, Commerce postponed the preliminary determination in this investigation to July 22, 2019.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and its electronic version are identical in content.

Scope of the Investigation

The merchandise covered by the scope of this investigation is steel threaded rod from China. For a full description of the scope of this investigation, *see* Appendix I to this notice.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice.*[7] *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] In making these findings, Commerce relied, in part, on facts available, and because one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[9] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,[10] Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of steel threaded rod from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 3, 2019, unless postponed.

All-Others Rate

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Ningbo Zhongjiang High Strength Bolts Co., Ltd. (Zhongjiang Bolts) and Zhejiang Junyue Standard Part Co., Ltd. (Junyue) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration.[11]

[1] *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 84 FR 10040 (March 19, 2019) (*Initiation Notice*).

[2] *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 84 FR 17379 (April 25, 2019). In accordance with Commerce's practice, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 2930, As Amended,* 70 FR 24533 (May 10, 2005).

[3] *See* ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated July 22, 2019 (Preliminary Scope Decision Memorandum).

[7] *Id.* at 3–4.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* sections 776(a) and (b) of the Act.

[10] *See* Petitioner's Letter, ''Carbon and Alloy Steel Threaded Rod from China: Request to Align the Final Determinations,'' dated June 14, 2019.

[11] With two respondents under examination, Commerce normally calculates (A) a weighted average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of

Continued

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Net subsidy rate (percent)
Ningbo Zhongjiang High Strength Bolts Co., Ltd	23.41
Zhejiang Junyue Standard Part Co., Ltd	24.89
All Others	23.83

Suspension of Liquidation

In accordance with section 703(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for submitting non-scope related case briefs.[12] The deadlines for scope-related comments and rebuttals are set in the Preliminary Scope Decision Memorandum.[13]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury, to the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 22, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of this investigation is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this investigation whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this investigation are: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this investigation is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience

the data, *see* the All-Others' Rate Calculation Memorandum.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* Preliminary Scope Decision Memorandum.

and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Application of the CVD Law to Imports From China
VII. Diversification of China's Economy
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Subsidies Valuation
X. Benchmarks and Discount Rates
XI. Analysis of Programs
XII. ITC Notification
XIII. Recommendation

[FR Doc. 2019–16036 Filed 7–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–PR–A001

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the Washington State Department of Transportation (WSDOT) to take small numbers of marine mammals, by harassment, incidental to the Seattle Multimodal Project at Colman Dock in Seattle, Washington.

DATES: This authorization is effective from August 1, 2019, through July 31, 2020.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

Electronic copies of the application and supporting documents, as well as the issued IHA, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 7, 2019, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington, from August 1, 2019 to July 31, 2020. After receiving the revised project description and the revised IHA application, NMFS determined that the IHA application is adequate and complete on May 8, 2018. NMFS is proposing to authorize the take by Level A and Level B harassments of the following marine mammal species: Harbor seal (*Phoca vitulina*); northern elephant seal (*Mirounga angustirostris*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetopias jubatus*); killer whale (*Orcinus orca*); long-beaked common dolphin (*Delphinus capensis*), bottlenose dolphin (*Tursiops truncatus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*); harbor porpoise (*Phocoena phocoena*); and Dall's porpoise (*P. dalli*). Neither WSDOT nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

This IHA covers one year of a larger project for which WSDOT obtained prior IHAs (82 FR 21579; July 7, 2017; 83 FR 35226; July 25, 2018) and intends to request take authorization for subsequent facets of the project. The larger 5-year project involves reconfiguring the Colman Dock of the Seattle Ferry Terminal while maintaining the same vehicle holding capacity as current conditions. WSDOT complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

Description of the Proposed Activity

Overview

The purpose of the Seattle Multimodal Project at Colman Dock is to preserve the transportation function of an aging, deteriorating and seismically deficient facility to continue providing safe and reliable service. The project will also address existing safety concerns related to conflicts between vehicles and pedestrian traffic and operational inefficiencies.

Dates and Duration

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction is limited each year to July 16 through February 15. In-water pile driving work will be conducted in daylight hours only. It is expected that a total of 146 pile driving days will be needed for the 2019/2020 construction work.

Specific Geographic Region

The Seattle Ferry Terminal at Colman Dock, serving State Route 519, is located on the downtown Seattle waterfront, in King County, Washington. The terminal services vessels from the Bainbridge Island and Bremerton routes, and is the most heavily used terminal in the Washington State Ferry system. The

Seattle terminal is located in Section 6, Township 24 North, Range 4 East, and is adjacent to Elliott Bay, tributary to Puget Sound (Figure 1–2 of the IHA application). Land use in the area is highly urban, and includes business, industrial, the Port of Seattle container loading facility, residential, the Pioneer Square Historic District and local parks.

Detailed Description of Specific Activity

The project will reconfigure the Colman Dock while maintaining approximately the same vehicle holding capacity as current conditions. The construction began in August 2017. In the 2017–2018 season, the construction activities were focused on the South Trestle, Terminal Building Foundation, and the temporary and permanent Passenger Offloading Facility. In the 2018–2019 season, the construction activities were focused on the North Trestle, and Slip 3 bridge seat, overhead loading, wingwall, and inner dolphin.

In the 2019–2020 season, WSDOT plans to work on Slip 2 bridge seat, Center Trestle, Slip 2 wingwall extension, and Slips 2 and 3 inner dolphins. Both impact pile driving and vibratory pile driving and pile removal would be conducted. A total of 58 days are estimated for pile driving and 88 days for pile removal.

In-water construction activities include:

- Permanently install 36-inch (in) steel piles with a vibratory hammer, and then proof with an impact hammer for the last 5–10 feet;
- Permanently install 24-in steel piles with a vibratory hammer;
- Removal of various piles with a vibratory hammer; and
- Install and removal of 24-in steel piles with a vibratory hammer.

A list of pile driving and removal activities is provided in Table 1.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES

Method	Pile type and size	Total number piles	Number piles/day	Work days
Vibratory drive *	Steel pipe (temp), 24-in	148	8	19
Vibratory drive	Steel pipe, 24-in	2	2	1
Vibratory drive **	Steel pipe, 36-in	148	8	19
Impact drive (proof) **	Steel pipe, 36-in	148	8	19
Vibratory removal	Timber, 14-in	1,046	20	52
Vibratory removal	Steel pipe, 12-in	108	11	10
Vibratory removal	Steel H, 14-in	19	10	2
Vibratory removal	Steel pipe, 18-in	15	10	2
Vibratory removal *	Steel pipe (temp), 24-in	148	8	19
Vibratory removal	Steel pipe, 36-in	3	1	3
Total		1,489		146

* Same 24-in steel pipe piles.
** Same 36-in steel pipe piles.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Mitigation* and *Monitoring and Reporting*).

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on June 4, 2019 (84 FR 25757). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses are provided below.

Comment 1: Commission recommends that NMFS refrain from using the proposed renewal process for WSDOT's authorization. The renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses. Notices for other types of activities should not even include the possibility that a renewal might be issued using the proposed foreshortened 15-day comment period. If NMFS intends to use the renewal process frequently or for authorizations that require a more complex review or for which much new information has been generated (*e.g.,* multiple or extensive monitoring reports), the Commission recommends that NMFS provide the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA

Response: There was a mistake in the notice of the proposed IHA that NMFS may issue a second 1-year IHA without additional notice. The correct procedure is that NMFS may issue a second 1-year IHA with a 15-day public comment period. The conditions that meet the renewal are the same as described in the **Federal Register** notice (84 FR 25757; June 4, 2019) for the proposed IHA. Separately, NMFS has responded to the same comment from the Commission previously and we refer the reader to our response, included in the FR notice announcing NMFS issuance of an IHA for the (84 FR 31032, June 28, 2019).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in lower Puget Sound area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of

the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's 2018 U.S. Pacific Draft Marine Mammal SARs (Carretta *et al.,* 2019). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Carretta *et al.,* 2018); and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	26,960	801	138
Family Balaenopteridae:						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	2,900	16.7	>38.6
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636	3.5	>1.3
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern N Pacific Southern resident	Y	77	0.13	0
		West coast transient	N	243	2.4	0
Long-beaked common dolphin	*Delphinus capensis*	California	N	101,305	657	>35.4
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	N	1,924	198	>0.84
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233	66	7.2
Dall's porpoise	*P. dali*	California/Oregon/Washington	N	25,750	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	N	257,606	14,011	>319
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N	41,267	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters	N	[4] 11,036	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	N	179,000	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here (Jefferies *et al.,* 2003; Carretta *et al.,* 2017).

All species that could potentially occur in the proposed action area are included in Table 2. More detailed descriptions of marine mammals in the WSDOT's Seattle Multimodal Project at Colman Dock project area is provided in the **Federal Register** notice for the proposed IHA (84 FR 25757; June 4, 2019). Therefore, it is not repeated here.

Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twelve marine mammal species (eight cetacean and four pinniped (two otariid and two phocid) species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to Table 2. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), three are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor and Dall's porpoises).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take* section, and the *Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Potential impacts to marine mammals from the WSDOT's Seattle Multimodal Project at Colman Dock are from noise generated during in-water pile driving activities. Detailed analysis of the impacts is provided in the **Federal Register** notice for the proposed IHA (84 FR 25757; June 4, 2019). Therefore, it is not repeated here.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise generated from in-water pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high-frequency cetacean species and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids, and because these species are much smaller than mysticetes, thus they present challenges in implementing monitoring and mitigation measures. Auditory injury is unlikely to occur for low- and mid-frequency cetacean species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities,

NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

WSDOT's activity includes the use vibratory hammer, which generates non-impulse noises, and impact hammer, which generates impulse noises. Therefore, the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WSDOT's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and pile removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB	$L_{rms,flat}$: 160 dB	$L_{rms,flat}$: 120 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.		
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.		
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.		
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Source Levels

The source level for vibratory pile driving and removal of the 18- and 24-in steel pile is based on vibratory pile driving of the 30-in steel pile at Port Townsend. The unweighted SPL_{rms} source level at 10 m from the pile is 174 dB re 1 re 1 μPa.

The source level for vibratory pile driving of the 36-in steel piles is based on vibratory test pile driving of 36-in steel piles at Port Townsend in 2010. Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the unweighted SPL_{rms} for vibratory pile driving of 36-in steel pile was 177 dB re 1 μPa.

The source level for impact pile driving of the 36-in steel pile is based on the sound source verification (SSV) measurements at Colman Dock in 2018. The source levels reported are: 174 dB re 1 μPa^2-s for SEL_{ss}, 188 dB re 1 μPa for SPL_{rms}, and 206 dB re 1 μPa for SPL_{pk}. These levels were recorded with the use of bubble curtains for noise attenuation. Since WSDOT plans to use bubble curtain for all impact pile driving, NMFS considers these measurements are appropriate for impact zone calculation.

The source level for vibratory pile removal of 14-in timber pile is based measurements conducted at the Port Townsend Ferry Terminal during vibratory removal of a 12-in timber pile by WSDOT. The recorded source level is 152 dB_{rms} re 1 μPa at 16 m from the pile, with an adjusted source level of 155 dB_{rms} re 1 μPa at 10 m.

The source levels for vibratory pile removal of 12-in steel and 14-in steel H piles are based on vibratory pile driving of 12-in steel pipe pile measured by CALTRANS. The unweighted source level is 155 dB_{rms} re 1 μPa at 10 m.

A summary of source levels is presented in Table 5.

TABLE 5—SUMMARY OF SOURCE LEVELS FOR THE SEATTLE MULTIMODAL PROJECT AT COLMAN

[Year 3]

Method	Pile type/size (inch)	SEL, dB re 1 μPa^2-s	SPL_{rms}, dB re 1 μPa	SPL_{pk}, dB re 1 μPa
Vibratory driving/removal	Steel, 18- and 24-in	174	174	
Vibratory driving/removal	Steel, 36-in	177	177	
Impact pile driving (proof)	Steel, 36-in	174	188	206
Vibratory removal	Timber, 14-in	155	155	
Vibratory removal	Steel, 12-in	155	155	

TABLE 5—SUMMARY OF SOURCE LEVELS FOR THE SEATTLE MULTIMODAL PROJECT AT COLMAN—Continued

[Year 3]

Method	Pile type/size (inch)	SEL, dB re 1 μPa²-s	SPL_{rms}, dB re 1 μPa	SPL_{pk}, dB re 1 μPa
Vibratory removal	Steel H, 14-in	155	155	

These source levels are used to compute the Level A injury zones and to estimate the Level B harassment zones.

Estimating Harassment Zones

All distances to the Level B harassment zone except for 18-, 24-, and 36-in vibratory pile driving are based on the above source levels applying practical spreading loss, *i.e.,* 15 * log(R), where R is the distance from the pile to where Level B harassment levels are. For vibratory pile driving and pile removal, the Level B harassment level is 120 dB re 1 μPa; for impact pile driving, the Level B harassment level is 160 dB re 1 μPa.

For Level B harassment ensonified areas for vibratory pile driving and removal of the 18-in, 24-in, and 36-in steel piles, the distance is based on measurements conducted during the year 1 Seattle multimodal project at Colman. The result showed that pile driving noise of two 36-in steel piles being concurrently driven was no longer detectable at a range of 5.4 miles (8.69 km). Therefore, the distance of 8,690 m is selected as the Level B harassment distance for vibratory pile driving and removal of the 18-in, 24-in, and 36-in steel piles.

For Level A harassment zones, since the peak source levels for both pile driving are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2018).

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as in-water pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. When calculate Level A harassment distances using NMFS' User Spreadsheet, input parameters pile driving or removal duration (for vibratory hammer) or number of strikes (for impact hammer) of each pile and the number of piles installed or removed per day.

Distances of ensonified area for different pile driving/removal activities for different marine mammal hearing groups is present in Table 6.

TABLE 6—DISTANCES TO HARASSMENT ZONES AND AREA

Pile type, size & pile driving method	Injury zone (m)/area (km²)					Level B ZOI (m)/area (km²)
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid	Otariid	
Vibratory drive/removal, 24-in steel piles, 8 piles/day, 20 min/pile	96.7/0.029	8.6/0.000	143.0/0.064	58.8/0.011	4.1/0.000	8,690/74.291
Vibratory drive 24-in steel pile, 2 piles/day, 20 min/pile	38.3/0.005	3.4/0.000	56.7/0.010	23.3/0.002	1.6/0.000	8,690/74.291
Vibratory drive 36-in steel pile, 8 piles/day, 20 min/pile	153.3/0.074	13.6/0.001	226.6/0.161	93.2/0.027	6.5/0.000	8,690/74.291
Impact drive (proof) 36-in steel pile, 8 piles/day, 200 strikes/pile	343.2/0.370	12.2/0.000	408.7/0.524	183.6/0.106	13.4/0.000	736/1.701
Vibratory remove 14-in timber pile, 20 piles/day, 15 min/pile	8.0/0.000	0.7/0.000	11.8/0.000	4.8/0.000	0.3/0.000	2,154/14.854
Vibratory remove 12-in steel pile, 11 piles/day, 20 min/pile	6.5/0.000	0.6/0.000	9.6/0.000	3.9/0.000	0.3/0.000	2,154/14.854
Vibratory remove 14-in steel H pile, 10 piles/day, 20 min/pile	6.1/0.000	0.5/0.000	9.0/0.000	3.7/0.000	0.3/0.000	2,154/14.854
Vibratory removal 18-in steel pile, 10 piles/day, 20 min/pile	112.1/0.039	9.9/0.000	165.8/0.086	68.1/0.015	4.8/0.000	8,690/74.291
Vibratory removal 36-in steel pile, 1 pile/day, 20 min/pile	38.3/0.005	3.4/0.000	56.6/0.010	23.3/0.002	1.6/0.000	8,690/74.291

Marine Mammal Occurrence and Take Estimates

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine mammal takes are calculated based on its likelihood to be present in the Seattle Multimodal project at Colman Dock. For species that are frequently occurring in the project area, such as harbor seal, California sea lion,

Steller sea lion, and harbor porpoise, take calculation are based on marine mammal monitoring during the 2017/2018 season Seattle Multimodal project at Colman Dock when observation data are available, then adjusted to account for possible missed observations.

For marine mammals that do not frequently occur in the Seattle Multimodal project area while density information is available, density data from the U.S. Navy Marine Species Density Report were used for take calculation. These species are gray whale, humpback whale, minke whale, killer whale (west coast transient), Dall's porpoise, and northern elephant seal.

For bottlenose dolphin and long-beaked common dolphin, no density estimate is available. Therefore, take numbers for these two species are based on prior anecdotal observations and strandings in the action area.

A summary of marine mammal abundance and density is provided in Table 7.

TABLE 7—MARINE MAMMAL ABUNDANCE AND/OR DENSITY USED FOR TAKE CALCULATION

[Numbers in parenthesis indicate adjustments made to account for possible missed observations]

Species	Abundance based on observation at WSDOT Seattle Multimodal project (animals/day)	Navy Marine Species Density Report (animals/km^2)
Humpback whale		0.0007
Minke whale		0.00003
Gray whale		0.00051
Killer whale (west coast transient)		0.002
Harbor porpoise	3	
Dall's porpoise		0.048
Harbor seal	8 (11)	
Northern elephant seal		0.00001
California sea lion	18	
Steller sea lion	0.6 (1.2)	

For marine mammals with observation data during WSDOT's 2017/2018 Seattle Multimodal project, take numbers were calculated as:

Total Take = animal abundance × pile driving days

To determine the portion of total take that would result from Level A harassment, the proportion of Level A and Level B harassment was used to apportion the total takes. Furthermore, an additional 20 takes of harbor seals by Level A harassment is added to account for the higher numbers historically sighted during monitoring and the smaller shutdown zones (see below).

For marine mammals that were not observed during the 2017/2018 season but with known densities in the general area (*i.e.,* gray, humpback, and minke whales and Dall's porpoise), take numbers were calculated as:

Take = ensonified area (Level A or Level B) × animal density × pile driving days

For long-beaked common dolphin and bottlenose dolphin, an average of 7 animals per group is determined based on sighting data from Cascadia Research (CRC 2012, 2017). Assuming that an average of one group could be encountered per month in the project area, a total of 49 takes of each species is assessed for the duration of 7 months in-water work window.

For calculated take number less than 15, such as northern elephant seals, transient killer whales, humpback whales, gray whales, and minke whales, Level B take numbers were adjusted to account for group size and the likelihood of encountering. Specifically, for northern elephant seal, take of 15 animals is estimated based on the likelihood of encountering this species during the project period. For transient killer whale, take of 30 animals is estimated based on the group size and the likelihood of encountering in the area. For gray, humpback, and minke whale, 30, 30, and 10 animals each area estimated, respectively.

WSDOT will implement strict monitoring and mitigation measures and to suspend pile driving activities when SRKWs are detected in the vicinity of the action to avoid takes of this population.

A summary of marine mammal take numbers is provided in Table 8.

TABLE 8—ESTIMATED TAKE NUMBERS

Species	Estimated Level A take	Estimated Level B take	Estimated total take	Percent population
Gray whale	0	30	30	0.11
Humpback whale	0	30	30	1.03
Minke whale	0	10	10	1.57
Killer whale, transient	0	30	30	12.35
Harbor porpoise	103	335	438	3.90
Dall's porpoise	64	208	272	1.06
Long-beaked common dolphin	0	49	49	0.05
Bottlenose dolphin	0	49	49	2.55
California sea lion	0	2,628	2,628	1.02
Steller sea lion	0	175	175	0.42
Pacific harbor seal	114	1,492	1,606	14.55
Northern elephant seal	0	15	15	0.01

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Specific mitigation measures are proposed as follows.

1. Time Restriction.

Work will occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

2. Establishing and Monitoring Level A, Level B Harassment Zones, and Shutdown Zones.

WSDOT shall establish shutdown zones that encompass the distances within which marine mammals could be taken by Level A harassment (see Table 7 above) except for harbor seal. For Level A harassment zones that is less than 10 m from the source, a minimum of 10 m distance should be established as a shutdown zone. For harbor seal, a maximum of 60 m shutdown zone would be implemented if the actual Level A harassment zone exceeds 60 m. This is because there are a few habituated harbor seals that repeated occur within the larger Level A zone, which makes implementing a shutdown zone larger than 60 m infeasible.

A summary of exclusion zones is provided in Table 9.

TABLE 9—SHUTDOWN ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS

Pile type, size & pile driving method	Shutdown zone (m)				
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid	Otariid
Vibratory drive/removal, 24-in steel piles, 8 piles/day	100	10	150	60	10
Vibratory drive 24-in steel pile, 2 piles/day; or vibratory removal 36-in steel pile, 1 pile/day	40	10	60	25	10
Vibratory drive 36-in steel pile, 8 piles/day	160	15	230	60	10
Impact drive (proof) 36-in steel pile, 8 piles/day	350	15	410	60	15
Vibratory remove 14-in timber pile, 20 piles/day; or vibratory removal 12-in steel pile, 11 piles/day; or vibratory removal 14-in steel pile, 10 piles/day	10	10	15	10	10
Vibratory removal 18-in steel pile, 10 piles/day, 20 min/pile	120	10	170	60	10

WSDOT shall also establish a Zone of Influence (ZOI) based on the Level B harassment zones for take monitoring where received underwater SPLs are higher than 160 dB_{rms} re 1 μPa for impulsive noise sources (impact pile driving) and 120 dB_{rms} re 1 μPa for non-impulsive noise sources (vibratory pile driving and pile removal).

NMFS-approved protected species observers (PSO) shall conduct an initial 30-minute survey of the exclusion zones to ensure that no marine mammals are seen within the zones before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

3. Soft-start.

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the impact pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without impact pile driving, the contractor will initiate the driving with ramp-up procedures described below.

Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of impact pile driving, or if pile driving has ceased for more than 30 minutes.

4. Shutdown Measures.

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is

about to enter an exclusion zone listed in Tables 8.

WSDOT shall also implement shutdown measures if SRKWs are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal shall be suspended until the whale exits the Level B harassment zone to avoid further level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

5. Coordination with Local Marine Mammal Research Network.

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Based on our evaluation of the required measures, NMFS has preliminarily determined that the prescribed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its dolphin relocation project at Bremerton and Edmonds ferry terminals. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from WSDOT's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of ZOI from different pile types, three different ZOIs and different monitoring protocols corresponding to a specific pile type will be established.

- For Level B harassment zones with radii less than 1,000 m, 3 PSOs will be monitoring from land;
- For Level B harassment zones with radii larger than 1,000 m but smaller than 2,500 m, 4 PSOs will be monitoring from land; and
- For Level B harassment zones with radii larger than 2,500 m, 4 PSOs will be monitoring from land with an additional 1 PSO monitoring from a ferry.

6. PSOs shall collect the following information during marine mammal monitoring:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);

- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
  - Species, numbers, and, if possible, sex and age class of marine mammals;
  - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
  - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and
  - Estimated amount of time that the animals remained in the Level B zone;
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period.

To verify the required monitoring distance, the exclusion zones and Level B harassment zones will be determined by using a range finder or hand-held global positioning system device.

Reporting Measures

WSDOT is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA, whichever comes earlier. In the case if WSDOT intends to renew the IHA in a subsequent year, a monitoring report should be submitted 60 days before the expiration of the current IHA. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed, extrapolated from marine mammals observed within the harassment zones that can be monitored. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS requires WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 8, given that the anticipated effects of WSDOT's Seattle Multimodal at Colman Dock project involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although some marine mammals could experience, and are authorized for Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day (114 harbor seals, 103 harbor porpoises, and 64 Dall's porpoise), the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Therefore, the degree of PTS is not likely to affect the echolocation performance of the two porpoise species, which use frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Nonetheless, we evaluate the estimated take in this negligible impact analysis.

For these species except harbor seal, harbor porpoise and Dall's porpoise, takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral and TTS). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. A few marine mammals could experience TTS if they occur within the Level B TTS zone. However, as discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours.

Portions of the SRKW range is within the proposed action area. In addition, the entire Puget Sound is designated as the SRKW critical habitat under the ESA. However, WSDOT would be required to implement strict mitigation measures to suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of SRKW would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' subsection. There is no ESA designated critical habitat in the vicinity of the Seattle Multimodal Project at Colman Dock area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at Colman Dock would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Injury—only a relatively small number of marine mammals (of three stocks) would experience Level A harassment in the form of mild PTS, which is expected to be of small degree;
- Behavioral disturbance—eleven species/stocks of marine mammals would experience behavioral disturbance and TTS from the WSDOT's Seattle Colman Dock project. However, as discussed earlier, the area to be affected is small and the duration of the project is short. In addition, the nature of the take would involve mild behavioral modification; and
- Although portion of the SWKR critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile driving are expected to avoid take of SRKW, and impacts to prey species and the habitat itself are expected to be minimal. No other important habitat for marine mammals exist in the vicinity of the project area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The estimated takes are below 15 percent of the population for all marine mammals (Table 8).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

The California-Oregon-Washington stock of humpback whale and the Southern Resident stock of killer whale are the only marine mammal species listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. NMFS worked with WSDOT to implement shutdown measures in the IHA that will avoid takes of Southern Resident killer whale. NMFS is proposing to authorize take of California/Oregon/Washington stock of humpback whale.

The effects of this proposed Federal action were adequately analyzed in NMFS' *Reinitiation of Endangered Species Act (ESA) Section 7(a)(2) Consultation (Humpback Whales) for the Seattle Multimodal Terminal at Colman Dock Project, King County, Washington* in October 2018, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Authorization

As a result of these determinations, NMFS has issued an IHA to the WSDOT to conduct Seattle Multimodal Project at Colman Dock in Seattle, Washington, between August 1, 2019, and July 31, 2020, provided the previously prescribed mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 23, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–15970 Filed 7–26–19; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0040]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled ''Equal Access to Justice Act.''

DATES: Written comments are encouraged and must be received on or before August 28, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 3170–0040.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden Hours: 15.

Abstract: The Equal Access to Justice Act (the Act) provides for payment of fees and expenses to eligible parties who have prevailed against the Bureau in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (12 CFR part 1071) require the filing of an application that shows that the party is a prevailing party and is eligible to receive an award under the Act. The Bureau regulations implementing the Act require the collection of information related to the application for an award in 12 CFR part 1071, subparts B, C. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on May 13, 2019, 84 FR 20864, Docket Number: CFPB–2019–0025 Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: July 24, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–16006 Filed 7–26–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2019–OS–0063]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 28, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Science, Mathematics and Research for Transformation (SMART) Scholarship Program; DD forms 3067–1,3067–2, 3067–3, 3067–4, 3067–5, 3067–6, 3067–7, 3067–8, 3067–9, 3067–10, 3067–11, 3067–12, 3067–13, 3067–14, 3067–15; OMB Control Number 0704–0466.

Type of Request: Extension.

Smart Application (Online).

Number of Respondents: 2,800.

Responses per Respondent: 1.

Annual Responses: 2,800.

Average Burden per Response: 8 hours.

Annual Burden Hours: 22,400 hours.

Smart Service Agreement/Handbook Packages (DD–3067–2, DD–3067–6, DD–3067–12)

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 5.5 hours.

Annual Burden Hours: 1,375 hours.

DD–3067–7—Smart Phase 1 Annual Report

Number of Respondents: 850.

Responses per Respondent: 1.

Annual Responses: 850.

Average Burden per Response: 4 hours.

Annual Burden Hours: 3,400 hours.

Award Change Requests (DD–3067–1, DD–3067–3, DD–3067–4, DD–3067–8, DD–3067–9, DD–3067–11, DD–3067–13, DD–3067–15)

Number of Respondents: 850.

Responses per Respondent: 8.

Annual Responses: 6,800.

Average Burden per Response: 15 hours.

Annual Burden Hours: 102,000 hours.

DD–3067–14—Smart Notice of Withdrawal

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 1 hour.

Annual Burden Hours: 50 hours.

Total Number of Respondents: 2,800 (Some respondents complete more than one collection instrument).

Total Annual Responses: 10,750.

Total Annual Burden Hours: 129,225.

Needs and Uses: SMART is designed to increase the number of new civilian science, technology, engineering, and mathematics (STEM) entrants to the DoD. Additionally, the SMART Program develops and retains current DoD civilian STEM employees that are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce. SMART awards scholarships, ranging from 1.5 to 5 years, to undergraduate and graduate level students pursuing a degree in one of 21 technical disciplines. Upon graduation, scholars fulfill a service commitment with the DoD facility that nominated the scholar for an award (the sponsoring facility, or SF). The information collection activity under review is a statutory and functional requirement necessary to administer the scholarship program.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–15950 Filed 7–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–HQ–0015]

Proposed Collection; Comment Request

AGENCY: The Office of the Secretary of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Navy Recruiting Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Ashley John at 2000 Navy Pentagon, Rm. 4E563, Washington DC 20350 or call 703–614–7583.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Commission in the U.S. Navy/U.S. Naval Reserve; NAVCRUIT Form 1131/238, OMB Control Number 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 14,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Annual Responses: 14,000.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: July 24, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–16012 Filed 7–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as

represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* 812–854–2777.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing: Patent No. 10,317,178 (Navy Case No. 200226): OPTIMIZED SUBSONIC PROJECTILES AND RELATED METHODS and Patent No. 10,309,786 (Navy Case No. 200250): NAVIGATIONAL AND LOCATION DETERMINATION SYSTEM.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 24, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–16034 Filed 7–26–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0057]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Student Loan Data System (NSLDS)

AGENCY: Federal Student Aid (FSA); Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 28, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0057. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Valerie Sherrer, 202–377–3547.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Student Loan Data System (NSLDS).

OMB Control Number: 1845–0035.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 25,728.

Total Estimated Number of Annual Burden Hours: 60,300.

Abstract: The United States Department of Education will collect data through the National Student Loan Data System (NSLDS) from Federal Perkins Loan holders (or their servicers) and Guaranty Agencies (GA) about Federal Perkins, Federal Family Education, and William D. Ford Direct Student Loans to be used to manage the federal student loan programs, develop policy, and determine eligibility for programs under title IV of the Higher Education Act of 1965, as amended (HEA). NSLDS also holds data about Federal Grants, including PELL, ACG/SMART, and TEACH. NSLDS is used for research, policy analysis, monitoring student enrollment, calculating default rates, monitoring program participants and verifying student eligibility. This revision includes updates to the systems with which NSLDS collects and shares data. We have also updated the associations with which we consult to ensure reporting requirements meet with institutional capabilities.

Dated: July 24, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–15990 Filed 7–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, August 24, 2019 9:00 a.m.

ADDRESSES: Tremont Lodge, 7726 E Lamar Alexander Parkway, Townsend, Tennessee 37882.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; Email: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://energy.gov/orem/services/*

community-engagement/oak-ridge-site-specific-advisory-board.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Introductions
- Presentation: OREM Program Overview and Updates
- Work Plan Topics: Presentations by DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Process and Plan for Issue Group Sign-up
- Break
- Public Comment Period
- Board Review of Fiscal Year (FY) 2018: Mission and Accomplishments, and Results of Member Survey
- Board Business:
  - Recommendations from the EM SSAB Chairs Meeting
  - Approval of June 12, 2019 Meeting Minutes
  - Recommendations on FY21 OREM Budget Priorities
  - Voting on Candidates for FY20 Officers
- Remarks: End of Day Meeting Evaluation
- Lunch Break
- Follow-on Discussion
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Signed in Washington, DC, on July 23, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–16009 Filed 7–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice of Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, August 15, 2019 6:00 p.m.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, Room 109, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825; email: *jennifer.woodard@pppo.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken as Appropriate

Public Participation: The meeting is open to the public. The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Woodard as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials.*

Signed in Washington, DC, on July 23, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–16010 Filed 7–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of open meeting and webinar.

SUMMARY: This notice announces a meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will hold a public meeting on August 8, 2019 from 10 a.m. to 3 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See the Public Participation section of this notice for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585–0121. Please see the Public Participation section of this notice for additional information on attending the public meeting.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The primary focus of this meeting will be the discussion and prioritization of topic areas that ASRAC can assist the Appliance and Equipment Standards Program with. DOE plans to hold this public meeting to gather advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment. (The final agenda will be available for public viewing at *https://www.regulations.gov/docket?D=EERE-2013-BT-NOC-0005.*)

Public Participation

Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the ASRAC staff at *asrac@ee.doe.gov.*

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *https://www.dhs.gov/real-id-enforcement-brief.* A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of Public Meeting

ASRAC's Designated Federal Officer will preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other relevant matters. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

In addition, any person may buy a copy of the transcript from the transcribing reporter.

Issued in Washington, DC, on July 22, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–16049 Filed 7–26–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9996–33–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support, Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General (OIG) is giving notice that it proposes to modify an existing system of records, Inspector General Enterprise Management System (IGEMS) Investigative module. The Inspector General Enterprise Management System (IGEMS) Investigative Module is modifying its point of contact, retention and disposal, and notification procedures.

DATES: Persons wishing to comment on this system of records notice must do so by August 28, 2019. If no comments are received by the end of the comment period, this system of record will become effective on August 28, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–2011–0366, by one of the following methods:

Regulations.gov: www.regulations.gov. Follow the online instructions for submitting comments.

Email: oei.docket@epa.gov.

Fax: 202–566–1752.

Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OEI Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–2011–0366. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, WJC West Building, Room 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 OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Maria Martir, 202–566–2692, *martir.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA OIG is giving notice that it intends to modify an existing system of records. The Inspector General Enterprise Management System (IGEMS) Investigative Module is modifying its point of contact, retention and disposal, and notification procedures. This system serves as the repository of information collected in the course of conducting investigations relating to programs and operations of the EPA. The privacy of individuals is protected through user authentication and system roles, permissions and privileges. The system is operated and maintained by the Office of Inspector General, Office of Management, Information Technology Directorate (OM–ITD).

SYSTEM NAME AND NUMBER:

Inspector General Enterprise Management System (IGEMS) Investigative Module. EPA–40.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SYSTEM MANAGER(S):

James Nussbaumer, *Nussbaumer.James@epa.gov,* 202–566–2583, Assistant Inspector General for Management, Office of Inspector General, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3.

PURPOSE(S) OF THE SYSTEM:

To serve as the repository of information collected in the course of conducting investigations relating to programs and operations of the EPA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects, complainants, and witnesses in OIG investigations; OIG employees who perform investigations; and individuals who receive the results of investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personally Identifiable Information (PII) records to include name, address, telephone number, employee ID, personal cell phone number, date of birth, employment information; Sensitive PII in the form of a social security number (SSN); Health insurance Portability and Accountability Act (HIPAA) records; and financial records. Records include investigative files and materials collected during the investigative process, names of subjects of OIG investigations; address of subjects; names of complainants and witnesses interviewed during the investigations; documents and other records collected

from public, business, government and other sources; forensic and other analyses; memoranda of investigative activities and contacts; electronic data; electronic images; and investigative tools.

RECORD SOURCE CATEGORIES:

Subjects of an investigation; present and former associations of the subjects (*e.g.,* colleagues, business associates, acquaintances, or relatives); federal, state, local, international, and foreign investigative or law enforcement agencies; other government agencies; confidential sources; complainants; witnesses; concerned citizens; and public source materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The following new routine uses apply to this system because the use of the record is necessary for the efficient conduct of government operations. The routine uses are related to and compatible with the original purpose for which the information was collected.

General routine uses A, B, C, D, E, F, G, H, I, J, and K apply to this system (73 FR 2245). Records may also be disclosed:

1. To any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate EPA investigation, audit, decision, or other inquiry.

2. To a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

3. To the Department of Justice to obtain its advice on Freedom of Information Act matters.

4. In response to a lawful subpoena issued by a Federal agency.

5. To the Department of the Treasury and the Department of Justice when EPA is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

6. To a Federal, State, local, foreign, or international agency, or other public authority, for use in a computer matching program, as that term is defined in 5 U.S.C. 552a(a)(8).

7. To a public or professional licensing organization if the record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

8. To any person when disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the EPA, when such recovery will accrue to the benefit of the United States, or when disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of EPA programs or operations.

9. To officers and employees of other Federal agencies for the purpose of conducting quality assessments of the OIG.

10. To the news media and public when a public interest justifies the disclosure of information on public events such as indictments or similar activities.

11. To Members of Congress and the public in the OIG's Semiannual Report to Congress when the Inspector General determines that the matter reported is significant.

12. To the public when the matter under audit or investigation has become public knowledge, or when the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the OIG audit or investigative process or is necessary to demonstrate the accountability of EPA officers, employees, or individuals covered by this system, unless it is determined that disclosure of the specific information in the context of a particular case could reasonably be expected to constitute an unwarranted invasion of personal privacy.

13. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14. To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

15. To the Office of Government Ethics to comply with agency reporting requirements in 5 CFR 2638.206.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

In accordance with OIG Records Management Policy, computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By names and other identifiers of subjects, complainants and witnesses interviewed during investigations; others involved in the investigative process; and investigative case file numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records stored in this system are subject to EPA Records Schedule 1016, which covers records related to operations and programs of the EPA and its external business partners that ensure compliance with applicable laws and regulations and prevent waste, fraud, and abuse.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings. The IGEMS Investigations module (I2M) is restricted to the I2M Administrator and the staff of EPA OIG Office of Investigations, Office of Counsel, the Inspector General and Deputy Inspector General. It is one of the modules found in IGEMS. IGEMS is accessible to EPA OIG employees only. It is an internal database accessible by multi-factor authentication. Use of strong passwords, which are renewed on a regular basis, and screen locks are enforced.

RECORD ACCESS PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(j), (k)(2) & (k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, EPA may in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to

protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. EPA's Privacy Act regulations are set out in 40 CFR part 16.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to you must be sent to the Agency's Privacy Officer at: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2831T), Washington, DC 20460; (202) 566–1668; Email: (*privacy@epa.gov*); Attn: Privacy Officer.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Under 5 U.S.C. 552a(j)(2), this system is exempt from the following provisions of the Privacy Act of 1974, as amended: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); (f); and (g).

Under 5 U.S.C. 552a(k)(2) and (k)(5), this system is exempt from the following provisions of the Privacy Act of 1974 as amended, subject to the limitations set forth in this subsection; 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), and (f)(2) through (5).

HISTORY:

66 FR 49947—The establishment of the IGOR system in the Office of Inspector General resulted in a restructuring of the OIG systems of records. Two existing systems (for investigative files and personnel security files) migrated to the IGOR structure. One new OIG system for audit, assignment, and time sheet files has been created.

76 FR 71019—proposes to amend an existing system of records by changing the name of the system from the Inspector General's Operation and Reporting (IGOR) System Investigative Files (EPA–40) to the Inspector General Enterprise Management System (IGEMS) Investigative Module.

Dated: May 3, 2019.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2019–16075 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0853]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 27, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0853.

Title: Certification by Administrative Authority to Billed Entity Compliance with the Children's internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act Form, FCC Form 486; and Funding Commitment and Adjustment Request Form, FCC Form 500.

Form Numbers: FCC Forms 479, 486 and 500.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents and Responses: 58,500 respondents, 58,500 responses.

Estimated Time per Response: 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and .75 hours for maintaining and updating the internet Safety Policy.

Frequency of Response: On occasion and annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 53,375 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval to extend the currently approved requirements contained in this information collection There is a decrease in burden hours of 5,200 hours. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place Internet safety policies. Schools and libraries receiving these services must certify, by completing a FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act), that respondents are enforcing a policy of

internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using a FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486. Consortia must, in turn, certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to adjust previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for nonrecurring services, and notifying USAC of equipment transfers. All requirements contained herein are necessary to implement the congressional mandate for universal service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–16028 Filed 7–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), this notice announces the establishment of a matching program the Federal Communications Commission (FCC or Commission or Agency) will conduct with the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by Universal Service Administrative Company (USAC) under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before August 28, 2019. This computer matching program will commence on August 28, 2019, unless written comments are received that require a contrary determination, and will conclude on January 29, 2021.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (National Verifier), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

Participating Agency

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), Transformed—Medicaid Statistical Information System (T–MSIS), System No. 09–07–0541.

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd at 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers are enrolled in the Medicaid program.

Categories of Individuals

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, a Lifeline applicant or subscriber's full name; physical and mailing addresses; partial Social Security number or Tribal ID number; date of birth; qualifying person's full name (if qualifying person is different from subscriber); qualifying person's physical and mailing addresses; qualifying person's partial Social Security number or Tribal ID number, and qualifying person's date of birth. The National Verifier will transfer these data elements to CMS, which will compare them to records maintained in T–MSIS and then respond either ''yes''

or ''no'' that the individual is enrolled in the Medicaid program.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a full notice of which the FCC last published at 82 FR 38686 (August 15, 2017). The CMS records shared as part of this matching program reside in the Transformed—Medicaid Statistical Information System (T–MSIS), System No. 09–07–0541, a full notice of which the CMS last published at 84 FR 2230 (February 16, 2019).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–16000 Filed 7–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0742]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 28, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0742.

Title: Sections 52.21 through 52.36, Telephone Number Portability, 47 CFR part 52, subpart (C) and CC Docket No. 95–116.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,631 respondents; 10,002,005 responses.

Estimated Time per Response: 0.0666 hours–10 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2) and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 673,460 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 251(b)(2) of the Communications Act of 1934, as amended, requires LECs to ''provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Through the LNP process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. In the *Porting Interval Order and Further Notice,* the Commission mandated a one business day porting interval for simple wireline-to-wireline and intermodal port requests. The information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission and will be used to comply with Section 251 of the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–16029 Filed 7–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2019–10]

Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission

AGENCY: Federal Election Commission.

ACTION: Policy statement.

SUMMARY: The Federal Election Commission (''Commission'') adopted a program on August 1, 2011, providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process. On October 23, 2013, the Commission revised this policy to provide an alternative electronic means to file a request with the Commission. On May 13, 2016, the Commission further revised this policy to clarify that requests for consideration must be submitted to the Commission Secretary to ensure that such requests are processed in a timely manner, and to build five business days into the program to allow time for the informal resolution of matters. The Commission is now republishing the policy to reflect the Commission's new mailing address. The Commission, however, is not making any substantive changes to the policy published on May 13, 2016.

DATES: This address change is effective July 29, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Lorenzo Holloway, Assistant General Counsel, or Margaret Forman, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 1, 2011, the Commission adopted a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process. Specifically, when the Office of Compliance (''OC'') (which includes the Reports Analysis Division and the Audit Division) requests that a person or entity take corrective action during the report review or audit process, if the person or entity disagrees with the request based upon a material dispute on a question of law, the person or entity may seek Commission consideration of the issue pursuant to this procedure. The October 23, 2013 revision of the program was identical to that August 1, 2011 program, except that it provided alternative means to file a request with the Commission. This change was made to address and clarify timeliness issues due to delays in the processing and receipt of requests mailed to the Commission, by encouraging requests to be filed electronically by email. The May 13, 2016 program revised the October 23, 2013 program by clarifying that requests for consideration must be submitted to the Commission Secretary to ensure that such requests are processed in a timely manner, and building five business days into the program to allow time for the informal resolution of matters. The Commission is now republishing the policy in order to update the Commission's address following its move to a new location in March 2018. The new address is 1050 First Street NE, Washington DC 20463. The policy statement regarding this program is reprinted in its entirety, below.

I. Procedures

Within 15 business days of a determination by the Reports Analysis Division or Audit Division that a person or entity remains obligated to take corrective action to resolve an issue that has arisen during the report review or audit process, the person or entity may seek Commission consideration if a material dispute on a question of law exists with respect to the recommended corrective action.[1] A ''determination'' for purposes of triggering the 15 business days is either: (1) Notification to the person or entity of legal guidance prepared by the Office of General Counsel (''OGC'') at the request of the Reports Analysis Division recommending the corrective action; or (2) the end of the Committee's Audit Exit Conference response period.

Any request for consideration by a Committee during the report review process or the audit process shall be limited to questions of law on material issues, when: (1) The legal issue is novel, complex, or pertains to an unsettled question of law; (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue; or (3) the request to take corrective action is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue. The request must specify the question of law at issue and why it is subject to Commission consideration. It should discuss, when appropriate, prior Commission matters raising the same issue, relevant court decisions, and any other analysis of the issue that may assist the Commission in its decision making. The Commission will not consider factual disputes under this procedure, and any requests for consideration other than on questions of law on material issues will not be granted.

All requests, including any extension requests, must be received by the Commission within 15 business days of the determination of corrective action. All requests must be directed to the attention of the Commission Secretary. Requestors may submit requests electronically via email. If a Requestor chooses to submit a request electronically via email, the email must be sent to *LegalRequestProgram@fec.gov*. Requestors are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, requests may be submitted in paper form. Paper requests must be sent to the Federal Election Commission, Attn.: Commission Secretary, 1050 First Street NE, Washington, DC 20463. Requestors are advised that if they submit a request, electronically or otherwise, to a different address than designated in this Policy, the processing of the request may be delayed. Upon receipt of a request, the Commission Secretary shall forward a copy of any request to each Commissioner, the General Counsel, and the Staff Director.

Any request for an extension of time to file will be considered on a case-by-case basis and will only be granted if good cause is shown, and the Commission approves the extension request by four affirmative votes within five business days of receipt of the extension request. Within five business days of notification to the Commissioners of a request for consideration of a legal question, if two or more Commissioners agree that the Commission should consider the request, OGC may, at that time, attempt to resolve the matter informally over the course of five business days. Within 15 business days from the date upon which OC and OGC conclude that the matter cannot be resolved informally, or from the expiration of the five business day period, whichever occurs first, OGC will prepare and circulate a recommendation in accordance with all applicable Commission Directives. If the matter is resolved informally, OC and OGC will notify the Commission that the matter

[1] Many disputes involving corrective action requests hinge on questions of fact rather than questions of law, and thus are not appropriate for this procedure.

has been resolved, and notify the Requestor in writing of the notification to the Commission. Informal resolution of a matter does not prevent the Requestor from seeking Commission consideration, in an additional or subsequent determination, subject to the requirements of this program.

After the recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. 552b(g), and applicable Commission regulations, 11 CFR part 2. However, if within 60 business days of the filing of a request for consideration, the Commission has not resolved the issue or provided guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners, the OC may proceed with the matter. After the 60 business days has elapsed, any requestor will be provided a copy of OGC's recommendation memorandum and an accompanying vote certification, or if no such certification exists, a cover page stating the disposition of the memoranda. Confidential information will be redacted as necessary.

After the request review process has concluded, or a Final Audit Report has been approved, a copy of the request for consideration, as well as the recommendation memorandum and accompanying vote certification or disposition memorandum, will be placed with the Committee's filings or audit documents on the Commission's website within 30 days. These materials will also be placed on the Commission's web page dedicated to legal questions considered by the Commission under this program.

This procedure is not intended to circumvent or supplant the Advisory Opinion process provided under 52 U.S.C. 30108 and 11 CFR part 112. Accordingly, any legal issues that qualify for consideration under the Advisory Opinion process are not appropriate for consideration under this new procedure. Additionally, this policy statement does not supersede the procedures regarding eligibility and entitlement to public funds set forth in Commission Directive 24 and 11 CFR 9005.1, 9033.4, 9033.6 or 9033.10.

II. Annual Review

No later than July 1 of each year, the OC and OGC shall jointly prepare and distribute to the Commission a written report containing a summary of the requests made under the program over the previous year and a summary of the Commission's consideration of those requests and any action taken thereon. The annual report shall also include the Chief Compliance Officer's and the General Counsel's assessment of whether, and to what extent, the program has promoted efficiency and fairness in both the Commission's report review process and in the audit process, as well as their recommendations, if any, for modifications to the program.

The Commission may terminate or modify this program through additional policy statements at any time by an affirmative vote of four of its members.

Dated: July 23, 2019.

On behalf of the Commission.

Ellen Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019–15988 Filed 7–26–19; 8:45 am]

BILLING CODE 6715–01–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 22, 2019.

A. *Federal Reserve Bank of Minneapolis* (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Frandsen Financial Corporation, Arden Hills, Minnesota;* to acquire 100 percent of the voting shares of Peoples Bank Midwest, Hayward, Wisconsin.

Board of Governors of the Federal Reserve System, July 23, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–15976 Filed 7–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''*Evaluating and Implementing the Six Building Blocks Team Approach to Improve Opioid Management in Primary Care.*'' In accordance with the Paperwork Reduction Act, AHRQ invites the public to comment on this proposed information collection. This proposed information collection was previously published in the **Federal Register** on April 12, 2019, and allowed 60 days for public comment. AHRQ did not receive any substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluating and Implementing the Six Building Blocks Team Approach To Improve Opioid Management in Primary Care

The project ''Evaluating and Implementing the Six Building Blocks Team Approach to Improve Opioid Management in Primary Care'' fully supports AHRQ's mission. The ultimate aim of this project is to further validate and expand the Six Building Blocks to Safer Opioid Management (6BBs) intervention and its associated resources and guidance to support primary care providers in safer opioid prescribing.

Opioid overdose deaths have increased dramatically since 1999, and despite recent decreases in the national opioid prescribing rate, prescribing rates remain high in many U.S. counties. Primary care providers (PCPs) are responsible for about half of all dispensed opioid pain relievers. To address the emerging opioid epidemic, the Six Building Blocks to Safer Opioid Management (6BBs) Toolkit has been developed to support primary care providers in safer opioid prescribing, largely concordant with the Centers for Disease Control and Prevention's Guideline for Prescribing Opioids for Chronic Pain. The 6BBs is a structured, systems-based approach for improving management of patients on long-term opioid therapy that targets six work areas a primary care practice needs to redesign in order to improve their clinic's management of patients on long-term opioid therapy.

Building upon previous work supported by AHRQ to address the opioid epidemic, this research has the following goals:

1. To improve the guidance for the 6BBs Toolkit,

2. To further implement the 6BBs in primary care practices, and

3. To understand the facilitators and barriers to implementing the Six Building Blocks to Safer Opioid Management.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Clinical Staff Survey. A brief survey will be administered electronically to all clinical staff, including primary care physicians, nurse practitioners, physician assistants, social workers, medical assistants, registered nurses, pharmacists and behavioral health workers, toward the beginning of 6BBs Toolkit implementation and approximately 12 months later. A quality improvement (QI) point person will provide email addresses for the staff who will be invited to complete the survey from each participating organization. These email addresses will be used to send clinical staff the surveys at both time points. The survey will collect information about staff's self-reported use of evidence-based opioid prescribing practices; procedures in place around opioid prescribing management; self efficacy regarding safe opioid prescribing; knowledge, beliefs and attitudes regarding opioid prescribing; adaptive reserve; self-reported burnout; and reported implementation experiences. The survey will also collect information about staffs' background (*e.g.,* clinic role and tenure). The survey will consist largely of closed-ended questions (*e.g.,* scale or Likert response options) with several open-ended questions.

(2) Staff Interviews. Interviews will be conducted with 5 staff at each of the 15 participating health care organizations. AHRQ will conduct 2 rounds of interviews, with the first round occurring within several months after the How-To-Guide is distributed to the organization and the second round occurring 12 months later. The evaluation team will conduct in-depth interviews with:

a. The quality improvement (QI) lead and

b. Four additional staff who are involved in 6BBs implementation at each organization, that might include a clinician, information technology analyst, social worker, behavioral health specialist, and/or care coordinator.

Staff interviewees will be selected by the QI lead at each organization, who will be asked to nominate a range of staff from those who embraced changes to those who were less willing to implement changes. Interviews will capture qualitative data regarding the organization's history with efforts to curb opioid prescribing, experiences using the How-To-Guide, implementation of the 6BB intervention and associated opioid management interventions, and lessons learned that can be shared with other health care organizations.

(3) Virtual Launch Meeting. A virtual launch meeting will be held for organization liaisons and quality improvement leaders from participating health care organizations to launch 6BBs Toolkit implementation. The meeting will be conducted by web-conference, and will last up to 2 hours.

(4) Quarterly Check-In Calls. A project team member will hold a quarterly check-in call with organization liaisons and quality improvement leaders to assess the progress of implementation of the 6BBs intervention and improvement initiatives at each organization. Check-in calls will occur quarterly for up to 12 months. Each call will be up to 60 minutes in duration, and notes will be taken by an evaluation team member during each call.

(5) QI Measures. Each health care organization will be asked to report quarterly on the number of patients on long-term opioid therapy and the proportion of those who are on greater than 90 morphine milligram equivalents, co-prescribed a benzodiazepine, and had the prescription drug monitoring program checked and a urine drug screen. Organizations may also select other outcome measures aligned to their own goals.

(6) Other outcome and output data from administrative records, electronic medical records, and organizational documents (Secondary Data). Health care organizations may also report their progress on implementing the 6BB intervention and associated changes in care processes through completion of worksheets contained in or associated with the How-To-Guide. Since these data collections involve simply submitting worksheets they complete for their own benefit while working through the How-To-Guide, they pose only minimal data collection burden to the health care organization, specifically the person who completes the worksheets (*i.e.,* QI lead). The project team will also obtain relevant organizational documents (*e.g.,* opioid prescribing policies, quality improvement plans, sample patient agreements, relevant practice workflows, screen shots of data dashboards).

The purpose of the proposed data collection effort is to obtain information needed to modify and enhance the 6BB How-To-Guide and to provide information to health care organizations considering using the How-To-Guide to improve their opioid prescribing

practices and relevant outcomes. Since this is only a study conducted in 15 organizations, outcomes or impacts will not be generalizable.

The data collected will help the project team: (1) Understand the facilitators and barriers of using the 6BB Toolkit and recommended improvements to processes of care and opioid prescribing practices, and (2) assess the effectiveness of using the 6BB Toolkit to improve processes of care and opioid prescribing practices. The data collection effort may also provide insights that could guide dissemination of the Toolkit. For example, if it was found that a specific type of organization included in this pilot study (*e.g.,* small, stand-alone clinic in a rural area) particularly benefitted from using the Toolkit, then AHRQ could tailor and target its dissemination of the Toolkit to similar organizations. Once revisions are made based on results of this evaluation, the How-To-Guide corresponding to the Toolkit will be published on AHRQ's website. A manuscript describing the pilot study and its results will also be produced for publication in a peer-reviewed journal.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the reporting burden hours for the data collection efforts. Time estimates are based on prior experiences and what can reasonably be requested of participating health care organizations. The number of respondents listed in column A, Exhibit 1 reflects a projected 75% response rate for data collection efforts 2a and 2b below. 1. Clinical Staff Survey. A brief survey will be emailed to all clinicians both toward the beginning of 6BBs Toolkit implementation and approximately 12 months later. We assumed 20 clinical staff per clinical site, and approximately 50 clinical sites overall (with a range from 1 clinic to 17 per organization), for a total of 1,000 staff across all 15 organizations. We assumed 750 clinical staff will complete the survey based on a 75% response rate. It is expected to take up to 15 minutes to complete.

2. Staff Interviews. In-depth interviews will occur with 5 staff at each health care organization, for a total of up to 75 individuals. The evaluation team will conduct these interviews, each lasting up to 1 hour, at 2 points in time with:

a. One QI lead per organization (toward the start of and at the end of the project).

b. Four additional staff (*e.g.,* clinician, information technology analyst, social worker) per organization (midway through and at the end of the project).

3. Virtual Launch Meeting. The meeting will occur with the quality improvement (QI) leads at participating health care organizations to launch 6BBs Toolkit implementation. The meeting will be conducted by web-conference, and will last up to 2 hours.

4. Quarterly Check-In Calls. Calls will occur with QI leads, clinical champions, and other relevant staff the QI lead identifies, for a total of no more than 5 individuals per organization. These calls will assess progress with the organization's use of the Toolkit and implementation of associated practice changes, and will occur quarterly over 15 months, for a total of 5 quarterly check-in calls. Each call will take up to 60 minutes.

5. QI Measures. Aggregate reports of the specified quality measures will be provided on a quarterly basis over the course of an 18-month period by a data analyst at each organization, for a total of 15 individuals across all 15 organizations. We assume 40 hours total (10 hours per quarter) for each data analyst to collect and provide these data.

6. Other outcome and output data from administrative records and organizational documents (Secondary Data). These secondary data will be provided by the QI lead at each organization, for a total of 15 individuals across all 15 organizations. We assume 4 hours per month for 12 months for a total of 48 hours for each QI lead to collect and provide these data.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method or project activity	Number of respondents A.	Number of responses per respondent B.	Hours per response C.	Total burden hours D.
1. Clinical Staff Survey*	750	2	15/60	375
2a. Staff Interview—QI Lead	15	2	1	30
2b. Staff Interview—Additional Staff	60	2	1	120
3. Virtual Launch Meeting	15	1	2	30
4. Quarterly Check-In Calls	75	5	1	375
5. QI Measures	15	4	10	600
6. Secondary data	15	12	4	720
Total	1035	n/a	n/a	2,250

*Number of respondents (Column A) reflects a sample size assuming a 75% response rate for this data collection effort.

Exhibit 2, below, presents the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be about $91,623.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method or project activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
1. Clinical Staff Survey	750	375	$48.45	$18,169
2a. Staff Interview—QI Lead	15	30	53.69	1,611
2b. Staff Interview—Additional Staff	60	120	38.83	4,660
3. Virtual Launch Meeting	15	30	53.69	1,611
4. Quarterly Check-In Calls	75	375	38.83	14,561

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Data collection method or project activity	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
5. QI Measures	15	600	20.59	12,354
6. Secondary data	15	720	53.69	38,657
Total				91,623

The average hourly rate of $48.45 for the clinical staff survey was calculated based on the 2017 mean hourly wage rate for health diagnosing and treating practitioners, $48.45 (occupation code 29–1000).

The average hourly rate of $53.69 for QI lead interviews was calculated based on the 2017 mean hourly wage rate for medical and health services managers, $53.69 (occupation code 11–9111). The average hourly rate of $38.83 for staff interviews was calculated based on the 2017 mean hourly wage rate for healthcare practitioners and technical occupations, $38.83 (occupation code 29–0000).

The average hourly rate of $53.69 for the virtual launch meeting was calculated based on the 2017 mean hourly wage rate for medical and health services managers, $53.69 (occupation code 11–9111).

The average hourly wage rate of $38.83 for quarterly check-in calls was calculated based on the 2017 mean hourly wage rate for healthcare practitioners and technical occupations, $38.83 (occupation code 29–0000).

The average hourly rate of $20.59 for QI measures was calculated based on the 2017 mean hourly wage rate for medical records and health information technicians, $20.59 (occupation code 29–2071).

The average hourly rate of $53.69 for secondary data was calculated based on the 2017 mean hourly wage rate for medical and health services managers, $53.69 (occupation code 11–9111).

Mean hourly wage rates for these groups of occupations were obtained from the Bureau of Labor & Statistics on ''Occupational Employment and Wages, May 2017'' found at the following URL: *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm.*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 23, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–15986 Filed 7–26–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Embedded Research in Care Delivery Systems.*''

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*Embedded Research in Care Delivery Systems*''

Embedded researchers contribute to learning health systems by collaborating with delivery system stakeholders to produce innovations and evidence that can be rapidly implemented to improve the outcomes of individuals and populations and health system performance.

Research is defined in this proposed project as *embedded* when it is conducted by an investigator who is employed or closely affiliated with the care delivery system and when the research project at least partially addresses operational concerns of the system (*e.g.,* ways to improve care quality, value, or other aspects of system performance, such as patient and staff satisfaction).

AHRQ is developing tools and findings to support learning health systems and embedded research, and is funding training of researchers to conduct embedded research.

The proposed project has the following goals:

- Select health care delivery systems that currently apply diverse and distinctive strategies for embedded research.
- Conduct and report on qualitative case studies documenting how embedded research is prioritized, funded, managed, conducted, and used in these systems.
- Specify several promising strategies for organizing and conducting embedded research.
- Provide summaries of study findings that will stimulate consideration of current and future strategies for embedded research among funders, trainers, and delivery system leaders.

The proposed project does *not* intend to create a comprehensive inventory of current practice in embedded research or to provide a representative sample of embedded research activities. Instead, the illustrative case studies will stimulate discussion at AHRQ and elsewhere about how to prepare researchers to conduct embedded research. Additionally, the case studies may provide insights to health research funding agencies about ways that funding criteria can influence the conduct of embedded research. The case studies may also provide health care leaders with illustrations of some of the potential benefits of supporting embedded research and some of the challenges of alternative approaches to incorporating such research into care delivery systems. AHRQ is conducting this study pursuant to the agency's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care. 42 U.S.C. 299a(a).

Method of Collection

Based on an environmental scan, six to eight care delivery systems will be selected that employ people engaged in embedded research; have engaged in this type of research for at least two fiscal years; and take a distinctive approach to it or are recognized as a leader in this field. At least one system will be selected that has a mission and a commitment to serving *AHRQ's priority populations.* The investigators will conduct phone interviews with up to eight people in each of the selected systems. The interview subjects in each delivery system will include at least one occupant of each of the following roles: Executive-level manager; person exercising oversight over embedded research activities; person from a service line or care sector in which several embedded research projects have been carried out; lead investigator on one or more embedded research projects. Interviews will be coded and case study summaries created for each system. The case study summaries will describe promising embedded research strategies, potential benefits and challenges of this type of research, and lessons learned about addressing challenges. The findings will be shared with AHRQ leadership, other health system leaders and funders of embedded research projects, and with the health services research community.

Estimated Annual Respondent Burden

Exhibit 1 is based on the following assumptions: No more than 8 subjects will participate in the main round of interviews in each system (site). There will be a maximum of 8 sites. If supplementary information is needed on selected projects, no more than 3 supplementary interviews will be conducted. Each supplementary interview will include 3–4 participants, with a total of no more than 10 participants in the whole set of supplementary interviews.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Collection activity-interviews	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Interviews with executive-level subjects	10	1	1	10
Interviews with physicians	22	1	1	22
Interviews with researchers and other operations staff	42	1	1	42
Total				74

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Interview participants	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Executive level (code 11–1011)	10	10	$96.22	$962.20
Physicians (code 29–1060)	22	22	101.43	2,231.46
Researchers and other operations staff (based on Operations Research Analysts code 15–2031)	42	42	42.48	1,784.16
Total				4,977.82

* National Compensation Survey: Occupational wages in the United States May 2018 "U.S. Department of Labor, Bureau of Labor Statistics."

Request for Comments

In accordance with the Paperwork Reduction Act, 42 U.S.C. 3501–3521, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: 24 July 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–16043 Filed 7–26–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–0198]

Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the prevention of delayed graft function (DGF) in kidney transplantation. This guidance finalizes the draft guidance of the same name issued March 23, 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on July 29, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–0198 for ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ozlem Belen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6118, Silver Spring, MD 20993–0002, 301–796–0676; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the prevention of DGF in kidney transplantation. This guidance finalizes the draft guidance of the same name issued on March 23, 2017 (82 FR 14904). FDA considered the few public comments received on the draft guidance and appropriate changes were made, including a rationale for the recommended number of patients for a preapproval safety database. Other edits were made to the efficacy endpoints and accelerated approval sections for improved clarity on those topics.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on developing drugs for

prevention of delayed graft function in kidney transplantation. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information under 21 CFR part 312 (investigational new drug application regulations) have been approved under OMB control number 0910–0014. The collections of information in 21 CFR parts 50 and 56 (Protection of Human Subjects: Informed Consent; Institutional Review Boards) have been approved under OMB control number 0910–0755. The collection of information under 21 CFR part 314, including the submission of information under subpart H (accelerated approval), has been approved under OMB control number 0910–0001. The collection of information under the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' (available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm358301.pdf*) has been approved under OMB control number 0910–0765.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: July 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–16026 Filed 7–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3077]

Agency Information Collection Activities; Proposed Collection; Comment Request; Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA research in obtaining information from pharmacists and other management at outsourcing facilities as well as at related compounding businesses to support a comprehensive analysis of the outsourcing facility sector that will inform future FDA work in this area.

DATES: Submit either electronic or written comments on the collection of information by September 27, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 27, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. midnight Eastern Time at the end of September 27, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3077 for ''Obtaining Information to Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

(OMB Control Number 0910–NEW)

This information collection supports Agency-sponsored research. Drug compounding is generally the practice of combining, mixing, or altering ingredients of a drug to create a medication tailored to the needs of an individual patient. Although compounded drugs can serve an important medical need for certain patients when an approved drug is not medically appropriate, they also present a risk to patients. Compounded drugs are not FDA-approved. Therefore, they do not undergo premarket review by FDA for safety, effectiveness, and quality. Since compounded drugs are subject to a lower regulatory standard than approved drugs, Federal law places conditions on compounding that are designed to protect the public health.

The Drug Quality and Security Act of 2013 created ''outsourcing facilities''—a new industry sector of drug compounders held to higher quality standards to protect patient health. Outsourcing facilities are intended to offer a more reliable supply of compounded drugs needed by hospitals, clinics, and other providers. Five years since its creation, this domestic industry is still relatively small and is experiencing growth and market challenges. In addition, FDA continues to find concerning quality and safety problems during inspections.

To help this industry meet its intended function, FDA intends to engage in several initiatives to address challenges and support compliance and advancement. One initiative includes conducting in-depth research to better understand challenges and opportunities encountered by the outsourcing facility sector in a number of different areas. These include: Operational barriers and opportunities related to the outsourcing facility market and business viability; knowledge and operational barriers and opportunities related to compliance with federal policies and good quality drug production; and barriers and opportunities related to outsourcing facility interactions with FDA.

The results of this research will be used by FDA to develop a comprehensive understanding of the outsourcing facility sector, its challenges, and opportunities for advancement. The information will be essential to help identify knowledge and information gaps, operational barriers, and views on interactions with FDA. The research results will inform FDA's future approaches to communication, education, training, and other engagement with outsourcing facilities to address challenges and support advancement.

Researchers will engage pharmacists, staff, and management from outsourcing facilities and similar compounding businesses. Researchers may use surveys, interviews, and focus groups to obtain information concerning challenges and opportunities encountered by outsourcing facilities. Within this context, the following questions or similar, related questions may be posed:

1. What financial and operational considerations inform outsourcing facility operational and business model decisions?

2. What factors impact the development of a sustainable outsourcing facility business?

3. What financial and operational considerations inform outsourcing facility product decisions?

4. Do outsourcing facilities understand the federal legislative and regulatory policies that apply to them? What, if any, knowledge gaps need to be addressed?

5. What challenges do outsourcing facilities face when implementing federal Current Good Manufacturing Practice (CGMP) requirements?

6. How do outsourcing facilities implement quality practices at their facilities?

7. How is CGMP and quality expertise developed by outsourcing facilities? How do they obtain this knowledge, and what training do they need?

8. What are the economic consequences of CGMP non-compliance/product failures for outsourcing facilities?

9. What are outsourcing facility management and staff views on current interactions with FDA? How do they want the interactions to change?

10. What are outsourcing facilities' understanding of how to engage with FDA during and following an inspection?

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Surveys, focus groups, and interviews	300	2	600	1	600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the average burden per response on review activities familiar to the Agency.

Dated: July 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–16027 Filed 7–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–2559]

Determination That FORTAMET (Metformin Hydrochloride) Extended-Release Tablets, 500 Milligrams and 1 Gram, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that FORTAMET (metformin hydrochloride) extended-release tablets, 500 milligrams (mg) and 1 gram (g), were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to these products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Carlarease Hunter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–3702, *Carlarease.Hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, are the subject of NDA 021574, held by Andrx Labs, LLC, and initially approved on April 27, 2004. FORTAMET is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus.

FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. Ajanta Pharma Limited submitted a citizen petition dated May 27, 2019 (Docket No. FDA–2019–P–2559), under 21 CFR 10.30, requesting that the Agency determine whether FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, from sale. We have also independently evaluated relevant literature and data for possible post marketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list FORTAMET (metformin hydrochloride) extended-release tablets, 500 mg and 1 g, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–16008 Filed 7–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement 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; Development of Medications to Prevent and Treat Opioid Use Disorders and Overdose (UG3/UH3—Clinical Trials Optional).

Date: August 22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16021 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIAAA, September 18, 2019, 8:30 a.m. to September 18, 2019, 3:30 p.m., National Institutes of Health, Building 10, Conference Room I–2330, 10 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 26, 2019, 84 FR 6155.

This meeting notice is amended to change the meeting location from Building 10, Conference Room I–2330, 10 Center Drive, Bethesda, MD 20892 to 5625 Fishers Lane, 5th Floor Conference Room, Rockville, MD 20852. The meeting is closed to the public.

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16013 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, September 19, 2019, 9:00 a.m. to September 19, 2019, 3:00 p.m., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on February 05, 2019, 84 FR 1757.

This meeting notice is amended to change the meeting date from September 19, 2019 to September 12, 2019. The closed session is amended to end at 9:30 a.m. and the open session is amended to begin at 9:30 a.m. The meeting is partially closed to the public.

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16020 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request National Cancer Institute (NCI) a Generic Submission for Formative Research, Pretesting and Customer Satisfaction of NCI's Communication and Education Resources (NCI); Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on July 2, 2019. That Notice requires a correction in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ilene French, Branch Chief, Office of Communication and Public Liaison, National Cancer Institute, 9609 Medical Center Drive, Maryland, 20892 or call non-toll-free number (240) 276–7787 or Email your request, including your address to: *nciocpl@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 2, 2019, in FR Doc. 2019–14071, on page 31605, correct the Estimated Annualized Burden Hours table to read as follows:

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Focus Groups, Individual In-Depth Interviews, Brief Interviews, Surveys, Website Usability Testing.	Individuals ..... (General Public).	9,000	1	45/60	6,750

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Focus Groups, Individual In-Depth Interviews, Brief Interviews, Surveys, Website Usability Testing.	Individuals ..... (Health Care Professionals).	9,000	1	45/60	6,750
Total	.....	.....	18,000	.....	13,500

Dated: July 24, 2019.

Patricia M. Busche,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2019–16022 Filed 7–26–19; 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; Chronic Kidney Disease Biomarkers Consortium Applications.

Date: August 15, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@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 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16015 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; BRAIN Initiative: New Concepts and Early-Stage Research for Large-Scale Recording and Modulation in the Nervous System (R21).

Date: August 29, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Acting Review Chief, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700B Rockledge Dr., Ste. 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16017 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Physical Frailty II [2020/01 ZAG1 ZIJ–P (J3)].

Date: September 26, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16019 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Advisory Committee to the Director, National Institutes of Health, was renewed for an additional two-year period on May 31, 2019.

It is determined that the Advisory Committee to the Director, National Institutes of Health, is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: July 23, 2019.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15981 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: September 9, 2019.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16014 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Acquired Immunodeficiency Syndrome Research Review Committee, which was published in the **Federal Register** on February 19, 2019, 84 FR 4834, Pg 4834.

Amendment changes the meeting dates from August 1–2, 2019 to August 14–15, 2019. The meeting is closed to the public.

Dated: July 23, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–15980 Filed 7–26–19; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Business Applications Cell Replacement Therapies for Type 1 Diabetes.

Date: August 12, 2019.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–18–512 Limited Competition: TEDDY Data Coordinating Center.

Date: September 23, 2019.

Time: 12:00 p.m. to 1:30 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: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Biomarker R01/X01 Applications using Samples from NIDDK Biorepository.

Date: September 26, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health,

Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–18–020: Diabetes Research Centers (P30).

Date: October 28–29, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–19–202: High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2)—Diabetes, Endocrinology and Metabolic Diseases.

Date: November 1, 2019.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov.*

(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 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16018 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; R24, Examining Diversity in Aging Research, PAR–18–749 R25, NIA MSTEM: Diversity in Aging, PAR–17–290.

Date: August 20, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16016 Filed 7–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on August 21, 2019.

The Council was established to advise the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Mental Health and Substance Use, SAMHSA; and Director, CSAP concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities.

The meeting will be open to the public and will include the discussion of the substance use prevention workforce, as well as addressing marijuana and HIV. The meeting will also include updates on CSAP program developments.

The meeting will be held in Rockville, Maryland. Attendance by the public will be limited to the space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations should notify the contact on or before one week prior to the meeting. Five minutes maximum will be allotted for each presentation.

To attend onsite, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' website, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAP Council's Designated Federal Officer (see contact information below).

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee website, *http://nac.samhsa.gov/,* or by contacting the Designated Federal Officer.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: August 21, 2019, from 9:30 a.m. to 5:00 p.m. EDT: (OPEN).

Place: SAMHSA, 5600 Fishers Lane, Room 5A04, Rockville, MD 20852, Adobe Connect webcast: *https://samhsa-csap.adobeconnect.com/nac/.*

Contact: Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 5600 Fishers Lane, Rockville, MD 20852, Telephone: 240–276–2440, Fax: 301–480–8480, Email: *matthew.aumen@samhsa.hhs.gov.*

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2019–15983 Filed 7–26–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–0064; FXES11140900000 190]

Endangered and Threatened Species; Receipt of an Incidental Take Permit Application and Low-Effect Habitat Conservation Plan for the Desert Tortoise; High Desert Solar Project, San Bernardino County, California; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: On July 22, 2019, we, the U.S. Fish and Wildlife Service, announced via a **Federal Register** notice the availability for public comment of a low-effect habitat conservation plan (HCP) for the desert tortoise in San Bernardino County, California. Our **Federal Register** notice inadvertently did not give the correct contact name and phone number and incorrectly identified the HCP as the High Desert Power Project. The correct name is the High Desert Solar Project. In this notice, we correct those errors. We also wish to provide an additional source for the public to use to access the documents. Finally, while the original end date for the comment period was August 21, 2019, we are extending the comment period to August 26, 2019, because of the errors in our original notice.

DATES: To ensure consideration, please submit your written comments by August 26, 2019.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, are available for public inspection online at the following websites:

- *http://www.regulations.gov* (in Docket No. FWS–R8–ES–2019–0064)
- *https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html*

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2019–0064.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2019–0064; U.S. Fish and Wildlife Service, MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Brian Croft, Mojave Desert Division Chief, Palm Springs Fish and Wildlife Office, by phone at 760–322–2070 or via email at *Brian_Croft@fws.gov*. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On July 22, 2019, we, the U.S. Fish and Wildlife Service, announced via a **Federal Register** notice the availability for public comment of a low-effect habitat conservation plan (HCP) for the desert tortoise in San Bernardino County, California. Our **Federal Register** notice inadvertently did not give the correct contact name and phone number and incorrectly identified the HCP as the High Desert Power Project. The Correct name is the High Desert Solar Project. In this notice, we correct those errors. We also wish to provide an additional source for the public to use to access the documents.

Corrections

In our July 22, 2019, notice (84 FR 35123), we did not provide the correct contact information in **FOR FURTHER INFORMATION CONTACT**. Please see corrected information above.

We also wish to provide an additional website at which the public can access the documents (see **ADDRESSES**).

Finally, while the original end date for the comment period was August 21, 2019, we are extending the comment period to August 26, 2019, because of the errors in our original notice.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: July 24, 2019.

Sara Prigan,

Federal Register Liaison, U.S. Fish and Wildlife Service.

[FR Doc. 2019–15993 Filed 7–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2019–N065; FF09L00200–FX–LE18110900000; OMB Control Number 1018–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 28, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: AMAD–ARM–PPM, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On February 1, 2019, we published a **Federal Register** notice soliciting

comments on this collection of information for 60 days, ending on April 2, 2019 (84 FR 1197). We received the following comments in response to the **Federal Register** notice:

Comment 1: Email comment received on February 1, 2019. The commenter requested the law be changed to prohibit international trophy hunting.

FWS Response to Comment 1: These comments did not address the collection of information using Form 3–177 and the related burden. No action taken.

Comment 2: Email comment on behalf of Robertson, Monagle & Eastaugh, received March 29, 2019. The author requested the Service revise its user fee system as it applies to commercial squid fisheries.

FWS Response to Comment 2: These comments did not address the collection of information using Form 3–177 and the related burden. Adoption of these comments would require a proposed rule to revise 50 CFR part 14. A Service rulemaking action would be a process separate from these information collection requirements.

Comment 3: Email comment on behalf of the Humane Society of the United States, received April 1, 2019. The comments were supportive of the need to collect information using Form 3–177 and our estimation of the related burden. However, the commenter raised the concern that submission of information through U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE), including the use of Census' Automated Export System (AES), could result in the information possibly being no longer available to enable the Service to implement its legislative and CITES Treaty obligations, and that the information might be no longer available to the public to exercise their rights to petition the government or take other actions.

FWS Response to Comment 3: The submission of information through CBP's ACE and AES systems will not result in a loss of data impacting the Service's ability to meet its obligations or the ability of the public to exercise their rights. Rather, we will re-route this information for entry into the Service's Law Enforcement Management Information System (LEMIS).

Comment 4: Letter dated March 28, 2019, on behalf of Friends of Animals, received by the Service on April 2, 2019. These comments addressed the Service's Low Risk Fee Exemption Program and its negative impact on wildlife resources and the Service's inspection program.

FWS Response to Comment 4: These comments did not address the collection of information using Form 3–177 and the related burden. Adoption of these comments would require a proposed rule to revise 50 CFR part 14. A Service rulemaking action would be a process separate from these information collection requirements.

Comment 5: Email on behalf of Safari Club International (SCI), dated April 2, 2019. SCI's comments did not address the collection of information using Form 3–177 and the related burden. Rather, these comments addressed the disclosure of personal information contained on Form 3–177 and found in LEMIS. See below for descriptions of and FWS responses to the comments.

FWS Response to Comment 5: SCI requested changes to Form 3–177 and its supporting information, requesting that the Service amend Form 3–177 to include a statement, to which the respondent could opt to agree, that the Service must maintain information contained on Form 3–177 in confidence and that we will not disclose the information in response to requests made under the Freedom of Information Act (FOIA) or any other law. However, the Service cannot include such an amendment to Form 3–177, because we must release information included on the form when requested, subject to the provisions of the FOIA.

In addition, SCI requested revisions to the language to the supporting information contained on Form 3–177, in particular, the ''Routine Uses'' and ''Disclosure'' text on the Notices page. SCI requested that the information included on Form 3–177 only be used for law enforcement purposes, and that information other than personal information may be subject to disclosure under the FOIA. The Service cannot include such a revision because we must release information included on the form when requested, subject to the provisions of the FOIA. SCI also requested additional revisions to the language to the supporting information contained on Form 3–177, in particular, the ''Disclosure'' and ''Paperwork Reduction Act Statement'' text on the Notices page. SCI requested that the language used in these statements be revised to indicate that the information requested on the form is involuntary, rather than voluntary. However, the Service considers the information requested on the form to be voluntary, in order to obtain or retain a benefit.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses, individuals, or government agencies importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form, as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion, are available for electronic submission at *https://edecs.fws.gov*. These forms are also available in fillable format at *http://www.fws.gov/forms/*. The information that we collect is unique to each wildlife shipment and enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Businesses or individuals must file FWS Forms 3–177 and 3–177a with us at the time when and at the port where they request clearance of the import or export of wildlife or wildlife products. Our regulations allow certain species of wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present. In these instances, importers and exporters may file the forms with U.S.

Customs and Border Protection. We collect the following information:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the shipment containing the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

In 2009, we implemented a new user fee system intended to recover the costs of the compliance portion of the wildlife inspection program. Since that time, we have been made aware that we may have placed an undue economic burden on businesses that exclusively trade in small volumes of low-value, non-federally protected wildlife parts and products. To address this issue, we implemented a program that exempts certain businesses from the designated port base inspection fees as an interim measure while we reassess the current user fee system. Businesses that possess a valid Service import/export license may request to participate in the fee exemption program through our electronic filing system (eDecs). Qualified licensees must create an eDecs filer account as an importer or exporter if they do not already have one, and file their required documents electronically.

To be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business must certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 and 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business also must certify that it will exclusively import or export the above types of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is $5,000 or less. Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a notice of violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program.

We are also requesting OMB's continued approval for electronic collection of data through ACE as an alternative electronic option for importers and exporters to eDecs. The Safe Port Act requires the Service to participate in the International Trade Data System, and the Executive Order on Streamlining Exports and Imports establishes ACE as the primary means for collection of international trade data by the government. The latter includes the use of Census's Automated Export System (AES) to collect agency licenses and other permissions for exports. Although the Service does not mandate importers or exporters to use ACE and AES to file Service data at this time, we will begin collection of data in ACE as an alternative to eDecs. If importers file in ACE, they will not file in eDecs.

Title of Collection: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61–14.64 and 14.94(k)(4).

OMB Control Number: 1018–0012.

Form Number: 3–177 and 3–177a.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; and government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
FWS Form 3–177 Hard Copy (Upon Import)				
Individuals	8,996	9,569	15 minutes	2,392
Private Sector	128	347	15 minutes	87
Government	0	0	15 minutes	0
Subtotals:	*9,124*	*9,916*	.....	*2,479*
FWS Form 3–177 Hard Copy (Upon Export)				
Individuals	717	881	15 minutes	220
Private Sector	30	43	15 minutes	11
Government	0	0	15 minutes	0
Subtotals:	*747*	*924*	.....	*231*
eDecs/ACE (Upon Import)				
Individuals	21,567	25,030	10 minutes	4,172
Private Sector	13,005	120,035	10 minutes	20,006
Government	46	90	10 minutes	15
Subtotals:	*34,618*	*145,155*	.....	*24,193*
eDecs (Upon Export)				
Individuals	975	1,930	10 minutes	322

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
Private Sector	2,548	32,230	10 minutes	5,372
Government	36	68	10 minutes	11
Subtotals:	*3,559*	*34,228*		*5,705*
eDecs—Confirmation Number (Automated Export System (AES))				
Private Sector	1,824	35,175	1 minute	586
Automated Commercial Environment (ACE)/AES Disclaimer (and Accompanying Documents)				
Private Sector	5,000	500,000	1 minute	8,333
eDecs—Fee Exemption Certification				
Private Sector	42	2,906	1 minute	48
Totals	*54,914*	*728,304*		*41,575*

* Rounded

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 23, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–15987 Filed 7–26–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–612–613 and 731–TA–1429–1430 (Final)]

Polyester Textured Yarn From China and India; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–612–613 and 731–TA–1429–1430 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of polyester textured yarn from China and India, provided for in subheadings 5402.33.30 and 5402.33.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Charlie Cummings (708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''. . . polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

Excluded from the scope of these investigations are bulk continuous filament yarn that: (a) Is polyester synthetic multifilament yarn; (b) has denier size ranges of 900 and above; (c) has turns per meter of 40 and above; and (d) has a maximum shrinkage of 2.5 percent.

The merchandise subject to these investigations are properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and India of polyester textured yarn, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on October 18, 2018, by Unifi Manufacturing, Inc., Greensboro, North Carolina; and Nan Ya Plastics Corp. America, Lake City, South Carolina.

For further information concerning the conduct of this phase of the

investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 29, 2019, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 13, 2019, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 7, 2019. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on November 8, 2019, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 5, 2019. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 20, 2019. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before November 20, 2019. On December 6, 2019, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 10, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–16004 Filed 7–26–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1169]

Certain Fish-Handling Pliers and Packaging Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 21, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of United Plastic Molders, Inc. of Jackson, Mississippi. Supplements to the complaint were filed on June 28, 2019, and July 19, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fish-handling pliers and packaging thereof by reason of infringement of certain claims of U.S. Patent No. 6,256,923 (''the '923 patent''); and infringement of U.S. Trademark Registration No. 4,980,923 (the '923 mark'') and U.S. Trademark Registration No. 5,435,944 (''the '944 mark''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the

alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 23, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–11 of the '923 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of the '923 mark and the '944 mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''pliers that aid in the landing, weighing, and handling of fish by securely gripping the lip of a fish while the hook is removed.'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is:* United Plastic Molders, Inc., 105 East Rankin Street, Jackson, MS 39201.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Yixing Five Union Industry & Trade Co., Ltd., Building A1, Innovation Park of Yixing City, Jiangsu Province, China 214213.

NOEBY Fishing Tackle Co., Ltd., No. 81 Bohai Road, Eco-zone, Weihai, Shandong, China 264200.

Weihai iLure Fishing Tackle Co., Ltd., No. 01 ZhouNing Road, LinGang District, Weihai, Shandong, China 264200.

SamsFX, No. 11, Shikefa Road, Yangzhou City, 225000 Jiangsu Province, China 225000.

Weihai Lotus Outdoor Co., Ltd., Zhang CunTown, Weihai City, Shandong Pro, China 264203.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 24, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–16025 Filed 7–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Gamma Radiation Surveys

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Gamma Radiation Surveys,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 28, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201904-1219-006* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Gamma Radiation Surveys information collection codified in regulations 30 CFR 57.5047 that requires a covered mine operator to maintain a record of cumulative individual gamma radiation exposure to ensure that annual exposure does not exceed five (5) Rems. This requirement protects the health of workers in mines with radioactive ores. The Federal Mine Safety & Health Act of 1977 sections 101(a) and 103(c) and (h) authorize this information collection. *See* 30 U.S.C. 811(a), 813(c), and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0039.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 3, 2019 (84 FR 19120).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Gamma Radiation Surveys.

OMB Control Number: 1219–0039.

Affected Public: Private sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 3.

Total Estimated Annual Time Burden: 6 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 23, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–15979 Filed 7–26–19; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirable Coal Mine Dust Sampling

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Respirable Coal Mine Dust Sampling,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 28, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=2019-1219-004* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the

Respirable Coal Mine Dust Sampling information collection. Section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. The existing standards provide that each coal mine operator sample bimonthly the designated occupations or work locations of the mine and submit these samples to MSHA for analysis to determine if the mine is complying with the applicable dust standards. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty to protect the safety and health of miners. *See* 30 U.S.C. 811 and 30 U.S.C 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0011.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 3, 2019 (84 FR 19122).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0011. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Respirable Coal Mine Dust Sampling.

OMB Control Number: 1219–0011.

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

Total Estimated Number of Respondents: 1,035.

Total Estimated Number of Responses: 1,291,236.

Total Estimated Annual Time Burden: 62,748 hours.

Total Estimated Annual Other Costs Burden: $28,065.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 23, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–15978 Filed 7–26–19; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. MSHA–2018–0015]

Escapeways and Refuges in Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of Program Policy Letter; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) announces the issuance of a Program Policy Letter (PPL) to provide mine operators guidance regarding the existing requirement to provide escapeways for underground metal and nonmetal (MNM) miners to enable them to escape in an emergency and, when they cannot escape, for refuges to enable miners to shelter safely in place until they can be rescued. This guidance responds to questions concerning the location of such refuges under the standard. This guidance is not a rulemaking.

DATES: Comments must be received or postmarked by midnight Eastern Daylight Time (EDT) on September 27, 2019.

ADDRESSES: Submit comments and informational materials, identified by Docket No. MSHA–2018–0015, by one of the following methods:

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.*
- *Email: GoodGuidance@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.
- *Fax:* 202–693–9441.

Instructions: All submissions must include Docket No. MSHA–2018–0015. Do not include personal information that you do not want publicly disclosed.

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov/subscriptions.*

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Information

MSHA will post all comments without change, including any personal information provided. Access comments and information electronically at *https://www.regulations.gov,* or *https://www.msha.gov/currentcomments.asp.* Review comments in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

I. Overview

Title 30 CFR 57.11050, Escapeways and Refuges, requires escapeways in underground MNM mines to enable miners to escape in an emergency and, when they cannot escape, the standard requires refuges to enable miners to shelter safely in place until they can be rescued. Based on questions from underground MNM operators, MSHA believes that this PPL addresses a significant safety issue regarding the placement of a refuge in a location that provides miners access if they cannot escape.

In accordance with Executive Order 12866 on Regulatory Planning and Review and the Office of Management and Budget's (OMB) Final Bulletin for Agency Good Guidance Practices, MSHA has determined that the guidance would not be economically significant as there would be no new costs. MSHA has determined, however, that the guidance is significant because it may reasonably be anticipated to raise novel legal or policy issues. MSHA is therefore issuing this PPL for public comment to clarify the existing standard regarding placement of refuges required by 30 CFR 57.11050(a), and will review all comments received.

David G. Zatezalo,

Assistant Secretary for the Mine Safety and Health Administration.

EFFECTIVE DATE: _____

PROGRAM POLICY LETTER NO. P18–IV–__

FROM: TIMOTHY WATKINS; Administrator for Enforcement Mine Safety and Health

SUBJECT: Escapeways and Refuges (30 CFR 57.11050)

Scope

This Program Policy Letter (PPL) applies to underground metal and nonmetal (MNM) mine operators, miners, miners' representatives, Mine Safety and Health Administration (MSHA) enforcement personnel, and other interested parties.

Background

Recently, underground MNM operators have raised questions regarding the placement of refuges required by 30 CFR 57.11050(a). This PPL provides guidance regarding the placement of such refuges under the standard.

Purpose

This PPL provides guidance regarding the existing standard that requires refuges to protect underground MNM miners in mines while a second escapeway is being developed or during the exploration or development of an ore body, and the location of such refuges.

Policy

Title 30 CFR 57.11050, Escapeways and Refuges, requires two or more separate, properly-maintained escapeways in underground MNM mines to enable miners to escape in an emergency and, when they cannot escape, the standard requires refuges to enable miners to shelter safely in place until they can be rescued.

The standard at 30 CFR 57.11050(a) recognizes two exceptions to the requirement that underground MNM miners be provided at least two separate escapeways from their working places to the surface. First, miners must be provided a method of refuge while a second escapeway is being developed. Second, during the exploration or development of an ore body, a second escapeway is ''recommended, but not required.'' MSHA consistently has interpreted these two exceptions to mean that if, in either of these situations, miners have only one escapeway from their working place, miners must have access to a refuge.

This refuge should be located near the miners so that they promptly and reliably can enter the refuge if they cannot escape. In determining an appropriate distance, MSHA considers mine-specific factors in each case. MSHA recognizes that it may not be practicable for most working places near the portal (for example, within 300 feet) in a horizontal configuration (as opposed to vertical) to have refuges. On the other hand, MSHA believes that in most cases a refuge located, for example, 1500 feet from miners on a relatively level surface (or, for example, reachable within a 10-minute walk in any configuration while carrying an injured miner) would generally be close enough to provide the protection the standard intends. Mine operators are encouraged to consult with their MSHA District Manager to determine appropriate refuge locations given mine-specific conditions and factors (*e.g.* steeply pitched, narrow, uneven, low-height, or wet travelways) when developing and reviewing the mine's escape and evacuation plan under 30 CFR 57.11053.

Authority

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 801 et seq; 30 CFR 57.11050 and 57.11053.

Filing Instructions

This program policy letter should be filed behind the tab marked ''Program Policy Letters'' at the back of Volume IV of the Program Policy Manual.

Internet Availability

This program policy letter may be viewed on the internet by accessing MSHA's homepage at *www.msha.gov* and then choosing ''Regulations,'' ''Policy and Procedures,'' and selecting ''Program Policy Letters.''

Issuing Office and Contact Person

Metal and Nonmetal Mine Safety and Health, Deputy Administrator for Metal and Nonmetal, Brian Goepfert, (202) 693–9600, Email: *goepfert.brian@dol.gov*

Distribution

MSHA Program Policy Manual Holders
Miners' Representatives
Metal and Nonmetal Mine Operators
Special Interest Groups

[FR Doc. 2019–16105 Filed 7–26–19; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following renewal of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before September 27, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6058, Alexandria, Virginia 22314, or email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0059.

Title: Supervisory Committee Audits and Verifications, 12 CFR 715.

Type of Review: Extension of a currently approved collection.

Abstract: Title 12 CFR part 715 prescribes the responsibilities of the supervisory committee to obtain an audit of the credit union and verification of member accounts as outlined in Section 115 of the Federal Credit Union Act, 12 U.S.C. 1761d. A supervisory committee audit is required at least once every calendar year covering the period since the last audit and to conduct a verification of members' accounts not less frequently than once every two years.

The information is used by both the credit union and the NCUA to ensure through audit testing that the credit union's assets, liabilities, equity, income, and expenses exist, are properly valued, controlled and meet ownership, disclosure and classification requirements of sound financial reporting. A written report on the audit must be made to the board of directors and, if requested, NCUA. Working papers must be maintained and made available to NCUA. Independence requirements must be met; standards governing verifications and the methods used to verify member's passbooks and accounts are set forth. Section 741.202 makes these requirements applicable to federally insured state-chartered credit unions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 6,025 (FCUs and FICU).

Estimated Annual Frequency: 4.35.

Estimated Total Annual Responses: 26,228.

Estimated Total Annual Burden Hours: 44,411.

Reason for Change: Adjustments are attributed to updated data since the previous submission.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on July 23, 2019.

Dated: July 23, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–15965 Filed 7–26–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Production of Non-Public Records and Testimony of Employees in Legal Proceedings (Touhy Request)

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before September 27, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collections to the Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6058, Alexandria, Virginia 22314, or email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to the address above or telephone (703) 548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0146.

Title: Production of Non-public Records and Testimony of Employees in Legal Proceedings (Touhy Request).

Type of Review: Extension of a currently approved collection.

Abstract: 12 CFR part 792, subpart C requires anyone requesting NCUA non-public records for use in legal proceedings, or similarly the testimony of NCUA personnel, to provide NCUA with information regarding the requester's grounds for the request. This process is also known as a ''Touhy Request''. The information collected will help NCUA decide whether to release non-public records or permit employees to testify in legal proceedings. NCUA regulations also require an entity or person in possession of NCUA records to notify the NCUA upon receipt of a subpoena for those records. The NCUA requires this notice to protect its records and, when necessary, intervene in litigation or file an objection to the disclosure of its confidential information in the appropriate court or tribunal.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated No. of Respondents: 20.

Estimated Annual Frequency: 1.

Estimated Annual Number of Responses: 20.

Estimated Burden Hours per Response: 4 hours.

Estimated Total Annual Burden Hours: 80.

Reason for Change: An adjustment increase is being made to the number of hours per response to give a more accurate account of the time it takes to prepare a Touhy request.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on July 23, 2019.

Dated: July 23, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–15967 Filed 7–26–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Workshop on Artificial Intelligence & Wireless Spectrum: Opportunities and Challenges

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of workshop.

SUMMARY: This workshop will focus on the opportunities and challenges posed by the application of existing and new Artificial Intelligence (AI) techniques in the wireless spectrum context.

DATES: August 28–29, 2019.

ADDRESSES: The workshop will take place on August 28 from 9:00 a.m. to 5:00 p.m. (ET) and August 29, from 8:30 a.m. to 12:30 p.m. (ET), at the Griffiss Institute Center for Information Assurance, Rome, NY. Due to meeting space limitations, in-person attendance is by invitation only; remote participation for the plenary sessions will be available via webcast. The agenda and information about how to join the webcast will be available the week of the event at: *https://www.nitrd.gov/nitrdgroups/index.php?title=Artificial-Intelligence-Wireless-Spectrum.*

FOR FURTHER INFORMATION CONTACT: Joyce Lee at (202) 459–9674 or email *wsrd-register@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview. This notice is issued on behalf of the NITRD Wireless Spectrum Research and Development (WSRD) Interagency Working Group (IWG). Agencies of the WSRD IWG are conducting a workshop focused on the application of existing and new AI techniques in the wireless spectrum context.

Wireless spectrum has been managed and utilized over many decades through a complex regulatory framework and a patchwork of policies. The current manual process of assessing spectrum needs is a growing problem due to the high-level of interdependencies in the spectrum domain. Existing and emerging methods for allocating spectrum are often driven by small studies that suffer from inherent biases. As a result, spectrum policies and usage are often sub-optimal and rigid, preventing efficient use of wireless spectrum. To maintain our Nation's global leadership in 5G technologies and deployment, we need fast and efficient wireless spectrum policy creation, adoption, and management of wireless spectrum.

AI techniques have been successfully applied in many other domains, such as image classification or autonomous navigation, which previously relied on either model-based approaches or a vital human-in-the-loop element. Despite the differences between multimedia and radio frequency signals, researchers have shown that the judicious integration of AI techniques can provide similar gains in the wireless spectrum domain.

Potential areas to be explored in this workshop include, but are not limited to:

- Artificial Intelligence for Future Communications Networks
- Artificial Intelligence for Dynamic Spectrum Allocation and Policy Management
- Artificial Intelligence for Spectrum Sharing

Experts from government, private industry, and academia will discuss current use cases, effective technology, tools, and practices, while identifying gaps and issues that will require additional research to resolve.

Workshop Objectives. Identify areas where artificial intelligence techniques can help increase efficiency of wireless spectrum use; and discuss ongoing efforts in federal, industrial and academic domains to utilize AI techniques in the wireless spectrum domain.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on July 24, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–16003 Filed 7–26–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2019–0130]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a November 16, 2018, request from Entergy Nuclear Operations, Inc. (the licensee or Entergy). The issuance of the exemption would permit Entergy to use funds from the Pilgrim Nuclear Power Station (Pilgrim) decommissioning trust fund (DTF) for spent fuel management and site restoration activities.

DATES: The exemption was issued on July 22, 2019

ADDRESSES: Please refer to Docket ID NRC–2019–0130 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0130. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, this 23rd day of July 2019.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption.

NUCLEAR REGULATORY COMMISSION

Docket No. 50-293

Entergy Nuclear Operations, Inc.

Pilgrim Nuclear Power Station

Exemption

I. Background.

Entergy Nuclear Operations, Inc. (Entergy, the licensee), is the holder of Renewed Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power

Station (Pilgrim). The facility is located in the town of Plymouth, Plymouth County, in the Commonwealth of Massachusetts.

By letter dated November 10, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15328A053), Entergy submitted a notification to the U.S. Nuclear Regulatory Commission (NRC) indicating that it would permanently shut down Pilgrim no later than June 1, 2019. By letter dated June 10, 2019 (ADAMS Accession No. ML19161A033), Entergy submitted to the NRC a certification in accordance with § 50.82(a)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), stating that Pilgrim permanently ceased power operations on May 31, 2019, and that as of June 9, 2019, all fuel had been permanently removed from the Pilgrim reactor vessel and placed in the spent fuel pool. Accordingly, pursuant to 10 CFR 50.82(a)(2), the Pilgrim renewed facility operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel.

II. Request/Action.

By letter dated November 16, 2018 (ADAMS Accession No. ML18320A037), Entergy submitted a request for exemption from 10 CFR 50.82(a)(8)(i)(A). The exemption from 10 CFR 50.82(a)(8)(i)(A) would permit Entergy to make withdrawals from the Pilgrim Decommissioning Trust Fund (DTF) for spent fuel management and site restoration activities in accordance with the Pilgrim decommissioning cost estimate. By a separate letter dated November 16, 2018 (ADAMS Accession No. ML18320A036), Entergy submitted an update to the Pilgrim Spent Fuel Management Plan pursuant to 10 CFR 50.54(bb). By another separate letter dated November 16, 2018 (ADAMS Accession No. ML18320A034), as supplemented by letter dated January 9, 2019 (ADAMS Accession No. ML19015A020), Entergy submitted the Post-Shutdown Decommissioning Activities Report and site-specific decommissioning cost estimate for Pilgrim.

The 10 CFR 50.82(a)(8)(i)(A) requirement restricts the use of DTF withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning that appears in 10 CFR 50.2. The definition of ''decommission'' in 10 CFR 50.2 reads as follows:

to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with spent fuel management and site restoration activities. Therefore, an exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Entergy to use funds from the DTF for spent fuel management and site restoration activities.

Similar to 10 CFR 50.82(a)(8)(i)(A), provisions of 10 CFR 50.75(h)(1)(iv) and (h)(2) dictate that with certain exceptions, disbursements from nuclear decommissioning trusts ''are restricted to decommissioning expenses.'' However, in accord with 10 CFR 50.75(h)(5), these provisions do not apply to ''any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions.'' The operating license for Pilgrim included ''existing license conditions relating to decommissioning trust agreements'' on December 24, 2003, and as such, Pilgrim is exempt from the provisions of paragraphs (h)(1) through (h)(3) of the regulations in 10 CFR 50.75, pursuant to the terms of 10 CFR 50.75(h)(5).

III. Discussion.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 (1) when the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would allow Entergy to use a portion of the funds from the DTF for spent fuel management and site restoration activities at Pilgrim in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors and license termination. Based on the site-specific cost estimate and the cash flow analysis, use of a portion of the DTF for spent fuel management and site restoration activities will not adversely impact Entergy's ability to complete radiological decommissioning within 60 years and terminate the Pilgrim license. Furthermore, withdrawals from the DTF for spent fuel management and site restoration should not affect the sufficiency of funds in the DTF to accomplish radiological decontamination of the site because such withdrawals are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B)–(C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v)–(vii).

Based on the above, there are no new accident precursors created by using the DTF in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemption will not present an undue risk to the public health and safety.

C. Consistent with the Common Defense and Security

The requested exemption would allow Entergy to use funds from the Pilgrim DTF for spent fuel management and site restoration activities at Pilgrim. Spent fuel management under 10 CFR 50.54(bb) is an integral part of the planned Entergy decommissioning and license termination process and will not

adversely affect Entergy's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds from the DTF for spent fuel management and site restoration activities has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A), which restricts withdrawals from DTFs to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and license termination. Strict application of this requirement would prohibit the withdrawal of funds from the Pilgrim DTF for activities other than radiological decommissioning activities at Pilgrim, such as for spent fuel management and site restoration activities, until final radiological decommissioning at Pilgrim has been completed.

The total Pilgrim DTF balance as of October 31, 2018, was approximately $1,051,722,000. The Entergy analysis projects the total radiological decommissioning cost of Pilgrim to be approximately $1,187,994,000 (2018 dollars). As required by 10 CFR 50.54(bb), Entergy estimated the costs associated with the long-term spent fuel management at Pilgrim to be $420.3 million in 2018 dollars.

The NRC staff performed an independent cash flow analysis of the DTF over the 60-year SAFSTOR period (assuming an annual real rate of return of 2 percent, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the DTF. The NRC staff confirmed that the current funds in the DTF and projected earnings provide reasonable assurance of adequate funding to complete all NRC-required radiological decommissioning activities, and also to pay for spent fuel management and site restoration activities. Therefore, the NRC staff finds that Entergy has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of Pilgrim, even with the disbursement of funds from the DTF for spent fuel management and site restoration activities. Consequently, the NRC staff concludes that application of the 10 CFR 50.82(a)(8)(i)(A) requirement that funds from the DTF only be used for radiological decommissioning activities and not for spent fuel management and site restoration activities is not necessary to achieve the underlying purpose of the rule; thus, special circumstances are present supporting approval of the exemption request.

By granting the exemption to 10 CFR 50.82(a)(8)(i)(A), the NRC staff considers that withdrawals consistent with the licensee's submittal dated November 16, 2018, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the DTF to complete radiological decommissioning activities as well as to conduct spent fuel management and site restoration activities consistent with the Post-Shutdown Decommissioning Activities Report, decommissioning cost estimate, Spent Fuel Management Plan, and the November 16, 2018, exemption request. Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTF and the licensee's funding for managing spent fuel. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10 CFR 50.82(a)(8)(vi) requires that the annual financial assurance status report must include additional financial assurance to cover the estimated cost of completion if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning. The requested exemption would not allow the withdrawal of funds from the DTF for any other purpose that is not currently authorized in the regulations without prior notification to the NRC.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. The licensee states that the DTF contains funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for spent fuel management and site restoration activities. The NRC does not preclude the use of funds from the decommissioning trust in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management or site restoration activities.

The NRC has stated that funding for spent fuel management and site restoration activities may be commingled in the DTF, provided that the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for spent fuel management and site restoration activities (see NRC Regulatory Issue Summary 2001-07, Rev. 1, ''10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning,'' dated January 8, 2009 (ADAMS Accession No. ML083440158), and Regulatory Guide 1.184, Revision 1, ''Decommissioning of Nuclear Power Reactors,'' dated October 2013 (ADAMS Accession No. ML13144A840)). Preventing access to those excess funds in the DTF because spent fuel management and site restoration activities are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the DTF to cover the cost of activities associated with spent fuel management and site restoration, in addition to radiological decommissioning, is supported by the site-specific decommissioning cost analysis. If the licensee cannot use its DTF for spent fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the DTF, or the licensee would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) was adopted.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) would be achieved by allowing Entergy to use a portion of the Pilgrim DTF for spent fuel management and site restoration activities, and compliance with the regulation would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemption.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of the exemption will not have a significant effect on the quality of the

human environment (see Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on July 1, 2019 (84 FR 31356).

IV. Conclusions.

In consideration of the above, the NRC staff finds that the proposed exemption confirms the adequacy of funding in the Pilgrim DTF, considering growth, to complete radiological decommissioning of the site and to terminate the license and also to cover estimated spent fuel management and site restoration activities.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy exemption from the 10 CFR 50.82(a)(8)(i)(A) requirement to allow use of a portion of the funds from the Pilgrim DTF for spent fuel management and site restoration activities in accordance with the Pilgrim Post-Shutdown Decommissioning Activities Report and decommissioning cost estimate, dated November 16, 2018, as supplemented by letter dated January 9, 2019.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of July, 2019.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–15961 Filed 7–26–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 29, August 5, 12, 19, 26, September 2, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 29, 2019

There are no meetings scheduled for the week of July 29, 2019.

Week of August 5, 2019—Tentative

There are no meetings scheduled for the week of August 5, 2019.

Week of August 12, 2019—Tentative

Wednesday, August 14, 2019

9:00 a.m. Hearing on Early Site Permit for the Clinch River Nuclear Site: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Mallecia Sutton: 301–415–0673)

This hearing will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of August 19, 2019—Tentative

There are no meetings scheduled for the week of August 19, 2019.

Week of August 26, 2019—Tentative

There are no meetings scheduled for the week of August 26, 2019.

Week of September 2, 2019—Tentative

There are no meetings scheduled for the week of September 2, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 25th day of July, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–16171 Filed 7–25–19; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244; NRC–2019–0147]

Exelon Generation Company LLC; R.E. Ginna Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the license held by Exelon Generation Company, LLC (Exelon, the licensee) for the operation of R.E. Ginna Nuclear Power Plant (Ginna). The proposed license amendment would revise the emergency response organization (ERO) positions identified in the emergency plan for Ginna. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendment.

DATES: The EA and FONSI referenced in this document are available on July 29, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0147 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0147. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number

for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

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

FOR FURTHER INFORMATION CONTACT: V. Sreenivas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2597; email: *V.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–18 held by Exelon for Ginna, located in Wayne County, Northwestern part of New York.

In accordance with section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC prepared the following EA that analyzes the environmental impacts of the proposed licensing action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the ERO positions identified in the Ginna emergency plan, including the on-shift, minimum, and full-augmentation ERO staffing requirements. The proposed revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures.

The proposed action is in accordance with the licensee's application dated January 15, 2019 (ADAMS Accession No. ML19017A136).

Need for the Proposed Action

Nuclear power plant owners, Federal agencies, and State and local officials work together to create a system for emergency preparedness and response that will serve the public in the unlikely event of an emergency. An effective emergency preparedness program decreases the likelihood of an initiating event at a nuclear power reactor proceeding to a severe accident. Emergency preparedness cannot affect the probability of the initiating event, but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

Each licensee is required to establish an emergency plan to be implemented in the event of an accident, in accordance with 10 CFR 50.47 and appendix E to 10 CFR part 50. The emergency plan covers preparation for evacuation, sheltering, and other actions to protect individuals near plants in the event of an accident.

The NRC, as well as other Federal and State regulatory agencies, reviews emergency plans to ensure that they provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Separate from this EA, the NRC is conducting a safety assessment of Exelon's proposed changes to the emergency plan for Ginna. This safety review will be documented in a safety evaluation. The safety evaluation of the proposed changes to the emergency plan will determine whether there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Ginna, in accordance with the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50.

The proposed action would align the emergency plan for Ginna with the NRC's alternative guidance for EROs provided in a June 12, 2018, letter to the Nuclear Energy Institute (ADAMS Accession No. ML18022A352). This alternative guidance is also included in draft Revision 2 to NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (ADAMS Accession Nos. ML14163A605 and ML17083A815). This change would provide Exelon with greater flexibility in staffing ERO positions. Additionally, this change reflects changes in NRC regulations and guidance, as well as advances in technologies and best practices, that have occurred since NUREG–0654/FEMA–REP–1, Revision 1, was published in 1980. The application indicates that Exelon provided the State of New York a draft of the license amendment request for Ginna, and that the State of New York had no concerns.

Environmental Impacts of the Proposed Action

The proposed action consists of changes related to staffing positions, position descriptions, duties, and duty locations specified in the emergency plan for Ginna. The on-shift, minimum, and full-augmentation ERO staffing requirements listed in the emergency plan would be revised. The revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; relocating certain position descriptions to other parts of the emergency plan or to implementing procedures; and other conforming administrative changes.

Regarding potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction, ground disturbing activities, or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permit would be needed. Changes in staffing levels and duty locations could result in minor changes to vehicular traffic and associated air pollutant emissions, but no significant changes in ambient air quality would be expected from the proposed changes. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region and no potential to affect historical properties. Therefore, there would be no significant nonradiological environmental impacts associated with the proposed action.

Regarding potential radiological environmental impacts, if the NRC staff's safety review of the proposed changes to the licensee's emergency plan determines that it continues to meet the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50, then the proposed action would not increase the probability or consequences of radiological accidents. Additionally, the proposed changes would have no direct radiological environmental impacts. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, no change in occupational or public radiation exposure. Moreover, no changes would be made to plant buildings or the site property. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental impacts. Accordingly, the environmental impacts of the proposed action and the no-action alternative would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. However, in accordance with 10 CFR 50.91(b), the licensee provided copies of its application to the State of New York, and the NRC staff will consult with the State prior to issuance of the amendment.

III. Finding of No Significant Impact

The licensee has requested a license amendment pursuant to 10 CFR 50.54(q) to revise the ERO positions identified in the emergency plan for Ginna by eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures. The license amendment would allow Exelon to make changes to the Ginna Emergency Plan related to staffing levels and positions specified in the emergency plan.

The NRC is considering issuing the requested amendment. The proposed action, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. It would also not result in any changes to radioactive effluents or emissions to nuclear plant workers and members of the public or any changes to radiological and non-radiological impacts to the environment. The proposed changes would only result in minor changes in staffing levels and a small change in air pollutant emissions associated with vehicular traffic.

Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA in Section II of this document. Based on the results of the EA, the NRC concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), previous considerations regarding the environmental impacts of operating Ginna in accordance with its renewed operating license are described in NUREG–1437, Supplement 14, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding R.E. Ginna Nuclear Power Plant, Final Report,'' dated January 2004 (ADAMS Accession No. ML040230341).

This FONSI and other related environmental documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are also accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
Exelon, ''License Amendment Request for Approval of Changes to Emergency Plan Staffing Requirements,'' dated January 15, 2019.	ML19017A136.
NRC letter to the Nuclear Energy Institute, ''Alternative Guidance for Licensee Emergency Response Organizations,'' dated June 12, 2018.	ML18022A352.
NUREG–0654/FEMA–REP–1, draft Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.''	ML14163A605 and ML17083A815.
NUREG–1437, Supplement 14, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants.'' Regarding R.E. Ginna Nuclear Power Plant, Final Report, dated January 2004.	ML040230341.

Dated at Rockville, Maryland, this 23rd day of July, 2019.

For the Nuclear Regulatory Commission.

Venkataiah Sreenivas,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–15977 Filed 7–26–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

[OMB Control No. 3255–0005]

Request for Emergency Processing of Revised Information Collection

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice.

SUMMARY: The U.S. Office of Special Counsel asked the Office of Management and Budget's Office of Information and Regulatory Affairs for emergency processing of an updated, consolidated complaint and disclosure form, Form 14, to be used for filing prohibited personnel practice and Hatch Act complaints and to make disclosures.

DATES: OSC requested that OMB complete emergency processing of its updated information collection of the revised Form 14, by July 26, 2019. The final rule authorizing the use of Form 14 goes into effect 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: OSC received OMB's approval of the prior Form 14 (OMB Control # 3255–0005) on September 28, 2017. OSC requests emergency processing of the updated Form 14. The final rule authorizing the use of Form 14 is effective August 26, 2019.

Dated: July 23, 2019.

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2019–15974 Filed 7–26–19; 8:45 am]

BILLING CODE 7405–01–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 29, 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 24, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 541 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–172, CP2019–194.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–16035 Filed 7–26–19; 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 29, 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 24, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 540 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–171, CP2019–193.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–16031 Filed 7–26–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86436; File No. SR–OCC–2019–006]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Administrative Updates to The Options Clearing Corporation's Risk Management Policies

July 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2019, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(3) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC is filing a proposed rule change to make administrative changes to its Risk Management Framework Policy (''RMF Policy''), Clearing Fund Methodology Policy (''CFM Policy''), Collateral Risk Management Policy (''CRM Policy''), Counterparty Credit Risk Management Policy (''CCRM Policy''), Default Management Policy (''DM Policy''), Margin Policy, and Model Risk Management Policy (''MRM Policy'') (collectively, ''OCC Policies'').

The proposed changes to the OCC Policies are included in confidential Exhibits 5A–5G. Material proposed to be added to the OCC Policies as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

[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)(3).

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

On September 28, 2016 the Commission adopted amendments to Rule 17Ad–22 [6] and added new Rule 17Ab2–2 [7] pursuant to Section 17A of the Exchange Act [8] and the Payment, Clearing, and Settlement Supervision Act of 2010 [9] to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a ''covered clearing agency,'' as defined by Rule 17Ad–22(a)(5) [10] (collectively, the new and amended rules are herein referred to as ''CCA Rules''). The CCA Rules require that covered clearing agencies ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . .'' comply with these enhanced standards. OCC is a covered clearing agency under the CCA Rules and therefore is subject to the CCA Rules. Accordingly, OCC maintains a number of policies that have been filed with the Commission and which need to be updated periodically so that those policies remain accurate and consistent with other OCC rules.

On February 13, 2019, the Commission approved a proposed rule change by OCC concerning changes in OCC's management structure specifically related to, at that time, OCC's Executive Chairman and Chief Executive Officer (''CEO''), Chief Operating Officer (''COO''), and Chief Administrative Officer (''CAO'') (collectively referred to as the ''Office of the Chief Executive Officer'' or ''Office

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ab2–2.

[8] 15 U.S.C. 78q–1.

[9] 12 U.S.C. 5461 *et seq.*

[10] 17 CFR 240.17Ad–22(a)(5).

of the CEO'').[11] The primary purpose of the proposed rule change was to: (1) Reestablish the separation of the roles of Executive Chairman and CEO and reallocate authority and responsibilities between the two roles and (2) remove the requirement from OCC's By-Laws that the Board of Directors (''Board'') elect a CAO and delete the references to a CAO throughout OCC's By-Laws, Rules, and Board/Board Committee charters. OCC proposes to revise the OCC Policies to align the policies with these recently approved changes to OCC's By-Laws and Rules and to otherwise enhance the accuracy, clarity, and consistency of the OCC Policies.

Proposed Changes

OCC proposes to make administrative changes to the OCC Polices to: (1) Conform them to the recently approved management structure changes implemented in OCC's By-Laws and Rules,[12] (2) update various internal OCC policy and procedure names, and (3) make other non-substantive clarifying and conforming changes.

1. Changes To Conform to By-Laws and Rules

As noted above, OCC recently adopted a proposed rule change that separated the roles of Executive Chairman and CEO, removed the requirement from OCC's By-Laws that the Board elect a CAO, and deleted references to the CAO throughout OCC's By-Laws, Rules, and Board/Board Committee charters. OCC now proposes to make conforming revisions to the OCC Policies to align any responsibilities or authority of members of the Office of the CEO in such policies with the recently approved changes to OCC's By-Laws and Rules. The proposed rule change is intended to ensure the accuracy of the OCC Policies and their consistency with OCC's By-Laws and Rules and is not intended to substantively change the responsibility or authority of members of the Office of the CEO.

OCC proposes to revise sections of its CFM Policy concerning (i) temporary increases to the minimum Clearing Fund cash requirement, (ii) temporary increases in the overall size of the Clearing Fund, (iii) escalation of intra-day margin calls that exceed 100% of a Clearing Member's net capital, (iv) notification and approvals of intra-month resizing of the Clearing Fund, and (v) authority to make proportionate changes against the Clearing Fund to reflect the new composition the Office of the CEO. OCC also proposes to revise its CCRM Policy to reflect that the CEO and COO now have the authority to approve Clearing Members, banks, liquidity providers, investment counterparties, and financial market utility relationships to align with the recently approved changes to OCC's By-Laws and Rules re-assigning responsibility for routine day-to-day business decisions to these senior officers.[13] OCC also proposes to revise sections of the CCRM Policy concerning the Watch Level Reporting process to reflect the new composition of the Office of the CEO and appropriately describe Watch Level notification and escalation requirements under the new management structure.

In addition, OCC proposes to revise its DM Policy to reflect the new composition of the Office of the CEO and their responsibilities in the default management process, including the authority for any member of the Office of the CEO to (i) suspend a Clearing Member, (ii) authorize a draw on OCC's credit facilities, (iii) authorize an extension of daily settlement times under OCC Rule 505, (iv) defer the close-out of some or all positions of a suspended clearing member, and (v) make proportionate charges against and require the replenishment of OCC's Clearing Fund consistent with OCC's By-Laws and Rules. OCC also proposes to revise its Margin Policy to reflect the new composition of the Office of the CEO and the authority of the officers thereof to approve intra-day margin calls outside of standard equity trading hours. OCC would also revise certain of the OCC Policies to include a defined term for ''Office of the Chief Executive Officer.''

2. Related Policy and Procedure Updates

As discussed above, the CCA Rules require OCC to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . .'' comply with the objectives and standards of the CCA Rules.[14] The OCC Policies currently contain references to certain related policies and procedures that OCC maintains in support of the OCC Policies. These policies and procedures are reviewed and updated on a periodic basis, which at times may result in the consolidation of certain related procedures or changes in policy or procedure names. OCC proposes to revise the OCC Policies to update internal policy and procedures names to reflect any changes resulting from these periodic reviews to ensure the accuracy, consistency, and clarity of the OCC Policies. The proposed changes are administrative in nature and are not intended to change the substance of the OCC Policies.

3. Other Non-Substantive Clarifying and Conforming Changes

OCC also proposes to make a number of other administrative changes to the OCC Policies that would improve the accuracy, consistency, and clarity of those documents but would not change the substance or requirements of those policies. OCC proposes to revise its RMF Policy to clarify that the term ''Residual Risk'' represents the level of risk exposure posed ''to'' (as opposed to ''from'') a process or activity after the application of controls or other risk-mitigating factors and to align the definition and usage of the term throughout the policy. OCC would also revise a section header in the RMF Policy to note that the section in question discusses OCC's use of risk tolerances in addition to OCC's Risk Appetite Framework.

OCC proposes to revise its DM Policy to update cross-references to certain provisions of OCC's By-Laws relating to the Clearing Fund that were recently relocated to Chapter X of OCC's Rules.[15] The DM Policy would also be revised to eliminate an incorrect reference to Rule 913, which does not currently exist in OCC's Rules. OCC also proposes to revise its Margin Policy to update cross-references to relevant chapters of OCC's Margins Methodology. Additionally, OCC would update the Recalibration section of the policy to clarify that, consistent with current practice, the standard historical data look-back period used for econometric estimation is ten years for univariate parameters and 500 days for correlations.[16] Finally,

[11] *See* Securities Exchange Act Release No. 85129 (February 13, 2019), 84 FR 5129 (February 20, 2019) (SR–OCC–2018–015) (Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Changes to The Options Clearing Corporation's Management Structure). Upon adoption of the proposed rule change, the Office of the CEO is now comprised of the Executive Chairman, CEO, and COO.

[12] *Id.*

[13] *See supra* note 11.

[14] *See* 17 CFR 240.17Ad–22.

[15] *See* Securities Exchange Act Release No. 83714 (July 26, 2018), 83 FR 37570 (August 1, 2018) (SR–OCC–2018–803) (Notice of No Objection to Advance Notice, as Modified by Amendments No. 1 and 2, Concerning Proposed Changes to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology) and Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (August 2, 2018) (SR–OCC–2018–008) (Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology).

[16] *See* Securities Exchange Act Release No. 83305 (May 23, 2018), 83 FR 24536 (May 29, 2018) (SR–OCC–2017–811) (Notice of No Objection to

Continued

OCC proposes to revise its MRM Policy to clarify that OCC's Model Risk Working Group is responsible for tracking ''model issues and activities'' as opposed to ''model defects and remediation.''

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act [17] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act [18] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing or agency or for which it is responsible. The proposed rule change is designed to align the OCC Policies with previously approved changes to OCC's By-Laws, Rules, and risk models [19] and otherwise enhance the accuracy, clarity, and consistency of the OCC Policies. The proposed changes would, among other things, ensure that the OCC Policies maintain accurate descriptions of the roles and responsibilities of the Office of the CEO and reference the appropriate procedures maintained under the OCC Policies to effectively carry out the requirements of those polices and thereby facilitate the effective operation of OCC's core clearance, settlement, and risk management activities. OCC believes that the proposed rule change is therefore designed, in general, to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible in accordance with Section 17A(b)(3)(F) of the Act.[20]

Rule 17Ad–22(e)(2)(i) [21] requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent. As discussed above, the proposed rule change is designed to align the OCC Policies with previously approved changes to OCC's By-Laws and Rules and otherwise enhance the accuracy, clarity, and consistency of the OCC Policies. The proposed changes would, among other things, ensure that the OCC Policies maintain accurate descriptions of the roles and responsibilities of the Office of the CEO and reference the appropriate procedures maintained under the OCC Policies to effectively carry out the requirements of those polices. OCC therefore believes the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i).[22] Moreover, OCC believes the proposed rule change promotes compliance with the CCA Rules [23] generally by improving the accuracy, clarity, and consistency of the OCC Policies so that they remain reasonably designed to achieve the standards and requirements thereunder.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [24] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. The proposed rule change is intended to make clarifying and conforming changes to OCC's internal policies in connection with the implementation of a proposed rule change that was previously approved by the Commission [25] and other administrative updates that would have no impact on Clearing Members or other market participants. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(iii) [26] of the Act, and Rule 19b–4(f)(3) thereunder,[27] the proposed rule change is filed for immediate effectiveness as it is concerned solely with the administration of OCC. 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.[28]

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–OCC–2019–006 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–OCC–2019–006. 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

Advance Notice Filing Concerning The Options Clearing Corporation's Margin Methodology) and Securities Exchange Act Release No. 83326 (May 24, 2018), 83 FR 25081 (May 31, 2018) (SR–OCC–2017–022) (Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Margin Methodology).

[17] 15 U.S.C. 78q–1.

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] *See supra* notes 11, 12, 15, and 16 and associated text.

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(2)(i).

[22] *Id.*

[23] 17 CFR 240.17Ad–22.

[24] 15 U.S.C. 78q–1(b)(3)(I).

[25] *See supra* notes 11, 12, 15, and 16 and associated text.

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(3).

[28] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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–OCC–2019–006 and should be submitted on or before August 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15971 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33563; 812–15010]

PFS Funds and Castle Investment Management, LLC.; Notice of Application

July 23, 2019.

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

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: PFS Funds (the ''Trust''), a Massachusetts business trust that is registered under the Act as an open-end management investment company, and Castle Investment Management, LLC (the ''Initial Adviser''), a Virginia limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (collectively with the Trust, the ''Applicants'').

FILING DATES: The application was filed on March 13, 2019 and amended on June 14, 2019, July 10, 2019, and July 12, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 19, 2019, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: John H. Lively, Esq., Practus, LLC, 11300 Tomahawk Creek Parkway, Suite 310, Leawood, KS 66211.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

SUMMARY OF THE APPLICATION:

1. An Adviser will serve as the investment adviser to each Sub-advised Series pursuant to an investment advisory agreement with the Trust (the ''Investment Management Agreement'').[1] Under the terms of each Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (the ''Board'') will provide continuous investment management of the assets of each Sub-advised Series. Consistent with the terms of each Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Sub-advised Series to one or more Sub-Advisers[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Sub-advised Series. The Adviser will evaluate, select and recommend Sub-Advisers to manage the assets of a Sub-advised Series and will oversee, monitor, and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to Board approval, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Sub-advised Series to disclose (as both a dollar amount and a percentage of the Sub-advised Series' net assets): (a) The aggregate fees paid to the Adviser and

[1] Applicants request relief with respect to the named Applicants, as well as to any future series of the Trust and any other registered open-end management investment company or series thereof that: (a) Is advised by the Initial Adviser, its successors, or any entity controlling, controlled by or under common control with the Initial Adviser or its successors (each, an ''Adviser''); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions set forth in the application (each, a ''Sub-advised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] A ''Sub-Adviser'' for a Sub-advised Series is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Sub-advised Series, or (2) a sister company of the Adviser for that Sub-advised Series that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Sub-advised Series or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Sub-advised Series (''Non-Affiliated Sub-Adviser'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-advised Series, the Trust or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-advised Series (''Affiliated Sub-Adviser'').

any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, ''Aggregate Fee Disclosure'').

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Sub-advised Series shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Sub-advised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Sub-advised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Sub-advised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15954 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33566; File No. 812–14911]

The Guardian Insurance & Annuity Company, Inc., et al.

July 23, 2019.

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

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the 1940 Act.

APPLICANTS: The Guardian Insurance & Annuity Company, Inc., (''Guardian''), The Guardian Separate Account Q, and The Guardian Separate Account R (collectively, the ''Separate Accounts'' and together with Guardian, the ''Section 26 Applicants''); and the Section 26 Applicants, Guardian Variable Products Trust (the ''Trust''), and Park Avenue Institutional Advisers LLC (''Park Avenue'') (collectively, the ''Section 17 Applicants''). All applicants to this Application may also be collectively referred to herein as the ''Applicants.''

SUMMARY OF APPLICATION: Section 26 Applicants seek an order pursuant to section 26(c) of the 1940 Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the ''Existing Portfolios'') for shares of certain investment portfolios of the Trust (the ''Replacement Portfolios''), held by the Separate Accounts under certain variable annuity contracts (the ''Contracts''). The Section 17 Applicants seek an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit them to engage in certain in-kind transactions.

FILING DATE: The application was filed on June 1, 2018 and was amended on November 5, 2018 and April 1, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 19, 2019 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the 1940 Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Richard T. Potter, Senior Vice President, Counsel and Assistant Corporate Secretary, The Guardian Insurance & Annuity Company, Inc., 7 Hanover Square, New York, New York 10004; Stephen E. Roth, Esq. and Cynthia R. Beyea, Esq., Eversheds Sutherland (US) LLP, 700 Sixth Street NW, Suite 700, Washington, DC 20001–3980.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Aaron Gilbride, Branch Chief at (202) 551–6906 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov.search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Guardian is a Delaware stock life insurance company licensed to conduct insurance business in the District of Columbia and all fifty states of the United States. Guardian is wholly-owned by The Guardian Life Insurance Company of America (''Guardian Life''), a mutual life insurance company.

2. Each Separate Account meets the definition of ''separate account,'' as defined in section 2(a)(37) of the 1940 Act and rule 0–1(e) thereunder. The Separate Accounts are registered with the Commission under the 1940 Act as unit investment trusts. The assets of the Separate Accounts support the Contracts and interests in the Separate Accounts offered through such Contracts. Guardian is the legal owner of the assets in the Separate Accounts. The Separate Accounts are segmented into subaccounts, and each subaccount invests in an underlying registered open-end management investment company or series thereof.

3. The Contracts are each registered under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4. Each Contract has particular fees, charges, and investment options, as described in the Contracts' respective prospectuses.

4. The Contracts are individual flexible or single premium deferred variable annuity contracts. As set forth in the prospectuses for the Contracts, each Contract provides that Guardian reserves the right to substitute shares of the funds in which the Separate Accounts invest for shares of any funds

already held or to be held in the future by the Separate Accounts.[1]

5. Guardian, on behalf of itself and the Separate Accounts, proposes to exercise its contractual right to substitute shares of theExisting Portfolios for shares of the Replacement Portfolios (''Substitutions''), as shown in the table below:

Substitution No.	Existing portfolio	Replacement portfolio
1	Fidelity VIP Contrafund Portfolio (Service Class 2)	Guardian Large Cap Disciplined Growth VIP Fund.
2	AB Large Cap Growth Portfolio (Class B)	Guardian Large Cap Disciplined Growth VIP Fund.
3	Franklin Rising Dividends VIP Fund (Class 2)	Guardian Diversified Research VIP Fund.
4	BlackRock Capital Appreciation V.I. Fund (Class III)	Guardian Large Cap Fundamental Growth VIP Fund.
5	Invesco V.I. Small Cap Equity Fund (Series II)	Guardian Small Cap Core VIP Fund.
6	Oppenheimer Main Street Small Cap Fund/VA (Service Shares)[2].	Guardian Small Cap Core VIP Fund.
7	MFS® Utilities Series (Service Class)	Guardian Global Utilities VIP Fund.
8	Franklin U.S. Government Securities VIP Fund (Class 2)	Guardian U.S. Government Securities VIP Fund.
9	Invesco V.I. Government Securities Fund (Series II)	Guardian U.S. Government Securities VIP Fund.
10	PIMCO Total Return Portfolio (Advisor Class)	Guardian Total Return Bond VIP Fund.
11	Western Asset Core Plus VIT Portfolio (Class II)	Guardian Total Return Bond VIP Fund.
12	Oppenheimer Global Strategic Income Fund/VA (Service Shares)[3].	Guardian Multi-Sector Bond VIP Fund.

6. The Replacement Portfolios are series of the Trust, a Delaware statutory trust registered as an open-end management investment company under the 1940 Act (File No. 811–23148) and whose shares are registered under the 1933 Act (File No. 333–210205). The Replacement Portfolios that have begun operations are currently available (or, in the case of the New Replacement Portfolios)[4] only as investment allocation options under variable insurance contracts issued by Guardian.

7. Park Avenue, an indirect wholly-owned subsidiary of Guardian Life, serves as the investment adviser of each Replacement Portfolio. Park Avenue is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940. Each Replacement Portfolio is sub-advised by a registered investment adviser that is unaffiliated with Applicants, the Trust, or Park Avenue.

[1] Certain Contracts make or made available guaranteed living benefit riders (each, a ''Living Benefit Rider'' and collectively, the ''Living Benefit Riders''). The terms of certain Living Benefit Riders include investment restrictions that limit the available investment options to identified allocation models consisting of a specified selection of investment options. A Contract owner with a Living Benefit Rider that has investment restrictions may transfer Contract value by reallocating all of his Contract value to a different allocation model under the rider or, depending on the terms of the rider, by reallocating his Contract value within the parameters of the allocation model.

[2] On October 18, 2018, Massachusetts Mutual Life Insurance Company, an indirect corporate parent of OppenheimerFunds, Inc. and certain of its subsidiaries, announced that it has entered into an agreement whereby Invesco Ltd. will acquire OppenheimerFunds, Inc. (the ''Transaction''). In connection with the Transaction, a proxy statement has been submitted to shareholders of the Oppenheimer Main Street Small Cap Fund/VA (Service Shares) and the Oppenheimer Global Strategic Income Fund/VA (Service Shares) (the ''Target Funds''). See AIM Variable Insurance Funds (Invesco Variable Insurance Funds), Definitive Materials (497) (Feb. 19, 2019) (File No. 333–229243). The proxy statement requests shareholder approval to reorganize (i) the Oppenheimer Main Street Small Cap Fund/VA (Service Shares) into the Invesco Oppenheimer V.I. Main Street® Small Cap Fund (Series II) and (ii) the Oppenheimer Global Strategic Income Fund/VA (Service Shares) into the Invesco Oppenheimer V.I. Global Strategic Income Fund (Series II). As described in the proxy statement, each of the Invesco funds referenced above (the ''Acquiring Funds'') is ''a newly organized shell fund created to acquire the assets and assume the accrued liabilities of the corresponding [Target Fund],'' and no funds other than the Target Funds would be acquired by the Acquiring Funds as part of the Transaction. In that regard, each Acquiring Fund does not currently have any operating or performance history, and would be a continuation of its Target Fund within a different fund complex once it commences operations. Each Acquiring Fund has the same investment objectives and substantially similar principal investment strategies and risks as its Target Fund. The fee structure (including management and Rule 12b–1 fees) of each Acquiring Fund is identical to its Target Fund. As disclosed in the proxy statement and the Acquiring Funds' current prospectuses as of the date of this Application, the net expense ratio of the Invesco Oppenheimer V.I. Main Street® Small Cap Fund (Series II) is identical to the Oppenheimer Main Street Small Cap Fund/VA (Service Shares), and the net expense ratio of the Invesco Oppenheimer V.I. Global Strategic Income Fund (Series II) is 0.02% lower than the net expense ratio of the Oppenheimer Global Strategic Income Fund/VA (Service Shares). The same portfolio management team that manages each Target Fund will manage the corresponding Acquired Fund. The Acquiring Funds will not commence operations unless and until the reorganizations occur, and when the Acquiring Funds do commence operations, they would continue the historical performance information of their Target Funds. In light of each Acquiring Fund being a continuation of its Target Fund, if the reorganizations are approved and occur prior to the Substitutions, the Applicants intend to rely on the requested order of approval to substitute the Acquiring Funds as if they were Existing Funds under Substitution Nos. 6 and 12, and such substitutions would be performed in accordance with the policies and procedures and conditions set forth in this Application. As of the date of the Application, shareholders of the Target Funds had yet to vote on the reorganizations.

[3] Id.

[4] The Replacement Portfolio that have begun operations are: Guardian Large Cap Disciplined Growth VIP Fund; Guardian Diversified Research VIP Fund; Guardian Large Cap Fundamental Growth VIP Fund; Guardian Small Cap Core VIP Fund; Guardian Global Utilities VIP Fund; Guardian U.S. Government Securities VIP Fund; Guardian Total Return Bond VIP Fund; Guardian Multi-Sector Bond VIP Fund. The New Replacement Portfolios are: Guardian Small Cap Core VIP Fund; Guardian Global Utilities VIP Fund; Guardian Multi-Sector Bond VIP Fund; Guardian Total Return Bond VIP Fund; and Guardian U.S. Government Securities VIP Fund.

8. The Section 26 Applicants state that the proposed Substitutions are part of a strategic business goal of Guardian to improve the administrative efficiency and cost-effectiveness of the Contracts, as well as to make the Contracts more attractive to Contract owners. The Section 26 Applicants note that the proposed Substitutions are intended to improve portfolio manager selection [5] and simplify fund lineups while reducing costs and maintaining a menu of investment options that would offer a similar diversity of investment options after the proposed Substitutions as is currently available under the Contracts. The Section 26 Applicants believe that the Replacement Portfolios have investment objectives, principal investment strategies, and principal risks, as described in their prospectuses, which are substantially similar to the corresponding Existing Portfolios, making those Replacement Portfolios appropriate candidates as substitutes. Information for each Existing Portfolio and Replacement Portfolio, including investment objectives, principal investment strategies, principal risks, and comparative performance history, can be found in the application.

9. The Section 26 Applicants state that for all the proposed Substitutions, the net annual operating expenses of the Replacement Portfolio will not exceed, on an annualized basis, the net annual operating expenses of any corresponding Existing Portfolio for the last fiscal year preceding the date of the application (the ''Expense Cap''). The Section 26 Applicants will cause Park Avenue, as the investment adviser of each Replacement Portfolio, to enter into a written contract with the Replacement Portfolio under which the net annual operating expenses of the Replacement Portfolio will not exceed the Expense Cap. The Expense Cap for each proposed Substitution will remain in place for a period of two years following the implementation of the proposed Substitution (the ''Substitution Date''), except that for those proposed Substitutions for which the sum of the current management fee and rule 12b–1 fees of the Replacement Portfolio is greater than that of the corresponding Existing Portfolio, the Expense Cap for that proposed Substitution will extend for the life of the affected Contracts following the Substitution Date. Any amounts waived or reimbursed by Park Avenue pursuant to any Expense Cap will not be subject to Park Avenue's recoupment rights.

10. The Section 26 Applicants represent that as of the Substitution Date, the Separate Accounts will redeem shares of the Existing Portfolios for cash and/or in-kind. Redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

11. Each Substitution will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with section 22(c) of the 1940 Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.[6]

12. Contract owners will not incur any fees or charges as a result of the proposed Substitutions. The obligations of the Section 26 Applicants, and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way. Guardian and/or its affiliates (other than the Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution. In addition, the Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

13. From the date of the Pre-Substitution Notice (defined below) through 30 days following the Substitution Date, subject to the terms of certain Living Benefit Riders, Contract owners may make at least one transfer of Contract value from the subaccount investing in an Existing Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other available subaccount under the Contract without charge and without imposing any transfer limitations. Further, on the Substitution Date, Contract values attributable to investments in each Existing Portfolio will be transferred to the corresponding Replacement Portfolio without charge and without being subject to any transfer limitations. Moreover, except with respect to market timing policies and procedures and the terms of the Living Benefit Riders, Guardian will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts for a period beginning at least 30 days, including limitations on the future number of transfers, before the Substitution Date through at least 30 days following the Substitution Date.

14. At least 30 days prior to the Substitution Date, Contract owners will be notified via prospectus supplements that the Section 26 Applicants received or expect to receive Commission approval of the applicable proposed Substitutions and of the anticipated Substitution Date (the ''Pre-Substitution Notice''). Pre-Substitution Notices sent to Contract owners will be filed with the Commission pursuant to rule 497 under the 1933 Act. The Pre-Substitution Notice will advise Contract owners that from the date of the Pre-Substitution Notice through the date 30 days after the Substitutions, subject to the terms of certain Living Benefit Riders, Contract owners may make at least one transfer of Contract value from the subaccounts investing in the Existing Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available subaccount without charge and without

[5] The Trust and Park Avenue may rely on an order from the Commission that permits Park Avenue, subject to certain conditions, including approval of the Trust's board of directors but without the approval of shareholders, to select certain wholly-owned and non-affiliated investment sub-advisers to manage all or a portion of the assets of each portfolio of the Trust pursuant to an investment sub-advisory agreement with Park Avenue, and to materially amend sub-advisory agreements with Park Avenue. *See* Guardian Variable Products Trust and Park Avenue Institutional Advisers LLC, Investment Company Act Release Nos. 32420 (Jan. 9, 2017) (notice) and 32468 (Feb. 6, 2017) (the ''Manager of Managers Order''). After the Substitution Date (defined below), Park Avenue will not change a Replacement Portfolio's sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order or any replacement order from the Commission with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Manager of Managers Order or any replacement order from the Commission, at a shareholder meeting, the record date for which will be after the proposed Substitution has been effected.

[6] The Section 26 Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. The Section 26 Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Portfolios and Replacement Portfolios, which Applicants cannot predict. Nevertheless, the Section 26 Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

imposing any transfer limitations. Among other information, the Pre-Substitution Notice will inform affected Contract owners that, except with respect to market timing policies and procedures and limitations imposed by Living Benefit Riders, Guardian will not exercise any rights reserved under the Contracts to impose additional restrictions on transfers out of a Replacement Portfolio subaccount from the date of the Pre-Substitution Notice, including limitations on the future number of transfers, until at least 30 days after the Substitution Date. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Portfolios at least 30 days before the Substitution Date.

15. In addition to the Supplements distributed to the Contract owners, within five business days after the Substitution Date, Contract owners whose assets are allocated to a Replacement Portfolio as part of the proposed Substitutions will be sent a written notice (each, a ''Confirmation'') informing them that the Substitutions were carried out as previously notified. The Confirmation also will restate the information set forth in the Pre-Substitution Notice. The Confirmation will also reflect the values of the Contract owner's positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

Legal Analysis

1. The Section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the 1940 Act approving the proposed Substitutions. Section 26(c) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. The Section 26 Applicants submit that the Substitutions meet the standards set forth in section 26(c) and that, if implemented, the Substitutions would not raise any of the concerns that Congress intended to address when the 1940 Act was amended to include this provision. The Section 26 Applicants state that each Substitution protects the Contract owners who have Contract value allocated to an Existing Portfolio by providing Replacement Portfolios with substantially similar investment objectives, strategies, and risks, and providing Contract owners with investment options that have net annual operating expenses that will not exceed the Expense Cap.

3. Guardian has reserved the right under the Contracts to substitute shares of another underlying fund for one of the current funds offered as an investment option under the Contracts. The Contracts and the Contracts' prospectuses disclose this right.

4. The Section 26 Applicants submit that the ultimate effect of the proposed Substitutions will be to simplify the investment line-ups that are available to Contract owners while reducing expenses and continuing to provide Contract owners with a wide array of investment options. The Section 26 Applicants state that the proposed Substitutions will not reduce in any manner the nature or quality of the available investment options and the proposed Substitutions also will permit Guardian to present information to its Contract owners in a simpler and more concise manner. The Section 26 Applicants also state it is anticipated that after the proposed Substitutions, Contract owners will be provided with disclosure documents that contain a simpler presentation of the available investment options under the Contracts. The Section 26 Applicants also assert that the proposed Substitutions are not of the type that section 26 was designed to prevent because they will not result in costly forced redemption, nor will they affect other aspects of the Contracts. In addition, the proposed Substitutions will not adversely affect any features or riders under the Contracts. Accordingly, no Contract owner will involuntarily lose his or her features or riders as a result of any proposed Substitution. Moreover, Applicants will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than those necessary to implement policies and procedures designed to detect and deter disruptive transfers and other ''market timing'' activities and administer the terms of the Living Benefit Riders) that may otherwise have been imposed for a period beginning on the date of the Pre-Substitution Notice (which supplement will be delivered to the Contract owners at least 30 days before the Substitution Date) and ending no earlier than 30 days after the Substitution Date. The proposed Substitutions are also unlike the type of substitution that section 26(c) was designed to prevent in that the Substitutions have no impact on other aspects of the Contracts.

5. The Section 17 Applicants request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to permit the Section 17 Applicants to carry out some or all of the proposed Substitutions. The Section 17 Applicants state that because the proposed Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the proposed Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliated persons.

6. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

7. The Section 17 Applicants state that the proposed transactions may involve a transfer of portfolio securities by the Existing Portfolios to the Separate Accounts. Immediately thereafter, the Separate Accounts would purchase shares of the Replacement Portfolios with the portfolio securities received from the Existing Portfolios. Accordingly, the Section 17 Applicants provide that to the extent that Guardian, the Separate Accounts, the Trust, Park Avenue, or the Replacement Portfolios, are deemed to be affiliated persons of one another under section 2(a)(3) or section 2(a)(9) of the 1940 Act, it is conceivable that this aspect of the proposed Substitutions could be viewed as being prohibited by section 17(a). Accordingly, the Section 17 Applicants have determined to seek relief from section 17(a).

8. The Section 17 Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Portfolios by the Separate Accounts, including the consideration to be paid and received, as described in the Application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants submit that the terms of the proposed in-kind transactions, including the consideration to be paid by each Existing Portfolio and received by each Replacement Portfolio involved, are reasonable, fair and do not involve overreaching principally because the transactions will conform with all but one of the conditions enumerated in rule 17a–7 under the 1940 Act.

9. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitutions will be effected without change in the amount or value of any Contract held by the affected Contract owners. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions. The fees and charges under the Contracts will not increase because of the Substitutions. Even though Guardian, the Separate Accounts, the Trust, Park Avenue, and the Replacement Portfolios may not rely on rule 17a–7, the Section 17 Applicants believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

10. The Section 17 Applicants also submit that the proposed in-kind purchases by the Separate Accounts are consistent with the policies of the Trust and the Replacement Portfolios, as provided in the Trust's current registration statement and reports filed under the 1940 Act. Finally, the Section 17 Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

Applicants' Conditions

The Section 26 Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless Guardian determines that: (i) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (ii) the Substitutions can be consummated as described in the application under applicable insurance laws; and (iii) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. After the Substitution Date, Park Avenue will not change a Replacement Portfolio's sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order or any replacement order from the Commission with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Manager of Managers Order, or any replacement order from the Commission, at a shareholder meeting, the record date for which shall be after the proposed Substitution has been effected.

3. Guardian or an affiliate thereof (other than the Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

4. The Substitutions will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with section 22(c) of the 1940 Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

5. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

6. The obligations of the Section 26 Applicants and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way.

7. Affected Contract owners will be permitted to transfer Contract value from the subaccount investing in the Existing Portfolio (before the Substitution Date) or the Replacement Portfolio (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Contract owners with Living Benefit Riders, as applicable, may transfer Contract value from the subaccounts investing in the Existing Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available investment option available under their respective riders without charge and without imposing any transfer limitations. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Applicants will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, transfers, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

8. All affected Contract owners will be notified via the Pre-Substitution Notice, at least 30 days before the Substitution Date, about: (i) The intended Substitution of Existing Portfolios with the Replacement Portfolios; (ii) the intended Substitution Date; and (iii) information with respect to transfers as set forth in Condition 7 above. In addition, the Section 26 Applicants will also deliver to affected Contract owners, at least 30 days before the Substitution Date, a prospectus for each applicable Replacement Portfolio.

9. The Section 26 Applicants will deliver to each affected Contract owner within five business days of the Substitution Date a written confirmation which will include: (i) A confirmation that the Substitutions were carried out as previously notified; (ii) a restatement of the information set forth in the Pre-Substitution Notice; and (iii) values of the Contract owner's positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

10. Guardian will cause Park Avenue, as the investment adviser of each Replacement Portfolio, to enter into a written contract with the Replacement Portfolio whereby, for the applicable time period, the net annual operating expenses of the Replacement Portfolio will not exceed, on an annualized basis, the net annual operating expense of any corresponding Existing Portfolio for the last fiscal year preceding the date of this Application. The written contract will remain in place for a period of two years following the Substitution Date, except that for those proposed Substitutions for which the sum of the current management fee and rule 12b–1 Fee of the Replacement Portfolio is greater than that of the corresponding Existing Portfolio, the written agreement will extend for the life of the affected Contracts following the Substitution Date. Park Avenue will reimburse expenses to the extent necessary under each written agreement on the last business day of each month. Any amounts waived or reimbursed by Park Avenue pursuant to this condition will not be subject to recoupment rights. In addition, the Section 26 Applicants will not increase the Contract fees and charges that would otherwise be assessed under the terms of the

Contracts for affected Contract owners for a period of at least two years following the Substitution Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15975 Filed 7–26–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86444; File No. SR–BX–2019–025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Governing Give Ups on the BX Options Market

July 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the BX Options Market (''BX Options'') to modify the give up of a Clearing Participant [3] by a Participant [4] on BX Options transactions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Clearing Participant'' means a Participant that is self-clearing or a Participant that clears BX Options Transactions for other Participants of BX Options. *See* Chapter I, Section 1(a)(18).

[4] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's rules for purposes of participating in options trading on BX Options as a ''BX Options Order Entry Firm'' or ''BX Options Market Maker.'' *See* Chapter I, Section 1(a)(41).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its requirements in Chapter VI, Section 14 related to the give up of a Clearing Participant by a Participant on BX Options transactions. This proposed rule change is substantially similar [5] to a recently-approved rule change by the Exchange's affiliate, Nasdaq PHLX LLC (''Phlx''),[6] and serves to align the rules of Phlx and the Exchange.[7]

By way of background, to enter transactions on BX Options, a Participant must either be a Clearing Participant or must have a Clearing Participant agree to accept financial responsibility for all of its transactions. In particular, Chapter VI, Section 14 currently provides that a Participant must give up the name of the Clearing Participant through which the transaction will be cleared. Chapter VI, Section 15(a) provides, in relevant part, that every Clearing Participant shall be responsible for the clearance of BX Options transactions of such Clearing Participant and of each Participant that gives up such Clearing Participant's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Participant to such Participant, which authorization must be submitted to the Exchange. Additionally Chapter VII, Section 8 provides that no Participant shall make any transactions on BX Options unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with the Exchange.

Recently, certain Clearing Participants, in conjunction with the Securities Industry and Financial Markets Association (''SIFMA''), expressed concerns related to the process by which executing brokers on U.S. options exchanges (''Exchanges'') are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Participants have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[8]

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Participant to opt in, at The Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Participant, will allow the Clearing Participant to specify which Participants are authorized to give up that OCC clearing number. Accordingly, Section 14 will be retitled as ''Authorization to Give Up,'' and the current rule text will be replaced by new language. Specifically, proposed Section 14(a) will provide that for each transaction in which a Participant participates, the Participant may indicate, through post trade allocation, any OCC number of a Clearing Participant through which a transaction will be cleared (''Give Up''), provided the Clearing Participant has not elected to ''Opt In,'' as defined in paragraph (b) of the proposed Rule, and restrict one or more of its OCC number(s) (''Restricted OCC Number'').[9] A Participant may Give Up a Restricted OCC Number provided the Participant has written authorization as described in paragraph (b)(ii) (''Authorized Participant'').

Proposed Section 14(b) provides that Clearing Participants may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') as

[5] Specifically, BX is not adopting section (c)(i) of Phlx Rule 1037, which relates to how the Phlx trading system will enforce unauthorized Give Ups for floor trades.

[6] *See* Securities Exchange Act Release No. 85136 (February 14, 2019) (SR–Phlx–2018–72) (Approval Order).

[7] The other Nasdaq, Inc.-owned options markets, The Nasdaq Options Market, Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX (collectively, ''Nasdaq HoldCo Exchanges''), have already filed or will file similar rule change proposals based on the Phlx filing.

[8] *See* note 6 above.

[9] Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a member organization may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. *See* note 12 below.

described in subparagraph (i) of Section 14(b). If a Clearing Participant Opts In, the Exchange will require written authorization from the Clearing Participant permitting a Participant to Give Up a Clearing Participant's Restricted OCC Number. An Opt In would remain in effect until the Clearing Participant terminates the Opt In as described in subparagraph (iii). If a Clearing Participant does not Opt In, that Clearing Participant's OCC number may be subject to Give Up by any Participant.

Proposed Section 14(b)(i) will set forth the process by which a Clearing Participant may Opt In. Specifically, a Clearing Participant may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Participant.[10] A copy of the proposed form is included in Exhibit 3. A Clearing Participant may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Participant would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the member users of that Restricted OCC Number who are not initially specified by the Clearing Participant as Authorized Participants to obtain the required written authorization from the Clearing Participant for that Restricted OCC Number. Such member users would still be able to Give Up that Restricted OCC Number during this ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Section 14(b)(ii) will set forth the process for Participants to Give Up a Clearing Participant's Restricted OCC Number. Specifically, a Participant desiring to Give Up a Restricted OCC Number must become an Authorized Participant.[11] The Clearing Participant will be required to authorize a Participant as described in subparagraph (i) or (iii) of Section 14(b) (*i.e.,* through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Participant is a party to, as set forth in Section 14(d).

Pursuant to proposed Section 14(b)(iii), a Clearing Participant may amend the list of its Authorized Participants or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Section 14(b)(i), the Exchange may permit the Clearing Participant to authorize, or remove authorization for, a Participant to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Participants if they are no longer authorized to Give Up a Clearing Participant's Restricted OCC Number. If a Clearing Participant removes a Restricted OCC Number, any Participant may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Section 14(c) will provide that the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.[12]

Furthermore, the Exchange proposes to adopt paragraph (d) to Section 14 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Participant that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Participant or the Participant.

The Exchange also proposes to adopt paragraph (e) to Section 14 to provide that an intentional misuse of this rule is impermissible, and may be treated as a violation of BX Rule 2110, titled ''Standards of Commercial Honor and Principles of Trade,'' or Chapter III, Section 1, titled ''Adherence to Law.'' This language will make clear that the Exchange will regulate an intentional misuse of this rule (*e.g.,* sending orders to a Clearing Participant's OCC account without the Clearing Participant's consent), and that such behavior would be a violation of Exchange rules.

In light of the foregoing proposal, the Exchange also proposes to amend Chapter VI, Section 15(a), which addresses the Clearing Participant's financial responsibility for the BX Options transactions of Participants who give up the name of such Clearing Participant pursuant to, for example, a letter of guarantee. In particular, the Exchange proposes to add that every Clearing Participant shall be responsible for the clearance of BX Options transactions of each Participant who gives up such Clearing Participant's name pursuant to a written authorization to become an Authorized Participant under Chapter VI, Section 14. Lastly, the Exchange proposes two technical changes in the same provision: (1) To capitalize Letter of Guarantee for consistency throughout its Rulebook, and (2) to delete obsolete references to the letter of authorization.[13]

Implementation

The Exchange proposes to implement the proposed rule change no later than by the end of Q3 2019. The Exchange will announce the implementation date to its Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Participants to identify any Clearing Participant as a designated give up for purposes of clearing particular transactions, and

[10] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Participant's contact information to assist Participants (to the extent they are not already Authorized Participants) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its members of such updates on a periodic basis.

[11] The Exchange will develop procedures for notifying Participants that they are authorized or unauthorized by Clearing Participants.

[12] Similar to Phlx, the System will block the entry of the order from the outset. *See* Phlx Rule 1037(c)(ii). This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a member organization if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the member organization becoming an Authorized Member Organization. The System will also restrict any post-trade allocation changes if the member organization is not authorized to use a Restricted OCC Number.

[13] The Exchange has since updated its forms to combine the letter of authorization and guarantee into one Letter of Guarantee applicable to all Participants.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Chapter VI, Section 14 help alleviate this risk by enabling Clearing Participants to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Participants may Give Up those Restricted OCC Numbers. As described above, all other Participants would be required to receive written authorization from the Clearing Participant before they can Give Up that Clearing Participant's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Participants as it provides controls for Clearing Participants to restrict access to their OCC clearing numbers, allowing access only to those Authorized Participants upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Participants, which ensures seamless administration of the rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Participants (other than Authorized Participants) to seek authorization from Clearing Participants in order to have the ability to give them up, each Participant will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Participant is party to that arrangement. The Exchange also notes that to the extent the executing Participant has a clearing arrangement with a Clearing Participant (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing Participant's guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Participant would be responsible for a trade, which protects investors and the public interest. Finally, the Exchange believes that adopting paragraph (e) of Section 14 will make clear that an intentional misuse of this rule (*e.g.,* sending orders to a Clearing Participant's OCC account without the Clearing Participant's consent) will be a violation of the Exchange's rules, and that such behavior would subject a Participant to disciplinary action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Participants. The Exchange also notes that, should the proposed changes make BX Options more attractive for trading, market participants trading on other exchanges can always elect to become Participants on BX Options to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Participants under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Participant's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Participant to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Participants may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Participants to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b-4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2019–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–025. 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/*

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–BX–2019–025 and should be submitted on or before August 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15982 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86437; File No. SR–NASDAQ–2019–053]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Governing the Nasdaq Options Market To Modify the Give Up of a Clearing Participant by a Participant on NOM Transactions

July 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Nasdaq Options Market (''NOM'') to modify the give up of a Clearing Participant[3] by a Participant[4] on NOM transactions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its requirements in Chapter VI, Section 14 related to the give up of a Clearing Participant by a Participant on NOM transactions. This proposed rule change is substantially similar[5] to a recently-approved rule change by the Exchange's affiliate, Nasdaq PHLX LLC (''Phlx''),[6] and serves to align the rules of Phlx and the Exchange.[7]

By way of background, to enter transactions on NOM, a Participant must either be a Clearing Participant or must have a Clearing Participant agree to accept financial responsibility for all of its transactions. In particular, Chapter VI, Section 14 currently provides that a Participant must give up the name of the Clearing Participant through which the transaction will be cleared. Chapter VI, Section 15(a) provides, in relevant part, that every Clearing Participant shall be responsible for the clearance of NOM transactions of such Clearing Participant and of each Participant that gives up such Clearing Participant's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Participant to such Participant, which authorization must be submitted to the Exchange. Additionally Chapter VII, Section 8 provides that no Participant shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with the Exchange.

Recently, certain Clearing Participants, in conjunction with the Securities Industry and Financial Markets Association (''SIFMA''), expressed concerns related to the process by which executing brokers on U.S. options exchanges (''Exchanges'') are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Participants have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[8]

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Participant to opt in, at The Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Participant, will allow the Clearing Participant to specify which Participants are authorized to give up that OCC clearing number. Accordingly, Section 14 will be retitled as ''Authorization to Give Up,'' and the current rule text will be replaced by new language. Specifically, proposed

[3] The term ''Clearing Participant'' means a Participant that is self-clearing or a Participant that clears NOM Transactions for other Participants of NOM. *See* Chapter I, Section 1(a)(9).

[4] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's rules for purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker.'' *See* Chapter I, Section 1(a)(40).

[5] Specifically, Nasdaq is not adopting section (c)(i) of Phlx Rule 1037, which relates to how the Phlx trading system will enforce unauthorized Give Ups for floor trades.

[6] *See* Securities Exchange Act Release No. 85136 (February 14, 2019) (SR–Phlx–2018–72) (Approval Order).

[7] The other Nasdaq, Inc.-owned options markets, Nasdaq BX, Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX (collectively, ''Nasdaq HoldCo Exchanges''), have already filed or will file similar rule change proposals based on the Phlx filing.

[8] *See* note 6 above.

Section 14(a) will provide that for each transaction in which a Participant participates, the Participant may indicate, through post trade allocation, any OCC number of a Clearing Participant through which a transaction will be cleared (''Give Up''), provided the Clearing Participant has not elected to ''Opt In,'' as defined in paragraph (b) of the proposed Rule, and restrict one or more of its OCC number(s) (''Restricted OCC Number'').[9] A Participant may Give Up a Restricted OCC Number provided the Participant has written authorization as described in paragraph (b)(ii) (''Authorized Participant'').

Proposed Section 14(b) provides that Clearing Participants may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') as described in subparagraph (i) of Section 14(b). If a Clearing Participant Opts In, the Exchange will require written authorization from the Clearing Participant permitting a Participant to Give Up a Clearing Participant's Restricted OCC Number. An Opt In would remain in effect until the Clearing Participant terminates the Opt In as described in subparagraph (iii). If a Clearing Participant does not Opt In, that Clearing Participant's OCC number may be subject to Give Up by any Participant.

Proposed Section 14(b)(i) will set forth the process by which a Clearing Participant may Opt In. Specifically, a Clearing Participant may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Participant.[10] A copy of the proposed form is attached [sic] in Exhibit 3. A Clearing Participant may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Participant would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the member users of that Restricted OCC Number who are not initially specified by the Clearing Participant as Authorized Participants to obtain the required written authorization from the Clearing Participant for that Restricted OCC Number. Such member users would still be able to Give Up that Restricted OCC Number during this ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Section 14(b)(ii) will set forth the process for Participants to Give Up a Clearing Participant's Restricted OCC Number. Specifically, a Participant desiring to Give Up a Restricted OCC Number must become an Authorized Participant.[11] The Clearing Participant will be required to authorize a Participant as described in subparagraph (i) or (iii) of Section 14(b) (*i.e.,* through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Participant is a party to, as set forth in Section 14(d).

Pursuant to proposed Section 14(b)(iii), a Clearing Participant may amend the list of its Authorized Participants or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Section 14(b)(i), the Exchange may permit the Clearing Participant to authorize, or remove authorization for, a Participant to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Participants if they are no longer authorized to Give Up a Clearing Participant's Restricted OCC Number. If a Clearing Participant removes a Restricted OCC Number, any Participant may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Section 14(c) will provide that the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.[12]

Furthermore, the Exchange proposes to adopt paragraph (d) to Section 14 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Participant that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Participant or the Participant.

The Exchange also proposes to adopt paragraph (e) to Section 14 to provide that an intentional misuse of this rule is impermissible, and may be treated as a violation of Nasdaq Rule 2010A, titled ''Standards of Commercial Honor and Principles of Trade,'' or Chapter III, Section 1, titled ''Adherence to Law.'' This language will make clear that the Exchange will regulate an intentional misuse of this rule (*e.g.,* sending orders to a Clearing Participant's OCC account without the Clearing Participant's consent), and that such behavior would be a violation of Exchange rules.

In light of the foregoing proposal, the Exchange also proposes to amend Chapter VI, Section 15(a), which addresses the Clearing Participant's financial responsibility for the NOM transactions of Participants who give up the name of such Clearing Participant pursuant to, for example, a letter of guarantee. In particular, the Exchange proposes to add that every Clearing Participant shall be responsible for the clearance of NOM transactions of each Participant who gives up such Clearing Participant's name pursuant to a written authorization to become an Authorized Participant under Chapter VI, Section 14. Lastly, the Exchange proposes two technical changes in the same provision: (1) To capitalize Letter of Guarantee for consistency throughout its Rulebook, and (2) to delete obsolete references to the letter of authorization.[13]

Implementation

The Exchange proposes to implement the proposed rule change no later than by the end of Q3 2019. The Exchange will announce the implementation date

[9] Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a member organization may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. *See* note 12 below.

[10] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Participant's contact information to assist Participants (to the extent they are not already Authorized Participants) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its members of such updates on a periodic basis.

[11] The Exchange will develop procedures for notifying Participants that they are authorized or unauthorized by Clearing Participants.

[12] Similar to Phlx, the System will block the entry of the order from the outset. *See* Phlx Rule 1037(c)(ii). This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a member organization if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the member organization becoming an Authorized Member Organization. The System will also restrict any post-trade allocation changes if the member organization is not authorized to use a Restricted OCC Number.

[13] The Exchange has since updated its forms to combine the letter of authorization and guarantee into one Letter of Guarantee applicable to all Participants.

to its Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Participants to identify any Clearing Participant as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Chapter VI, Section 14 help alleviate this risk by enabling Clearing Participants to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Participants may Give Up those Restricted OCC Numbers. As described above, all other Participants would be required to receive written authorization from the Clearing Participant before they can Give Up that Clearing Participant's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Participants as it provides controls for Clearing Participants to restrict access to their OCC clearing numbers, allowing access only to those Authorized Participants upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Participants, which ensures seamless administration of the rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Participants (other than Authorized Participants) to seek authorization from Clearing Participants in order to have the ability to give them up, each Participant will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Participant is party to that arrangement. The Exchange also notes that to the extent the executing Participant has a clearing arrangement with a Clearing Participant (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing Participant's guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Participant would be responsible for a trade, which protects investors and the public interest. Finally, the Exchange believes that adopting paragraph (e) of Section 14 will make clear that an intentional misuse of this rule (*e.g.,* sending orders to a Clearing Participant's OCC account without the Clearing Participant's consent) will be a violation of the Exchange's rules, and that such behavior would subject a Participant to disciplinary action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Participants. The Exchange also notes that, should the proposed changes make NOM more attractive for trading, market participants trading on other exchanges can always elect to become Participants on NOM to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Participants under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Participant's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Participant to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Participants may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Participants to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–053 and should be submitted on or before August 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15973 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33565; 812–14984]

Zacks Investment Management, Inc. and Zacks Trust

July 23, 2019.

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

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) the Funds to issue shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

APPLICANTS: Zacks Investment Management, Inc. (''Initial Adviser''), an Illinois corporation registered as an investment adviser under the Investment Advisers Act of 1940, and Zacks Trust (''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company.

FILING DATES: The application was filed on December 4, 2018 and amended on March 29, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 19, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Tonya L. Cody, Greenberg Traurig, LLP, 2200 Ross Avenue, Suite 5200, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be

[1] Applicants request that the order apply to the new series of the Trust described in the application, as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto

Continued

purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and (a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15955 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33564; 812–14983]

Zacks Investment Management, Inc. and Zacks Trust

July 23, 2019.

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

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: Zacks Investment Management, Inc. (the ''Initial Adviser''), an Illinois corporation registered as an investment adviser under the Investment Advisers Act of 1940 and Zacks Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company.

FILING DATES: The application was filed on December 4, 2018 and amended on March 29, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 19, 2019 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Tonya L. Cody, Greenberg Traurig, LLP, 2200 Ross Avenue, Suite 5200, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment

[1] Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15968 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No: 34–86432; File No. SR–CBOE–2019–030]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Rules To Permit Cboe Trading, Inc. To Become a Trading Permit Holder and an Inbound and Outbound Router of the Exchange

July 23, 2019.

I. Introduction

On June 25, 2019, the Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to adopt rules related to outbound routing and limited inbound routing by an affiliated Trading Permit Holder, as well as seek approval from the Commission for that affiliate, Cboe Trading, Inc. (''Cboe Trading''), to become a Trading Permit Holder of the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 3, 2019.[3] The Commission did not receive any comment letters on the proposed rule change. This order provides accelerated approval of the proposed rule change.

II. Description of the Proposed Rule Change

As described in more detail in the Notice, the Exchange proposes to: (1) Seek approval from the Commission pursuant to Cboe Options Rule 3.32(b) for its affiliate, Cboe Trading, to become a Trading Permit Holder of the Exchange; (2) amend Rule 3.32(b) to conform it to the rules of the Exchange's affiliate options exchanges (Cboe EDGX Exchange, Inc. (''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe C2 Exchange, Inc. (''C2'') (collectively, the ''Affiliated Cboe Exchanges'') and relocate it to Rule 3.11; (3) adopt Rule 3.12 to govern the Exchange's use of Cboe Trading as an outbound router; (4) adopt Rule 3.13 to govern the Exchange's receipt of inbound orders from the Affiliated Cboe Exchanges; and (5) amend Rule 6.14B to specify that it applies to the Exchange's non-affiliated routing brokers.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86224 (June 27, 2019), 84 FR 31940 (July 3, 2019) (''Notice'').

[4] *See id.* at 31941. The Exchange proposes to amend Rule 6.14B to account for its use of affiliate

Exchange notes that proposed Rules 3.11, 3.12 and 3.13 and current Rule 6.14B are substantively identical in all material respects to EDGX Options Rules 2.10, 2.11, 2.12, and 21.9(e), as well as C2 Rules 3.16, 3.17, 3.18 and 6.15(e).[5]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to and from which it is routing orders, the Exchange has proposed limitations and conditions on Cboe Trading's affiliation with the Exchange as part of its proposal to use Cboe Trading as an outbound router and limited inbound router.

Limited Inbound Routing. Specifically, as detailed above, the Exchange committed to the following limitations and conditions concerning limited inbound routing of transactions to Cboe Options from the Affiliated Cboe Exchanges:[6]

- The Exchange must enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') and a regulatory services agreement with a non-affiliated SRO to perform regulatory responsibilities for Cboe Trading for unique Exchange rules.
- The regulatory services agreement must require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, ''Exceptions'') in which Cboe Trading is identified as a participant that has potentially violated Exchange or Commission rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying all such exception reports, alerts, complaints, trading errors, cancellations, investigations and enforcement matters on not less than a quarterly basis.
- The Exchange, on behalf of its parent company, Cboe Global Markets, must establish and maintain procedures and internal controls reasonably designed to ensure that Cboe Trading does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated Trading Permit Holders of the Exchange.

As proposed, if the Exchange complies with the above-listed conditions, then Cboe Trading would be permitted to operate as a limited inbound router for orders sent to Cboe Options from the Affiliated Cboe Exchanges, which would entail Cboe Trading acting as an outbound router on behalf of each Affiliated Cboe Exchange in accordance with their respective rules.

Outbound Routing. Further, the Exchange committed to the following limitations and conditions concerning outbound routing transactions:[7]

- Cboe Options will regulate the outbound router function of Cboe Trading as a facility (subject to Section 6 of the Act), and will, among other things, be responsible for filing with the Commission rule changes and fees relating to the Cboe Trading outbound router function and Cboe Trading will be subject to exchange nondiscrimination requirements.
- FINRA, an SRO unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining Cboe Trading for compliance with applicable financial responsibility rules.
- A Trading Permit Holder's use of Cboe Trading to route orders to another trading center will be optional. Any Trading Permit Holder that does not want to use Cboe Trading may use other routers to route orders to other trading centers.
- Cboe Trading will not engage in any business other than (i) its outbound router function, (ii) its inbound router function as described in Rule 3.13, (iii) its usage of an error account in compliance with proposed Rule 3.12(a)(7) (regarding Cboe Trading's maintenance of an error account described below), and (iv) any other activities it may engage in as approved by the Commission.
- The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including Cboe Trading), and any other entity, including any affiliate of Cboe Trading, and, if Cboe Trading or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of Cboe Trading or its affiliate that provides the other business activities and the routing services.
- The Exchange or Cboe Trading may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Cboe Trading, or a routing destination. The Exchange or Cboe Trading will provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.
- Proposed Rule 3.12(a)(7) provides that Cboe Trading will maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous under Rule 6.25 and result from a technical or systems issue at Cboe Trading, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''Error Positions'').[8]
- The books, records, premises, officers, agents, directors, and employees of Cboe Trading as a facility of the Exchange are deemed to be the books, records, premises, officers, agents, directors, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of Cboe Trading as a facility of the Exchange are subject at all times to inspection and copying by the Exchange and the Commission. Nothing in the Rules precludes officers, agents, directors, or employees of the Exchange from also serving as officers, agents, directors, and employees of Cboe Trading.

The Exchange proposed the above conditions for both inbound and outbound routing to protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as ensure that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.[9]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is

Cboe Trading as an outbound router, as proposed, by specifying that the rule applies to the Exchange's non-affiliated routing brokers. The Exchange also proposes to specify in the introductory rule text under Rule 6.14B that the conditions in the following subparagraphs apply to non-affiliated routing brokers, as well as update the rule heading accordingly. The Exchange noted in its filing that the proposed changes to Rule 6.14B do not substantively alter the conditions in that rule, which currently are applicable to non-affiliated routing brokers. *See id.* at 31943. The Exchange further noted that C2 Rule 6.15(e) and EDGX Options Rule 21.9(e) provide the same conditions for their non-affiliated routing brokers. *See id.* The Exchange is not proposing to treat its non-affiliated routing brokers as back-up routing brokers for its affiliate. *See id.* at note 6.

[5] *See id.* at 31941.

[6] *See* Notice, *supra* note 3 at 31942.

[7] *See id.* at 31941.

[8] *See* Notice, *supra* note 3, at 31941–42.

[9] *See* Notice, *supra* note 3, at 31943.

consistent with the requirements of the Act,[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[14] To address these concerns, the Exchange has proposed the ongoing conditions summarized above, and also discussed further in the Notice, that will be applicable to Cboe Trading's routing activities in its capacity as a facility of the Exchange. The Commission believes that these conditions are designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of Cboe Trading, combined with a non-affiliated SRO's monitoring of Cboe Trading's compliance with applicable rules and regulations, will help ensure appropriate and independent regulatory oversight of Cboe Trading. The Commission also believes that the Exchange's proposal is designed to ensure that the Exchange will not permit Cboe Trading to have any information advantage on account of its affiliation with the Exchange.

Finally, Exchange Rule 3.32(b) provides that, without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange. The Exchange now seeks Commission approval for its affiliate, Cboe Trading, to become a Trading Permit Holder of the Exchange pursuant to Rule 3.32(b) so that its affiliate may provide routing services as a facility of the Exchange. Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed above, the Commission believes that it is consistent with the Act to permit Cboe Trading to become affiliated with the Exchange, in the capacity of a facility of the Exchange, for the purposes of providing the proposed routing services for the Exchange subject to the conditions described above.

The Commission notes that Cboe Trading currently serves as the outbound, and limited inbound, routing facility for the Affiliated Cboe Exchanges, and is subject to the same conditions and limitations by those exchanges.[15] The Exchange's current proposal is intended to allow Cboe Trading to perform an identical role for the Exchange as to which it currently performs for EDGX Options, BZX Options, and C2, including acting as an outbound router and as a limited inbound router to receive options orders from other Affiliated Cboe Exchanges.

The Commission believes that good cause exists for accelerated approval of the proposed rule change because the proposed rule change raises no novel issues, as the Exchange is adopting the same conditions and limitations that EDGX Options, BZX Options, and C2 have adopted for Cboe Trading.[16] Furthermore, the Commission did not receive any comments during the comment period on this filing. For those reasons, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[17] to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2019–030) be, and hereby is, granted accelerated approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–15972 Filed 7–26–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013) (order approving rules change to make permanent a pilot program allowing inbound routing); 69870 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR–EDGX–2013–17) (same); and 82952 (March 27, 2018), 83 FR 14096 (April 2, 2018) (C2–2018–004) (order approving inbound router).

[15] *See* EDGX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router), BZX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router), and C2 Options Rule 3.18 (Cboe Trading, Inc. as Inbound Router). *See also* EDGX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router), BZX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router), and C2 Rule 3.18 (Cboe Trading, Inc. as Outbound Router).

[16] The Commission notes that it did not receive any comments on substantively identical proposals from EDGX Options, BZX Options, and C2 with respect to inbound routing from Cboe Trading. *See* Securities Exchange Act Release Nos. 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013); 69870 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR–EDGX–2013–17); and 82952 (March 27, 2019), 83 FR 14097 (April 2, 2018) (SR–C2–2018–004).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement (EIS): Centre County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice rescinds the Notice of Intent for preparing an Environmental Impact Statement (EIS) for a proposed highway in Centre County, Pennsylvania. The project study area includes U.S. Route 322 (U.S. 322), Pennsylvania State Route 144 (PA 144), Pennsylvania State Route 45 (PA 45) in College Township, Harris Township, Spring Township, Benner Township, Potter Township, and Centre Hall Borough, Centre County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Camille Otto, Environmental Manager, FHWA, Pennsylvania Division, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone: (717) 221–2238 (email: *Camille.Otto@dot.gov*), or Thomas Zurat, P.E., Assistant District Executive—Design, District 2–0, Pennsylvania Department of Transportation, 70 PennDOT Drive, Clearfield, PA 16830, Telephone: 814–765–0426 (email: *tzurat@pa.gov).*

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Pennsylvania Department of Transportation (PennDOT) and the Centre Region Metropolitan Planning Organization initiated an EIS with a Notice of Intent published in the **Federal Register** on June 9, 1999, at 64 FR 31034, to identify and evaluate alternatives to address transportation problems within the southern central Centre County area. The proposed project would involve improvements to transportation conditions on the U.S. 322, PA 144, PA 45 and the local road systems, between Potters Mills, Pleasant Gap, and Boalsburg in south central Centre County.

Improvements for this corridor were considered necessary to provide for the existing and projected traffic demands. A needs study was undertaken and a range of transportation alternatives, including but not limited to No-Build, Transportation Systems Management (TSM) strategies, upgrading existing facilities, and New Alignment alternatives were developed consistent with land use strategies to address the identified transportation needs. The development of alternatives was based on traffic demands, engineering requirements, environmental and socioeconomic constraints, and public input. Public involvement and inter-agency coordination were maintained throughout the development of the EIS.

Due to fiscal constraints within the Commonwealth of Pennsylvania at the time, the project was halted on March 23, 2004, and the Notice of Intent is now rescinded.

Issued on: July 22, 2019.

Alicia Nolan,

Division Administrator, Federal Highway Administration.

[FR Doc. 2019–16054 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0152]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR entitled ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders,'' which is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: We must receive your comments on or before September 27, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0152 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Lorenzo Allen, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2465; email: *Lorenzo.allen@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to register motor carriers under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary delegated authority

pertaining to these registration requirements to FMCSA in 49 CFR 1.73(a)(5).

Registered motor carriers, brokers and freight forwarders must designate an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303). Registered motor carriers must also designate an agent for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered motor carrier (49 U.S.C. 13304, 49 CFR 366.4T). Every broker shall make a designation for each State in which its offices are located or in which contracts are written (49 U.S.C. 13304, 49 CFR 366.4T). Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with FMCSA on Form BOC–3, ''Designation of Agents for Service of Process.'' The program decrease in annual burden hours from 18,395 to 6,508 is due to a revised estimate of the number of respondents and responses.

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Renewal of a currently-approved information collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 39,047.

Estimated Time per Response: 10 minutes.

Expiration Date: January 31, 2020.

Frequency of Response: On occasion. Form BOC–3 must be filed by all motor carriers, freight forwarders and brokers when the transportation entity first registers with the FMCSA. All brokers must make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Estimated Total Annual Burden: 6,508 hours [39,047 respondents × 10 minutes per response].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: July 23, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–15956 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0356]

Agency Information Collection Activities; Approval of a Renewal Information Collection Request: Transportation of Household Goods, Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval of the ''Transportation of Household Goods; Consumer Protection.'' The information collected will be used to help regulate motor carriers transporting household goods (HHG) for individual shippers. FMCSA invites public comment on the ICR.

DATES: Please send your comments by August 28, 2019. OMB must receive your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0356. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Monique Riddick, Lead Transportation Specialist, Office of Enforcement and Compliance, Commercial Enforcement and Investigations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–366–8045; Email Address: *monique.riddick@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Summary of Public Comments Received

On May 2, 2019, FMCSA published a notice in the **Federal Register** Docket Number: FMCSA–2018–0356 with a 60-day public comment period to announce information collection request for the Transportation Household Goods, Consumer Protection.

One commenter responded, the American Moving & Storage Association (AMSA). Three of AMSA's comments pertained to Household Goods Consumer Protection Working Group recommendations. The Working Group's report is currently under consideration in the Agency's concurrence process, therefore FMCSA has made no changes to the proposed renewal.

A fourth AMSA comment concerned weighing of shipments. AMSA indicated that weighing a shipment is required on non-binding estimates as outlined in 49 CFR part 375.507 and is used to determine the final charges for the load. However, if transit to the nearest weigh station is considered, this is a significant underestimation as scales in some parts of the country can be up to 30–40 miles away. More study should be required to determine the accurate time burden of this data collection. FMCSA does not have additional information to revise our estimate at this time.

Title: Transportation of Household Goods, Consumer Protection.

OMB Control Number: 2126–0025.

Type of Request: Renewal Collection.

Respondents: Household Goods Movers and Consumers.

Estimated Number of Respondents: 4,212 household goods movers.

Estimated Time per Response: Varies depending on task.

Expiration Date: August 31, 2019.

Frequency of Response: Once.

Estimated Total Annual Burden: 4,282,171 hours [Informational documents provided to prospective shippers at 24,692 hours + Written Cost estimates for prospective shippers at 3,5933,866 hours + Service orders, bills of lading at 621,621 hours + In-transit

service notifications at 17,496 hours + Complaint and inquiry records including establishing records system at 24,496 hours = 4,282,171].

Background

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) authorized the Secretary of Transportation (Secretary) to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the former Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, Dec. 29 1995). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT.

The FMCSA has authority to regulate the overall commercial operations of the household goods industry under 49 U.S.C. 14104, ''Household goods carrier operations.'' This ICR includes the information collection requirements contained in title 49 CFR part 375, ''Transportation of Household Goods in Interstate Commerce; Consumer Protection.'' The information collected encompasses that which is generated, maintained, retained, disclosed, and provided to, or for, the agency under 49 CFR part 375.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA–LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: Definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, ''Transportation of Household Goods; Consumer Protection.''

On July 16, 2012, FMCSA published a Direct Final Rule (DFR) titled, ''Transportation of Household Goods in Interstate Commerce; Consumer Protection: Household Goods Motor Carrier Record Retention Requirements,'' (77 FR 41699). The rule amended the regulations governing the period during which HHG motor carriers must retain documentation of an individual shipper's waiver of receipt of printed copies of consumer protection materials. This change harmonized the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amended the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: July 23, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–15957 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0027]

Hours of Service of Drivers: Application for Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption renewal.

SUMMARY: FMCSA announces its decision to grant WestRock's request for renewal of its exemption from the hours-of-service (HOS) regulations that prohibit drivers from operating property-carrying commercial motor vehicles (CMVs) after the 14th hour after coming on duty and require 10 hours off-duty before driving. FMCSA renews this limited exemption for WestRock's shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products short distances between its shipping and receiving locations on a public road. The exemption is restricted to a specific route in Chattanooga, Tennessee. This exemption will allow these individuals to occasionally work up to 16 consecutive hours and be allowed to return to work with less than the mandatory 10 consecutive hours off duty. The Agency previously determined that the CMV operations of WestRock's drivers under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective retroactively from April 17, 2019 (12:01 a.m.), through April 16, 2024 (11:59 p.m.).

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Carrier, Driver and Vehicle Safety Standards, Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2010–0027'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket

Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. WestRock's Application for Exemption

WestRock (USDOT 153734) operates a paper mill located in Chattanooga, Tennessee. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver-employees to travel on a public road to shuttle trailers as needed. These drivers utilize a public road—Compress Street—an average of forty times per day to travel between WestRock's manufacturing facility, and shipping and receiving docks. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work. Because the material being transported is received from or destined for other States, the local travel is interstate in nature.

WestRock (then known as RockTenn) submitted its initial exemption application for relief from the HOS rules in 2009; a copy of the application is in the docket. That application fully describes the nature of shipping operations encountered by CMV drivers employed by WestRock. On May 29, 2012, FMCSA granted WestRock the proposed exemption (77 FR 31684). FMCSA has since renewed this limited exemption [April 22, 2014 (77 FR 22571); and July 25, 2016 (81 FR 48496)]. The exemption expired on April 16, 2019.

WestRock's shipping department currently works 12-hour shifts for 4 days, and then allows employees 4 days off duty. The schedule is subject to change. Usually there are two shipping department employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive a CMV continuously during their shift(s).

At times, WestRock may operate on three 8-hour shifts with employees working a double (16-hour) shift when ''rotating back.'' According to WestRock, the problem arises because of the double-shift, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to ''hurry back'' within 8 hours. As a result of the mandatory 10 hours off-duty requirement for drivers, without the exemption WestRock would be required to schedule these drivers' shifts to start later than other employees. This would create at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the 14-hour driving window, they would ''work short'' without the exemption, creating on-time delivery issues for other employees, who are allowed to work an entire ''double shift'' (16 hours) when necessary.

WestRock requested renewal of its exemption for its shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to drive as late as the 16th hour since coming on duty and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees could follow the same work schedule as other WestRock employees on their shift, and would be able to work for the full 16 hours of a ''double shift.'' WestRock could therefore minimize the chances of delayed shipments that might occur if their drivers were not allowed to work the same schedule as other employees.

WestRock acknowledged in its application that these drivers would still be subject to all of the other FMCSRs, including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

A copy of WestRock's application for exemption renewal is available for review in the docket for this notice.

Comments

On February 21, 2019 (84 FR 5546), FMCSA published notice of this application, and asked for public comment. The Application received one comment from LJ Schmitt. Mr. Schmitt wrote ''While I understand there is no one size fits all, the purpose of regulations from your office is to make it fair and safe for everyone. If these drivers are safe with only 8 hours of rest, so are the rest of us.''

FMCSA Response and Decision

The granted exemption is restricted to CDL holders employed by WestRock who are exclusively assigned to a specific route. This route is entirely on one street (Compress Street), between the shipping and receiving departments—approximately 275 feet in one direction. The CMVs operated by WestRock's shipping department shuttle drivers will be exposed to travel on a public road for brief periods of time. The granted exemption is comparable to current HOS regulations that allow certain ''short-haul'' drivers a 16-hour driving ''window'' once a week and other non-CDL short-haul drivers two 16-hour duty periods per week, provided specified conditions are met.

The FMCSA has evaluated WestRock's application for exemption and the public comment. The Agency believes that WestRock's overall safety performance as reflected in its ''satisfactory'' safety rating, and the short distance drivers will operate a commercial motor vehicle, will likely enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

The exemption enables WestRock's shipping department employees and occasional substitute CDL holders who transport paper mill products between the shipping and receiving locations to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

Terms and Conditions

The exemption from the requirements of 49 CFR 395.3(a)(1) (the 10-hour off-duty rule) and (a)(2) (the ''14-hour rule'') is granted for the period from 12:01 a.m. on April 17, 2019, through 11:59 p.m. on April 16, 2024. The exemption is restricted to CDL holders employed by WestRock who are exclusively assigned to a specific route. This specific route is entirely on Compress Street, between WestRock's shipping and receiving departments, approximately 275 feet in one direction.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

WestRock must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

a. Name of the Exemption: ''WestRock.''

b. Date of the accident,

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

d. Driver's name and driver's license State, number, and class,

e. Co-Driver's name and driver's license State, number, and class,

f. Vehicle company number and power unit license plate State and number,

g. Number of individuals suffering physical injury,

h. Number of fatalities,

i. The police-reported cause of the accident,

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

Termination

The FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: July 23, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–15958 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0105]

Pipeline Safety: Request for Special Permit; Gulfstream Natural Gas System

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to seek public comments on a request for a special permit seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to either grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by August 28, 2019.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov website: https://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *https://www.Regulations.gov*.

Note: There is a privacy statement published on *https://www.Regulations.gov*. Comments, including any personal information provided, are posted without changes or edits to *https://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or email at *kay.mciver@dot.gov.*

Technical: Mr. Zaid Obeidi by telephone at 202–366–5267, or email at *zaid.obeidi@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received a special permit request from Gulfstream Natural Resources, LLC, to deviate from the federal pipeline safety regulations in 49 CFR 192.619(a) and 192.195(a) on the Gulfstream Natural Gas System (Gulfstream Pipeline). The proposed special permit, if granted, would allow an increase in the maximum allowable operating pressure (MAOP) from 2,180 pounds per square inch gauge (psig) to 2,296 psig from Gulfstream Pipeline Mile Post 3.9 to Mile Post 59 and the use of pressure gradient for pressure control to maintain a MAOP of 2,180 psig downstream of Mile Post 59. The Gulfstream Pipeline segment, where the proposed special permit would be applicable, is from Mile Post 3.9 in Mobile County, Alabama to the Gulfstream Pipeline west subsea tie-in valves located at Mile Post 59 in the Gulf of Mexico, Outer Continental Shelf.

Gulfstream Pipeline is proposing a gas transmission flow volume increase of 78,000 dekatherms per day. A Gulfstream Pipeline MAOP increase from 2,180 psig to 2,296 psig will be required from Mile Post 0.0 to Mile Post 59. The Gulfstream 36-inch diameter piping, valves, and components from Mile Post 0.0 to Mile Post 3.9 will be replaced and pressure tested, where required, to meet part 192 regulations for a 2,296 psig MAOP.

The Gulfstream Pipeline is a 36-inch diameter pipeline that spans approximately 427 miles from southern Alabama, across the bottom of the Gulf of Mexico, to the Tampa Bay, Florida region. The Gulfstream Pipeline begins at Compressor Station 410, an existing natural gas compressor station located in Mobile County near Coden, Alabama, travels offshore into the Gulf of Mexico, and ends at Compressor Station 420 located in Manatee County near Bartow, Florida.

A draft environmental assessment (DEA) accompanied the special permit request. The DEA is available at *https://www.Regulations.gov*, in Docket Number PHMSA–2018–0105. We invite interested persons to participate by reviewing the special permit request and DEA at *https://www.Regulations.gov*, and by submitting written comments, data, or other views. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny the request.

Issued in Washington, DC on July 8, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–15992 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on information collections as required by the Paperwork Reduction Act of 1995 (PRA).

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

The OCC is soliciting comment concerning renewal of its information collection titled, ''Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Written comments should be received on or before August 28, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0180, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0180'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0180, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0180'' or ''Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, Chief Counsel's Office, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of this collection.

Title: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.

OMB Control No.: 1557–0180.

Form Numbers: 8010–1/8010–9.

Abstract:

Minimum Security Devices and Procedures

Under 12 CFR 21.2, 21.4, 168.2, and 168.4, national banks and federal savings associations are required to designate a security officer who must develop and administer a written security program. The security officer shall report at least annually to the institution's board of directors on the effectiveness of the security program. The substance of the report shall be reflected in the board's minutes. These requirements ensure that the security officer is responsible for the security program and that institution management and the board of directors are aware of the content and

[1] On May 6, 2019, the OCC published a 60-day notice for this information collection, 84 FR 19825.

effectiveness of the program. These requirements also ensure prudent institution management safety and soundness.

Suspicious Activity Report (SAR)

In 1992, the Department of the Treasury was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA). *See* 31 U.S.C. 5318(g). The Financial Crimes Enforcement Network (FinCEN), which has been delegated the authority to administer the BSA, joined with the bank regulators in 1996 in requiring, on a consolidated form (*i.e.,* SAR), reports of suspicious transactions. *See* 31 CFR 1020.320(a) (formerly 31 CFR 103.18(a)). The filing of SARs is necessary to prevent and detect crimes involving depository institution funds, institution insiders, criminal transactions, and money laundering. These requirements are necessary to ensure institution safety and soundness.

Banks and savings associations are required to maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years. The documents are necessary for criminal investigations and prosecutions.

FinCEN and the Federal financial institution supervisory agencies [2] adopted the SAR form to simplify the process through which depository institutions inform their regulators and law enforcement about suspected criminal activity. The SAR form was updated in 1998, 2000, 2003, 2006, 2011, 2012, 2015, and 2018.

Procedures for Monitoring Bank Secrecy Act Compliance

Under 12 CFR 21.21, national banks and savings associations are required to develop and provide for the continued administration of a program reasonably designed to assure and monitor their compliance with the BSA and applicable Treasury regulations. The compliance program must be in writing, approved by the board of directors, and reflected in the minutes of the national bank or savings association. These requirements are necessary to ensure institution compliance with the BSA and applicable Treasury regulations.

Type of Review: Regular.

Affected Public: Business, for-profit institutions, and non-profit.

Estimated Number of Respondents: 1,233.

Estimated Total Annual Burden: 615,130 hours.

The OCC issued a notice for 60 days of comment regarding this collection on May 6, 2019, 84 FR 19825. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC'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.

Dated: July 23, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–15959 Filed 7–26–19; 8:45 am]

BILLING CODE 4810–33–P

[2] The Federal financial institution supervisory agencies are the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA). The Office of Thrift Supervision, which was in existence at the time the SAR was adopted, was integrated into the OCC in 2011.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; FFIEC Cybersecurity Assessment Tool

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

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

The OCC is soliciting comment on behalf of the Agencies concerning renewal of the information collection titled, ''FFIEC Cybersecurity Assessment Tool'' (''Assessment''). The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before August 28, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0328, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0328'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0328, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by

[1] On April 5, 2019, the OCC published a 60-day notice for this information collection, 84 FR 13786.

searching by OMB control number ''1557–0328'' or ''FFIEC Cybersecurity Assessment Tool.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, Carl Kaminski, Special Counsel, or Priscilla Benner, Attorney (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. *et seq.*), federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC, on behalf of the Agencies, asks that OMB extend its approval of the information collection in this notice for three years.

Title: FFIEC Cybersecurity Assessment Tool.

OMB Number: 1557–0328.

Description: Cyber threats continue to evolve and increase exponentially with greater sophistication. Financial institutions [2] are exposed to cyber risks because they are dependent on information technology to deliver services to consumers and businesses every day. Cyber attacks on financial institutions may result in unauthorized access to, and the compromise of, confidential information, as well as the destruction of critical data and systems. Disruption, degradation, or unauthorized alteration of information and systems can affect a financial institution's operations and core processes and undermine confidence in the nation's financial services sector. Absent immediate attention to these rapidly increasing threats, financial institutions and the financial sector as a whole are at risk.

For this reason, the Agencies, under the auspices of the Federal Financial Institutions Examination Council (''FFIEC''), have worked diligently to assess and enhance the state of the financial industry's cyber preparedness and to improve the Agencies' examination procedures and training to strengthen the oversight of financial industry cybersecurity readiness. The Agencies also have focused on providing financial institutions with resources that can assist in protecting them and their customers from the growing risks posed by cyber attacks.

As part of these efforts, the Agencies developed the Assessment to assist financial institutions of all sizes in assessing their inherent cyber risks and their risk management capabilities. The Assessment allows a financial institution to identify its inherent cyber risk profile based on the technologies and connection types, delivery channels, online/mobile products and technology services that it offers to its customers, its organizational characteristics, and the cyber threats it is likely to face. Once a financial institution identifies its inherent cyber risk profile, it may use the Assessment's maturity matrix to evaluate its level of cybersecurity preparedness based on the financial institution's cyber risk management and oversight, threat intelligence capabilities, cybersecurity controls, external dependency management, and cyber incident management and resiliency planning. A financial institution may use the matrix's maturity levels to identify opportunities for improving the financial institution's cyber risk management based on its inherent risk profile. The Assessment also enables a financial institution to rapidly identify areas that could improve the financial institution's cyber risk management and response programs, as appropriate. Use of the Assessment by financial institutions is voluntary.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Burden Estimates: [3]

Assessment burden estimate	Estimated number of respondents less than $500 million @80 hours	Estimated number of respondents $500 million–$10 billion @120 hours	Estimated number of respondents $10 billion–; $50 billion @160 hours	Estimated number of respondents over $50 billion @180 hours	Estimated total respondents and total annual burden hours
OCC National Banks and Federal Savings Associations.	823 × 80 = 65,840 hours.	157 × 120 = 18,840 hours.	123 × 160 = 19,680 hours.	82 × 180 = 14,760 hours.	1,185 respondents, 119,120 hours.
FDIC State Non-Member Banks and State Savings Associations.	2,689 × 80 = 215,120 hours.	760 × 120 = 91,200 hours.	34 × 160 = 5,440 hours.	6 × 180 = 1,080 hours	3,489 respondents, 312,840 hours.
Board State Member Banks and Bank Holding Companies.	2,768 × 80 = 221,440 hours.	766 × 120 = 91,920 hours.	81 × 160 = 12,960 hours.	26 × 180 = 4,680 hours.	3,641 respondents, 331,000 hours.
NCUA Federally-Insured Credit Unions	4,830 × 80 = 386,400 hours.	536 × 120 = 64,320 hours.	8 × 160 = 1,280 hours	1 × 180 = 180 hours	5,375 respondents, 452,180 hours.
Total	11,110 × 80 = hours = 888,800.	2,219 × 120 hours = 266,280 hours.	246 hours × 160 = 39,360 hours.	115 hours × 180 = 20,700 hours.	13,690 Respondents, 1,215,140 hours.

On April 5, 2019, the OCC, on behalf of the Agencies published a 60-day notice requesting comment on this collection of information.[4]

The OCC received two comments from industry trade associations and

[2] For purposes of this information collection, the term ''financial institution'' includes banks, savings associations, credit unions, and bank holding companies.

[3] Burden is estimated conservatively and assumes all institutions will complete the Assessment. Therefore, the estimated burden may exceed the actual burden because use of the Assessment by financial institutions is not mandatory. The burden estimates for financial institutions include technology service providers who may assist financial institutions in completing their Assessments.

[4] 84 FR 13786.

one comment from the Financial Services Sector Coordinating Council (FSSCC). The comments, described below, address concerns related to the collection of information.

Usability and Format of the Assessment

One industry group suggested changes to the format of the Assessment to increase usability. This industry group suggested that the FFIEC provide banks an automated or interactive document that banks can use to input information for the Assessment, as opposed to a static PDF document of questions and responses. The industry group added that many community banks are using the Financial Services Sector Coordinating Council's automated Assessment spreadsheet to complete the Assessment in advance of their examinations.

While this industry group asked the Agencies to provide the Assessment in a format that can be easily completed and provided to the examiner, if requested, the commenter also stated that none of the banks it represents reacted favorably to the questions in the notice inviting comment on the FFIEC agencies' potential use of automated collection techniques or other forms of information technology to collect Assessment information. This industry group stated that several banks were concerned that automated collection would lead to a greater need to provide defensible answers during the examination review of the Assessment. The industry group also stated, however, that many banks find it useful to discuss the Assessment with the examiner on-site.

The Agencies acknowledge the potential value of an automated or editable form of the Assessment for financial institutions that choose to use the Assessment. However, as the commenters noted, there are currently available a number of automated versions of the Assessment developed by financial institutions and industry groups. Automated versions are available publicly through trade associations, the Financial Services Information Sharing and Analysis Center, and the FSSCC. Accordingly, the Agencies do not intend to release an additional automated or editable version of the Assessment at this time.

Utility of the Assessment

One industry group commenter stated that the inherent risk review is very linear and could be better rooted in bank operations and market conditions. As an example, this commenter stated that many community banks engage cloud providers for data management, and while cloud computing is a standard term, not all cloud computing companies are equal. They do not all have the same risks or mitigating controls. The commenter stated that when a community bank checks the ''most'' risk level due to the sheer number of cloud providers, the Assessment should allow for an additional level of risk mitigation, such as vendor management and vendor type, which could significantly reduce the risk.

The Agencies appreciate the feedback and are continually seeking ways to update and improve the tools they use to assess cybersecurity. For example, in response to requests from financial institutions, the Agencies recently updated the Assessment to expand the response options for each declarative statement. With the additional response options, financial institutions' management may include supplementary or complementary behaviors, practices, and processes that represent current practices of the institution in assessing declarative statements.

Voluntary Nature of the Assessment

Both industry groups and the FSSCC stated that most financial institutions employ the Assessment as one of the tools they use to assess their cybersecurity risk and maturity. However, they do not use the Assessment exclusively. Most use the Assessment in conjunction with other recognized technology frameworks. As such, the commenters said that examiners should not require the use of the Assessment nor require a financial institution to translate any other risk framework they use into the Assessment format. The commenters stated that if a regulator requires an examiner to complete the Assessment, then the examiner should translate the framework used by the institution into the Assessment format.

The FSSCC and one industry group commenter stated that most of the financial institutions under the Agencies' respective jurisdictions do not perceive the Assessment to be voluntary. To clarify this misperception, these commenters asked the Agencies to make a clear statement that other methodologies, such as NIST Cybersecurity Framework and the FSSCC Cybersecurity Profile, are acceptable inputs into the examination process. The FSSCC also stated that the Agencies should more closely align the Assessment with the NIST Cybersecurity Framework or a NIST-based standard, like the FSSCC Cybersecurity Profile, because the NIST Cybersecurity Framework represents a leading approach to cybersecurity with an international community of users.

One industry group commenter stated that several of its members expressed concern that examiners sometimes provide only a cursory review of the Assessment, if at all, with financial institution staff. This industry group asked the Agencies to clarify that if an institution takes the time to complete the Assessment, examiners should spend time reviewing it with the institution, and that if examiners complete the Assessment as part of the examination process, then the examiner-completed Assessment should be reviewed with the institution during the exam.

The Agencies agree that the NIST Cybersecurity Framework is a valuable tool that provides a mechanism for cross-sector coordination. When developing the Assessment, the Agencies were informed by the NIST Cybersecurity Framework, the FFIEC Information Technology Examination Handbook, and industry accepted cybersecurity practices. In addition, Appendix B of the Assessment provides a mapping of the Assessment to the NIST Cybersecurity Framework. NIST reviewed and provided input on the mapping to ensure consistency with the NIST Cybersecurity Framework principles and to highlight the complementary nature of the two resources.

The NIST Cybersecurity Framework is intended to address cybersecurity across many different sectors. The Agencies determined that developing an assessment, informed by the NIST Cybersecurity Framework but tailored to the specific risks and risk management and controls expectations within the banking industry, could help financial institutions to effectively assess their cybersecurity preparedness. Additionally, we note that prior to the development of the Assessment, the Agencies received many requests from financial institutions, particularly smaller financial institutions, to provide them with a meaningful way to assess cyber risks themselves based on financial sector-specific risks and mitigation techniques. The Agencies developed the Assessment, in part, to address those requests and received several positive comments about how the Assessment met this need. Thus, the Agencies believe the Assessment supports financial institutions by giving them a systematic way to assess their cybersecurity preparedness and evaluate their progress.

Finally, as the Agencies stated when the Assessment was first published, use

of the Assessment by financial institutions is voluntary. Therefore, financial institutions may choose to use the Assessment, the NIST Cybersecurity Framework, or any other risk assessment process or tool to assess cybersecurity risk. The Agencies' examiners will not require a financial institution to complete the Assessment, nor will they require financial institutions to translate other risk frameworks into the Assessment format. However, if a financial institution has completed the Assessment, examiners may ask the financial institution for a copy, as they would for any risk self-assessment performed by a financial institution.

Benchmarking

One industry group stated that an advantage to the broad collection of Assessment information across the entire financial services sector is the ability to compile information into useful benchmarking data for banks of comparable size and risk profiles so that peer institutions may become aware of their overall cybersecurity posture in the sector. The industry group stated that the information may be useful to an information security officer or board of directors, particularly when it comes time to discuss budget impacts of the financial institution's security posture. Additionally, benchmarking may allow the Agencies insight into broad categories of risk and exposure in the financial services sector.

Since use of the Assessment by financial institutions is voluntary and may vary across financial institutions, the Agencies do not to intend to publish or otherwise make publicly available the results of financial institutions' use of the Assessment.

Accuracy of Burden Estimate

The Agencies estimated that, annually, it would take a financial institution between 80 and 180 burden hours, depending on the institution's size, to complete the Assessment.

All three commenters addressed the accuracy of the Agencies' burden estimates. The FSSCC letter stated that the Agencies' burden estimate understated the burden involved in completing the Assessment, and one of the industry groups referenced and endorsed the FSSCC's conclusions in its letter. The FSSCC advised that to be more accurate, the Agencies' burden hour estimates should include the time required to prepare for and complete the Assessment. The FSSCC stated that preparing to complete the Assessment includes the testing of controls and systems, gathering of materials as evidence, and the accompanying education of staff that are not familiar with the Assessment. The FSSCC stated that the time required to collect evidence and review systems before the Assessment can begin is significant, and the hours required to review the Assessment's more than 530 responses—usually by committee—is substantial. The FSSCC further stated that the hours required to complete responses to the Assessment, while concurrently completing assessments based on other industry-based standards (*e.g.,* NIST Cybersecurity Framework) for other regulatory agencies (such as state or market regulators), is significant. The FSSCC added that the amount of time spent training cybersecurity professionals on the Assessment is underestimated.

The other industry group stated that the Agencies overestimated the burden hours necessary for community banks to complete and subsequently update the Assessment. This industry group stated that its members reported the burden of completing an initial Assessment as being 40 hours or less. Members of this industry group reported that the burden of completing annual updates to the Assessment for subsequent evaluations could take between 15 and 20 hours.

The Agencies do not believe that commenters provided any additional information that would result in the Agencies changing their burden estimates at this time. The PRA defines burden to include the ''time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a federal agency.'' 44 U.S.C. 3502(2). The Agencies note that the burden estimates assume that the Assessment is completed by knowledgeable individuals at the financial institution who have readily-available information to complete the Assessment. Additionally, while the Assessment's User's Guide provides that institutions may use the Assessment to prioritize improvement of their cybersecurity posture, completing the Assessment does not include development or implementation of action plans. The Agencies further note that completion of the Assessment does not include internal reporting. Any internal reporting that financial institutions may choose to undertake is therefore outside of the scope of the Assessment. Because reporting to committees, developing and implementing internal action plans, and preparing for examinations are not part of completing the Assessment, these activities do not constitute burden under the PRA. In addition, for financial institutions, reporting to boards and management generally constitutes a usual and customary business practice. Usual and customary business practices are excluded from the definition of burden under OMB regulations.[5]

The Agencies recognize that the size and complexity of a financial institution impacts the amount of time and resources necessary to complete the Assessment and, for that reason, the Agencies' burden estimates vary based on financial institution asset size. The Agencies also appreciate that the time necessary for a particular financial institution to complete the Assessment can vary, potentially widely, based on whether the institution has readily available information to complete the Assessment. The Agencies will review their burden estimates from time to time and will update them in the future, if warranted.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates 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 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.

Dated: July 23, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–15964 Filed 7–26–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Submission for OMB Review; Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

[5] 5 CFR 1320.3(b).

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a revised information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the revision of its information collection titled, ''Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by August 28, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0184, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0184'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0184, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0184'' or ''Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency of information by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. The OCC requests that OMB extend its approval of the information collection set forth in this notice.

Title: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW,[2] MSD–4, MSD–5, G–FIN, G–FINW, GFIN–4 and GFIN–5.[3]

Description: This information collection is required to satisfy the requirements of section 15B [4] and section 15C [5] of the Securities Exchange Act of 1934, which require, in part, any national bank or federal savings association that acts as a government securities broker/dealer or a municipal securities dealer to file the appropriate form with the OCC to inform the agency of its broker/dealer activities. The OCC uses this information to determine which national banks and federal savings associations are acting as government securities broker/dealers and municipal securities dealers and to monitor entry into and exit from these activities by institutions and registered persons. The OCC also uses the information in planning national bank and federal savings association examinations.

The OCC proposes to revise Form MSD–4 and Form MSD–5 to (1) remove the date of birth and place of birth items from the 'Personal History of the Applicant' section from the Form MSD–4 report form and instructions and (2) include the OCC's Privacy Act notice on the respective Form MSD–4 and Form MSD–5.

The date of birth and place of birth data fields are considered personally identifiable information (PII). The OCC generally does not need the information in these fields in order to perform its supervisory responsibilities regarding the review applications to become municipal securities principals or representatives but could obtain this information on a case-by-case basis, when needed. The OCC is making an effort to remove PII from its supervisory reports if that PII is not critical to fulfilling its supervisory responsibilities.

The OCC also proposes to include its Privacy Act notice on the forms. The Privacy Act governs the collection, maintenance, use, and dissemination of

[1] On April 1, 2019, the OCC published a 60-day notice for this information collection, 84 FR 12324.

[2] The Securities and Exchange Commission (SEC) maintains collections for the MSD and MSDW under OMB Control Nos. 3235–0083 and 3235–0087; however, there is a requirement that these be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[3] The Department of the Treasury maintains collections for the G–FIN–4 and G–FIN–5 under OMB Control No. 1535–0089; however, there is a requirement that the forms be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[4] 15 U.S.C. 78o–4.

[5] 15 U.S.C. 78o–5.

information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of the agency from which information about individuals is retrieved by name of the individual or some identifier assigned to the individual. Under the Privacy Act, an agency that maintains a system of records must provide notice to individuals, at the point of collection of information maintained in the system of records, of: (1) The authority which authorizes the collection and whether the collection is mandatory or voluntary; (2) the purpose of the collection; (3) the routine uses which may be made of the information; and (4) the effects of not disclosing the information.

Non-substantive changes are being made to the G–FIN and G–FINW forms to clarify where to file, the number of copies to file, and to generally update the forms and instructions.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 17 (6 government securities dealers and 11 municipal and government securities dealers).

Estimated Number of Responses: 672.

Frequency of Response: On occasion.

Estimated Annual Burden: 587 burden hours.

On April 1, 2019, the OCC issued a notice for 60 days of comments regarding this collection, 84 FR 12324. No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: July 23, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–15962 Filed 7–26–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 28, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Security Summit application process.

OMB Control Number: 1545–XXXX.

Type of Review: Revision of a currently approved collection.

Description: The IRS has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers. The Security Summit consists of IRS, state tax agencies and the tax community, including tax preparation firms, software developers, payroll and tax financial product processors, tax professional organizations and financial institutions. Form 15058—Application for Security Summit Membership, is the application form for membership.

Forms: Application for Security Summit Membership.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 62.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 62.

Estimated Time per Response: .08 hours per response.

Estimated Total Annual Burden Hours: 5.

Title: Application for Renewal of Enrollment to Practice before the Internal Revenue Service; Application for Renewal of Enrollment to Practice before the Internal Revenue Service s an Enrolled Retirement Pl.

OMB Control Number: 1545–0946.

Type of Review: Revision of a currently approved collection.

Description: Section 10.6(d) of Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries and Appraisers before the Internal Revenue Service (31 CFR part 10), requires that those who are enrolled to practice before the Internal Revenue Service renew such enrollment periodically. Form 8554 is an application for renewal mailed to all enrolled agents each year. Form 8554–EP is used to renew your Enrolled Retirement Plan Agent (ERPA) status.

Forms: 8554, 8554–EP.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 62,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 21,800.

Estimated Time per Response: .33 hours per response.

Estimated Total Annual Burden Hours: 7,267.

Title: Arbitrage Rebate, Yield Restrictions and Penalty in Lieu of Arbitrage Rebate.

OMB Control Number: 1545–1219.

Type of Review: Revision of a currently approved collection.

Description: Sections 143 and 148 require bond issuers to pay a rebate to the United States if the proceeds of a bond issue are used for arbitrage and the issuer wishes the bonds to retain their exempt status. Section 148 also contains provisions for election and/or payment of various penalties associated with arbitrage bonds. Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Forms: 8038–T.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 3,900.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,900.

Estimated Time per Response: 23.16 hours per response.

Estimated Total Annual Burden Hours: 59,325.

Title: TD 9178—Testimony or Production of Records in a Court or Other Proceeding.

OMB Control Number: 1545–1850.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains previously approved final regulations replacing the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Form: None.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,400.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 1,400.

Estimated Time per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 1,400.

Title: Form 8912—Clean Renewable Energy Bond Credit and Gulf Bond Credit.

OMB Control Number: 1545–2025.

Type of Review: Revision of a currently approved collection.

Description: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of new Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Form: 8912.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 50.

Estimated Time per Response: 13.78 hours per response.

Estimated Total Annual Burden Hours: 689.

Title: Tax Return Preparer Complaint Process and Fraud or Misconduct Affidavit.

OMB Control Number: 1545–2168.

Type of Review: Revision of a currently approved collection.

Description: These forms (14157 and 14157–A), are designed specifically for tax return preparer complaints and include the items necessary for the IRS to evaluate and route to the appropriate function. The form will be used by taxpayers to report allegations of misconduct by tax return preparers.

Form: 14157–A, 14157.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 7,500.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 7,500.

Estimated Time per Response: .21 hours per response.

Estimated Total Annual Burden Hours: 1,593.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 17, 2019.

Jennifer P. Quintana,

Treasury PRA Clearance Officer.

[FR Doc. 2019–15984 Filed 7–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0781]

Agency Information Collection Activity Under OMB Review: Disability Benefits Questionnaire (Group 4)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0781'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov*. Please refer to ''OMB Control No. 2900–0781'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Disability Benefits Questionnaires (Group 4).

OMB Control Number: 2900–0781.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0960 series is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. No changes are proposed. This is an extension request only.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 87 on May 6, 2019, pages 19831 and 19832.

Affected Public: Individuals or Households.

Estimated Annual Burden: 53,750 hours.

Estimated Average Burden per Respondent: 18.5 minutes per form (17 forms).

Frequency of Response: One time.

Estimated Number of Respondents: 160,000.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–16024 Filed 7–26–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the Advisory Committee on Disability Compensation (Committee) will meet on August 6–8, 2019 at the St. Petersburg VA Regional Office (RO), located at 9500 Bay Pines Boulevard, North Conference Room 3rd Floor, Bay Pines, Florida 33744. Additionally, the Committee will meet at Bay Pines VA Medical Center, 10000 Bay Pines Boulevard, Bay Pines, Florida 33708. The meeting sessions will begin and end as follows:

Date	Time	Location
August 6, 2019	8:30 a.m. to 4:30 p.m	St. Petersburg VA Regional Office, 3rd Floor North Conference Room, 9500 Bay Pines Blvd., Bay Pine, FL 33744.
August 7, 2019	8:30 a.m. to 4:30 p.m	St. Petersburg VA Regional Office, 3rd Floor North Conference Room, 9500 Bay Pines Blvd., Bay Pine, FL 33744.
August 8, 2019	8:30 a.m. to 11:30 a.m	St. Petersburg VA Regional Office, 3rd Floor North Conference Room, 9500 Bay Pines Blvd., Bay Pine, FL 33744.
August 8, 2019	12:30 p.m. to 3:00 p.m	Bay Pines VA Medical Center, 10000 Bay Pines Blvd, Bay Pines, FL 33708.

Sessions are open to the public, except when the Committee is conducting tours of VA facilities, and participating in off-site events. Tours of VA facilities are closed to protect Veterans' privacy and personnel information, in accordance with 5 U.S.C. Sec. 552b(c)(6).

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

On the morning of August 6, 2019 from 8:30 a.m. to 10:00 a.m., the Committee will meet in open session with key staff members at the St. Petersburg VA RO to discuss the productivity of the RO. From 10:00 a.m. to 11:30 a.m., the Committee will convene with a closed tour of the RO. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C Sec. 552b(c)(6). In the afternoon from 12:30 p.m. to 3:00 p.m., the Committee will reconvene in open session to receive briefings on the intake and claims establishment process from the RO. From 3:30 p.m. to 4:30 p.m., the Committee will work on drafting recommendations for the annual report to the Secretary.

On August 7, 2019 from 8:30 a.m. to 2:00 p.m., the Committee will meet in open session to receive briefings on the development and the completion process of VA claims from the RO. From 2:00 p.m. to 4:30 p.m., the Committee will work on drafting recommendations for the annual report to the Secretary.

On the morning of August 8, 2019 from 8:30 a.m., to 11:30 a.m., the Committee will convene in an open session to receive briefings on the VA Appeals process from the St. Petersburg Decision Review Operations Center (DROC). In the afternoon from 12:30 p.m. to 3:00 p.m., the Committee will convene with a closed tour of the Bay Pines VA Medical Center. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C Sec. 552b(c)(6).

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Ms. Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211B), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Janice Stewart at (202) 461–9023.

Dated: July 24, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–16042 Filed 7–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Agency Information Collection Activity Under OMB Review: Authorization To Disclose Personal Information to a Third Party

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0736'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov*. Please refer to ''OMB Control No. 2900–0736'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Authorization To Disclose Personal Information to a Third Party, VA Form 21–0845.

OMB Control Number: 2900–0736.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Form 21–0845 is used to release information in its custody or control in the following circumstances: Where the individual identifies the particular information and consents to its use; for the purpose for which it was collected or a consistent

purpose (*i.e.,* a purpose which the individual might have reasonably expected).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 88 on May 7, 2019, pages 20002 and 20003.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Danny S. Green,

Interim Department Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–16023 Filed 7–26–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Monday,

No. 145 July 29, 2019

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0047; FRL–9996–22–OAR]

RIN 2060–AU18

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Municipal Solid Waste (MSW) Landfills source category. The EPA is proposing decisions concerning the residual risk and technology review (RTR). The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; reorganize rule text to incorporate provisions from the new source performance standards (NSPS) within this subpart; and add requirements for electronic reporting of performance test results. The EPA is also proposing minor changes to the MSW Landfills NSPS and Emission Guidelines and Compliance Times for MSW Landfills. Specifically, the EPA is proposing to add provisions to the most recent MSW Landfills NSPS and Emission Guidelines (EG) that would allow affected sources to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements of the most recent NSPS and EG by following the corresponding requirements in the MSW Landfills NESHAP.

DATES:

Comments. Comments must be received on or before September 12, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 28, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before August 5, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2002–0047, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2002–0047 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2002–0047.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2002–0047, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Andrew Sheppard, Natural Resources Group, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4161; fax number: (919) 541–0516; and email address: *Sheppard.Andrew@epa.gov.* For specific information regarding the risk modeling methodology, contact Jim Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *Hirtz.James@epa.gov.* For questions about monitoring and testing requirements, contact Muntasir Ali, Sector Policies and Programs Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; fax number: (919) 541–4991; and email address: *Ali.Muntasir@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–7027; and email address: *Malave.Maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2002–0047. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0047. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2002–0047.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ADI Applicability Determination Index
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ATSDR Agency for Toxic Substances and Disease Registry
BACT best available control technology
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRT Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CHIEF Clearinghouse for Inventories and Emissions Factors
CO carbon monoxide
DASEC discrete area source eddy covariance
DFW Dallas Fort Worth
EC eddy covariance
EG emission guidelines
EL expansion lag
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
GCCS gas collection and control system
GHGRP Greenhouse Gas Reporting Program
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HF hydrogen fluoride
HI hazard index
HOV higher operating value
HQ hazard quotient
IBR incorporation by reference
IRIS Integrated Risk Information System
km kilometer
LAER lowest achievable emissions rate
LFG landfill gas
LMOP Landfill Methane Outreach Program
MACT maximum achievable control technology
mg/kg-day milligrams per kilogram per day
mg/m^3 milligrams per cubic meter
Mg/yr megagrams per year
MIR maximum individual risk
MSW municipal solid waste
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
HEM–3 Human Exposure Model
NESHAP national emission standards for hazardous air pollutants
NMOC non-methane organic compounds
NRC National Research Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
OTM Other Test Method
PAH polycyclic aromatic hydrocarbons
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
RACT reasonably available control technology
RCRA Resource Conservation and Recovery Act
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SCC Source Classification Code
SOE subsurface oxidation event
SSM startup, shutdown, and malfunction
SWANA Solid Waste Association of North America
TC tracer correlation
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
μg/m^3 micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
USGS U.S. Geological Survey
VCS voluntary consensus standards

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP (40 CFR part 63, subpart AAAA) and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities could be affected by this proposed action because these entities are often the owners or operators of MSW landfills. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July 1992), the MSW Landfills source category is any facility that is an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial waste. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes (see 40 CFR 257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Industry: Air and water resource and solid waste management	MSW Landfills	924110
Industry: Refuse systems—solid waste landfills		562212
State, local, and tribal government agencies		562212, 924110

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2002–0047).

II. Background

A. What is the statutory authority for this action?

The statutory authority for revisions to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, and control technologies'' that may be appropriate to incorporate into the standards. CAA section 112(d)(6). This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these

statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *National Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1082–1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667, 673–674 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

The EPA is proposing amendments to the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpaft Cf) under the authority of CAA sections 111(b) and 111(d). In 1991, under authority of section 111(b)(1)(A) of the CAA, the EPA added the source category MSW Landfills to the priority list in 40 CFR 60.16 because, in the judgment of the Administrator, the source category contributes significantly to air pollution which may reasonably be anticipated to endanger public health and welfare (56 FR 24468, May 30, 1991). In that same action (56 FR 24468), the EPA proposed NSPS for new MSW landfills under section 111(b) of the CAA and proposed EG for existing MSW landfills under section 111(d) of the CAA.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The NESHAP for the MSW Landfills source category, the National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (herein after referred to as the ''MSW Landfills NESHAP''), was promulgated on January 16, 2003 (68 FR 2227), and is codified at 40 CFR part 63, subpart AAAA. As promulgated in 2003 and further amended on April 20, 2006 (71 FR 20462), the MSW Landfills NESHAP regulates HAP emissions from MSW landfills that are either major and area sources.

The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and have estimated uncontrolled emissions equal to or greater than 50 Mg/yr non-methane organic compounds (NMOC). The MSW

Landfills NESHAP (40 CFR part 63, subpart AAAA) also applies to MSW landfills that have accepted waste since November 8, 1987, and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 that were not permanently closed as of January 16, 2003.

The majority of emissions of HAP at MSW landfills come from the continuous biodegradation of the MSW in the landfill and the formation of landfill gas emissions. Landfill gas emissions contain methane, carbon dioxide, and more than 100 different NMOC. The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene (61 FR 9906, March 12, 1996). The owner or operator of a landfill may control the gas by routing it to a non-enclosed flare, an enclosed combustion device, or a treatment system that processes the collected gas for subsequent sale or beneficial use.

The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) regulates HAP emissions by requiring MSW landfills that exceed the size and emission thresholds to install and operate a landfill gas collection and control system (GCCS), as enumerated in the original NSPS for MSW landfills (40 CFR part 60, subpart WWW), the Federal Plan (40 CFR part 62, subpart GGG), or an EPA-approved state plan or tribal plan that implements the EG (40 CFR part 60, subpart Cc). The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) achieves emission reductions through a well-designed and well-operated landfill gas (LFG) collection and control system with a control device capable of reducing NMOC by 98 percent by weight. NMOC is a surrogate for LFG. The GCCS must be installed within 30 months after an MSW landfill that exceeds the design capacity threshold (2.5 million Mg and 2.5 million m^3) reaches or exceeds an NMOC level of 50 Mg/yr. The landfill must expand the system to collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade. The collection and control system may be capped or removed when the landfill is closed, the system has operated 15 years, and NMOC emissions are below 50 Mg/yr.

In addition, the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) requires timely control of bioreactors. A bioreactor is an MSW landfill or portion of the landfill where any liquid other than leachate is added to the waste mass to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the biodegradation of the waste. New bioreactors must install the GCCS in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate; existing bioreactors must install the GCCS before initiating liquids addition and must begin operating the GCCS within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later.

Based on modeled emission estimates in the 2016 NSPS/EG datasets, and supplementary searching of the Greenhouse Gas Reporting Program (GHGRP) data, located in 40 CFR part 98, subpart HH, the EPA Landfill Methane Outreach Program (LMOP) Landfill and LFG Energy Project Database, and selected permits, as of 2014, there were between 664 and 709 MSW landfills subject to the collection and control requirements of the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). The exact list of facilities subject to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is unknown because many landfills collect site-specific data for NMOC concentrations using the Tier 2 provisions allowed under the regulation to compute the NMOC annual emission rates. A list of facilities that were expected to be subject to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) based on modeled emissions and a default NMOC concentration of 595 parts per million by volume (ppmv) is available in the RTR dataset.[2] It is estimated that these landfills emit between 2,242 and 4,586 Mg/yr of HAP, after considering current control requirements. Most of these emissions are fugitive emissions.

C. What data collection activities were conducted to support this action?

The EPA did not gather a substantial amount of new data for this RTR proposal because data were recently gathered and compiled to support the 2016 NSPS/EG rulemaking (see 81 FR 59332 and 81 FR 59276, August 29, 2016). These regulations are codified at 40 CFR part 60, subpart XXX (NSPS) and 40 CFR part 60, subpart Cf (EG) and are hereinafter referred to as the ''MSW Landfills NSPS'' and ''MSW landfills EG.'' However, the EPA did focus additional data collection efforts in three main areas.

First, the EPA analyzed locations of the landfills, flares, and any engines, turbines or other destruction devices for the approximately 700 affected facilities by utilizing Google Maps©. Because the database for the MSW Landfills NSPS (40 CFR part 60, subpart XXX) contained only a single coordinate for each facility, every landfill was visually inspected on Google Maps© to ensure the correct location for each emission point. Additionally, some coordinates in the MSW Landfills NSPS (40 CFR part 60, subpart XXX) were for an office or headquarters away from the actual landfill location, so state records or permits were gathered to assist narrowing down the true location of these sources.

Second, the EPA visited four landfills in September 2018. These landfills were the Waste Management Dallas Fort-Worth (DFW) Landfill in Lewisville, Texas; the 121 Regional Disposal Facility and renewable natural gas production plant in Melissa, Texas; the City of Grand Prairie Landfill in Grand Prairie, Texas; and the Hunter Ferrell Landfill in Irving, Texas. The EPA discussed materials handling, materials/waste screening and separation, basic overview of waste acceptance history and general size, the use of liquids addition or leachate recirculation at the landfill, and design and operation of landfill GCCS components, including energy recovery devices and monitoring procedures to ensure a well-operated and well-controlled LFG GCCS. At the DFW Landfill, the EPA observed a quarterly surface emission monitoring event. The site visits are documented in separate reports that are available in the docket for this action: Site Visit Report—DFW Landfill, Lewisville, Texas; Site Visit Report—121 Landfill, Melissa, Texas; Site Visit Report—City of Grand Prairie Landfill, Grand Prairie, Texas; and Site Visit Report—Hunter Ferrell Landfill, Irving, Texas.

Third, emission factors were calculated for conventional landfills using data that were initially used for the 2008 Compilation of Air Pollutant Emission Factors (AP–42) draft emission factors for this source category in addition to data submitted in response of this draft.[3] Although thesse data are not ''new,'' these data came after the

[2] *MSW Landfills NESHAP RTR Draft Emissions Modeling File.* May 2018. Available at: *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.*

[3] U.S. EPA. AP42, Fifth Edition, Volume I Chapter 2.4: *Municipal Solid Waste Landfills Draft Section.* October 2008. Available at: *https://www3.epa.gov/ttn/chief/ap42/ch02/index.html.*

original promulgation of the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). These emission factors were applied to estimated landfill gas flow rates to estimate the HAP emissions from landfills for the risk analysis. Further detail on the emission factor devleopment can be found in the document, *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the 2019 Risk and Technology Review Proposed Rule, located* in EPA–HQ–OAR–2002–0047.

Finally, we are coordinating with the EPA Office of Land and Emergency Management on relevant data received on the Advanced Notice of Proposed Rulemaking (ANPRM), Revisions to the Criteria for Municipal Solid Waste Landfills To Address Advances in Liquids Management (83 FR 66210; December 26, 2018). Specifically, this notice describes the NESHAP definition for bioreactor landfill units, but indicates the EPA is contemplating future revisions that could define a bioreactor landfill as including other factors such as whether liquids are added intentionally for any purpose other than cleaning, maintenance, and wetting of daily cover; the average amount of annual precipitation in an area; whether leachate is recirculated; and the magnitude of the first-order biodegradation constant (k), or unintentially (*i.e.,* from extreme weather events). Relatedly, the ANPRM distinguishes between bioreactor landfill units to which liquids are purposefully added and ''wet landfill units,'' which are MSW landfills operating at high levels of moisture content. Readers are directed to that docket (EPA–HQ–OAR–2002–0047) to review the data and information solicited and received in response to the ANPRM, which will inform the EPA in making determinations concerning what actions, if any, to take when undertaking future revisions to MSW landfill related provisions.

D. What other relevant background information and data are available?

The EPA used data and information from the 2016 NSPS/EG MSW Landfill rulemaking databases, the GHGRP (40 CFR part 98, subpart HH), and the EPA LMOP Landfill and LFG Energy Project Database to support this proposed rulemaking. We used these data to develop the modeling file for the risk review. The EPA used these same sources as well as additional information regarding the timing of GCCS installations and expansions and the types of LFG control devices installed at landfills from selected permits, state regulations, Federal regulations affecting landfills other than the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), consent decrees for MSW landfills, and Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse, and literature sources, to identify additional control technologies for the technology review. The EPA also reviewed the Applicability Determination Index (ADI),[4] consent decrees, and data available from EPA Regions related to requests for corrective action and higher operating values for wellheads. See sections IV.A, IV.B, IV.C, and IV.E of this preamble for further detail on the use of these sources of information.

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[5] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained:

> [t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health'.

See 54 FR 38044, 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that a ''MIR of approximately 1 in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes [a]MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many

[4] U.S. EPA. ADI. *https://cfpub.epa.gov/adi/.*

[5] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [6]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency: (1) Conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the MSW Landfills Source Category in Support of the 2019*

[6] Recommendations of the SAB Risk and Technology Review (RTR) Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

Risk and Technology Review Proposed Rule. The methods used to assess risk (as described in the eight primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;[7] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The initial list of facilities was based on the 2016 NSPS/EG database by selecting landfills that had an annual NMOC emission rate of 50 Mg/yr or greater in 2014. This faciliy list was then examined one-by-one using Google Earth to verify the boundaries of the landfill itself, as well as stack locations for any flare or control devices. Total flow rate of landfill gas was estimated utilizing the same method as the 2016 NSPS/EG, described below.

The EPA created a Microsoft® Access database of landfills for the 2016 NSPS and EG rules. Additional detail about the database can be found in the docketed memorandum, *Summary of Updated Landfill Dataset Used in the Cost and Emission Reduction Analysis of Landfills Regulations, 2016.* Within the database, we programmed a series of calculations in the database (hereinafter referred to as the ''model'') to estimate LFG flow rates using a first-order decay equation and the associated cost and emission reduction impacts for each landfill expected to control emissions by the NSPS and EG regulations in a particular year. The model estimated flow rates using default parameters from AP–42[8] for NMOC, methane generation potential (L_0), and the methane generation rate (k). A detailed discussion of the methodology, modeling parameters, and equations used to estimate the LFG flow rate are available in the docketed memorandum, *Revised Methodology for Estimating Cost and Emission Impacts of MSW Landfill Regulations,* 2016.

Total collected landfill gas was estimated using available information including the calculated LFG flow rate described above. Total collected landfill gas was estimated by using the maximum value of landfill gas reported as collected in GHGRP for 2014, LMOP reported collected gas where GHGRP collection in 2014 was not provided, LMOP reported flow rate to projects or 85 percent of the 2016 NSPS and EG database's total flow rate. In cases where the total collected landfill gas estimation exceeded the modeled total flow rate of landfill gas, total landfill gas flow rate was back-calculated using GHGRP's estimated gas collection efficiency (or 85 percent when not available). Fugitive landfill emissions were calculated by subtracting the total collected landfill gas estimation from the total landfill gas flow rate, whether it was modeled or back-calculated. Landfill gas flow to engines was used for instances that LMOP had reported landfill gas flow to projects. We assumed that all LMOP projects were engines with 98-percent destruction efficiency for this modeling effort. We also assumed any additional collected landfill gas estimation beyond what LMOP listed as flow to a project went to a flare with 86-percent destruction efficiency. Stack parameters were not available for the source category, therefore, default parameters were developed using RTR default values developed by the EPA based on Source Classification Code (SCC) and assigned accordingly. Once we calculated all landfill gas emissions and estimated the amount of landfill gas flow to engines and flares, we applied emission factors to estimate HAP emissions from these sources.

To estimate HAP using a factor applied to landfill gas collection or generation estimates, we determined the appropriate basis of the factor. Although the 1998 Final AP–42 is commonly used to calculate emissions in inventories, the 1998 Final AP–42 is outdated and has very few HAP emission factors. The 1998 Final AP–42 has factors for 47 different compounds, 23 of which are HAP. In 2008, the EPA drafted AP–42 emission factors for this source category. The 2008 proposed factors were based on 47 test reports containing speciated organic and reduced sulfur compound data that could be corrected for air infiltration. This draft had emission factors for 173 compounds. In response to this draft, the EPA received public comments and additional data on the proposed AP–42 emission factor updates. This included 446 new test reports, of which 242 were unique complete test reports. 116 unique landfills were represented in the new data. Overall, including the original data and additional data submissions, test reports were available for landfills in 37 different states. This complete dataset (the data used to calculate the 2008 Draft AP–42 plus the new test reports) was used to calculate HAP emission factors for use in the RTR for the MSW Landfills NESHAP.

These data were analyzed for errors and the concentrations were corrected for air infiltration, in the same fashion the 2008 data were quality controlled. These two datasets were combined with the 2008 dataset. All non-detect data were removed. Then to remove outliers, data points that were two standard deviations above or below the mean of each HAP were removed. Each HAP's data were then averaged to develop the emission factor. The docket for this rulemaking contains the following document, which provides more information on the emission factor development as well as the emission estimation calculations: *Residual Risk Modeling File Documentation for the Municipal Solid Waste Landfills Source Category.*

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

Because the requirements under the NESHAP are for all landfills that exceed the NMOC threshold to install a gas collection and control system, allowable emissions were equal to the calculated actual emissions, therefore, the allowable multiplier is 1. Because the landfill owner or operator is required to operate the GCCS at all times, there is

[7] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[8] U.S. EPA, AP–42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.* 1995. *http://www.epa.gov/ttnchie1/ap42/.*

no differentiation between actual and allowable emissions.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[9] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[10] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block [11] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP [12] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'' *(https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary).* In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic

[9] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[10] U.S. EPA. Revision to the Guideline on Air Quality Models: *Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[11] A census block is the smallest geographic area for which census statistics are tabulated.

[12] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data*—an SAB Advisory, available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

Substances and Disease Registry (ATSDR) Minimum Risk Level *(https://www.atsdr.cdc.gov/mrls/index.asp);* (2) the CalEPA Chronic Reference Exposure Level (REL) *(https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0);* or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[13] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* We will be applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[14] reasonable worst-case dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [15] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[16] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [17] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

[13] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[14] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

[15] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[16] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs, *(https://www.epa.gov/aegl).*

[17] ERPGS Procedures and Responsibilities. March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, we used the default multiplication factor of 10. While we don't anticipate large variations in acute hourly emissions, we took a conservative approach to determine if the default multiplication factor would result in high risk. Upon modeling the emissions using the acute multiplication factor of 10, we determined that the noncancer risk was still below a HQ of 1. Due to the low risk results, further research to justify a lower multiplication factor was not necessary.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we assess site-specific data to ensure that the acute HQ is at an off-site location. For this source category, we did not have to perform any refined acute assessments.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any PB–HAP, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library.*)

For the MSW Landfills source category, we identified PB–HAP emissions of mercury, so we proceeded to the next step of the evaluation. In this step, we determine whether the facility-specific emission rates of the emitted PB–HAP are large enough to create the potential for significant human health risk through ingestion exposure under reasonable worst-case conditions. To facilitate this step, we use previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and polycyclic organic matter (POM). Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants above represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf.*) In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS waterbody data. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates and data are available, we may conduct a Tier 3 screening assessment. If PB–HAP emission rates do not exceed a Tier 2 screening value of 1, we consider those PB–HAP emissions to pose risks below a level of concern.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport. If the Tier 3 screening assessment indicates that risks above levels of concern cannot be ruled out, the EPA may further refine the screening assessment through a site-specific assessment.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

5. How do we assess risks considering emissions control options?

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimate risks considering the potential emission reductions that would be achieved by the control options under consideration. In these cases, the expected emission reductions are applied to the specific HAP and emission points in the RTR emissions dataset to develop corresponding estimates of risk and incremental risk reductions.

6. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect''

as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the MSW Landfills source category emitted any of the environmental HAP. For the MSW Landfills source category, we identified emissions of mercury. Because mercury is listed as an environmental HAP and is emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary National Ambient Air Quality Standards (NAAQS) for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk, because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse

environmental effect (as defined in Section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Municipal Solid Waste Landfills Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

7. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using the same dataset that was compiled for actual emissions. The modeled emissions were based upon EPA-derived emission factors for the source category. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were the same as the facility-wide risks. The *Residual Risk Assessment for the MSW Landfills Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks.

8. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the MSW Landfills Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is

stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[18] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[19] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[20] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case actual exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[21]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model,

[18] IRIS glossary *(https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary).*

[19] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[20] *See* A Review of the Reference Dose and Reference Concentration Processes, U.S. EPA, December 2002 (*https://www.epa.gov/sites/production/files/2014-12/documents/rfd-final.pdf*), and Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry, U.S. EPA, 1994 (*https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=71993*).

[21] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Inhalation Risk Assessment Results

The inhalation risk modeling performed to estimate risks based on actual, allowable, and whole facility emissions relied primarily on emissions factors derived by the EPA.

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual, allowable, and whole facility emissions under 40 CFR part 63, subpart AAAA, the MIR posed by the source category could be as high as 10-in-1 million. The total estimated cancer incidence based on actual emission levels is 0.04 excess cancer cases per year, or 1 case every 25 years. The total estimated cancer incidence based on allowable emission levels is 0.05 excess cancer cases per year, or 1 case every 20 years. Fugitive air emissions of benzene-based pollutants contributed approximately 50 percent to the cancer incidence. The population exposed to cancer risks greater than or equal to 1-in-1 million based upon actual emissions is 18,300 (see Table 2 of this preamble).

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR MUNICIPAL SOLID WASTE LANDFILLS SOURCE CATEGORY
[40 CFR part 63, subpart AAAA]

	Cancer MIR (in 1 million)		Based upon actual emissions			
	Based on actual emissions [1]	Based on allowable emissions	Cancer incidence (cases per year)	Population with risk of 1-in-1 million or more	Population with risk of 10-in-1 million or more	Max chronic noncancer HI (actuals and allowables)
Source Category ...	10 (p-dichlorobenzene, ethyl benzene, benzene).	10 (p-dichlorobenzene, ethyl benzene, benzene).	0.04	18,300	11	HI < 1

[1] Whole facility emissions are equal to actual emissions and have the same risk.

2. Acute Risk Results

Our screening analysis for worst-case acute impacts based on actual emissions indicates that no pollutants exceed an acute HQ value of 1 based upon the REL. The acute hourly multiplier utilized a default factor of 10 for all emission processes.

3. Multipathway Risk Screening Results

The multipathway risk screening assessment resulted in a maximum Tier 2 noncancer screening value of less than 1 for mercury. Mercury was the only PB–HAP emitted by the source category. Based on these results, we are confident that the noncancer risks due to multipathway exposures have an HI less than 1.

4. Environmental Risk Screening Results

The ecological risk screening assessment indicated all modeled points were below the Tier 1 screening threshold based on actual emissions of mercury emitted by the source category.

5. Facility-Wide Risk Results

An assessment of whole-facility risks was performed as described above in Table 2 of this preamble. Whole-facility modeled emissions were the same as actuals for this source category. Refer to Section B1 of the Inhalation Risk Assessment Results for a discussion of the health risks.

6. What demographic groups might benefit from this regulation?

Results of the demographic analysis indicate that, for six of the 11 demographic groups; (African American, Other and Multiracial, Hispanic, below the poverty level, and those individuals over 25 without a highschool diploma) that are living within 5 km of facilities in the source category exceed the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from MSW landfill facilities, we find 18,200 people are exposed to a cancer risk at or above 1-in-1 million and no individuals or groups exposed to a chronic noncancer TOSHI greater than 1.[22]

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near MSW Landfills,* available in the docket for this action.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the MSW Landfills source category across different demographic groups within the populations living near facilities.[23]

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—MSW LANDFILLS DEMOGRAPHIC RISK ANALYSIS RESULTS

Municipal Solid Waste landfills Source Category: Demographic Assessment Results—50 km Study Area Radius			
		Population with cancer risk greater than or equal to 1-in-1 million	Population with HI greater than 1
	Nationwide	Source Category	
Total Population	317,746,049	18,217	0
	White and minority by percent		
White	62	58	0
Minority	38	42	0
	Minority by percent		
African American	12	13	0
Native American	0.8	0.1	0
Hispanic or Latino (includes white and nonwhite)	18	20	0
Other and Multiracial	7	8	0
	Income by percent		
Below Poverty Level	14	15	0
Above Poverty Level	86	85	0
	Education by percent		
Over 25 and without a High School Diploma	14	17	0
Over 25 and with a High School Diploma	86	83	0
	Linguistically isolated by percent		
Linguistically Isolated	6	8	0

The percentages of the at-risk population in each demographic group (except for White, Native American, and Non-Hispanic) are lower than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and*

[22] There may be small differences between the Environment Justice (EJ) Tool's total population within 50 km and HEM–3's total domain population, because some of the 2010 Census blocks modeled by HEM–3 (which have a non-zero population) match to American Community Survey 2014 Census block groups that have a population of zero.

[23] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

Technology Review—Analysis of Demographic Factors for Populations Living Near Municipal Solid Waste Landfills Source Category Operations, available in the docket for this action.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section III of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (54 FR 38045, September 14, 1989). In this proposal, the EPA estimated risks based on actual and allowable emissions from MSW landfills, and we considered these in determining acceptability.

For the MSW Landfills source category, the risk analysis indicates that the cancer risk to the individual most exposed is below 10-in-1 million from both actual and allowable emissions. This risk is considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also estimates a cancer incidence of 0.04 excess cancer cases per year, or 1 case every 20 years, as well as a maximum chronic noncancer TOSHI value below 1 (0.1). In addition, the risk assessment indicates no significant potential for multipathway health effects.

The results of the acute screening analysis also estimate a maximum acute noncancer HQ value of less than 1 based on the acute REL. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III of this preamble, we propose that the risks from the MSW Landfills source category are acceptable.

2. Ample Margin of Safety Analysis

As directed by CAA section 112(f)(2), we conducted an analysis to determine whether the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in the risk assessment. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any cost-effective controls or other measures that would reduce emissions further.

The risks from this source category were deemed acceptable with a maximum upper-bound chronic excess cancer risk of 10-in-1 million from 1 facility and 168 facilities with an excess cancer risk greater than or equal to 1-in-1 million but less than 10-in-1 million. Our risk analysis indicated the risks from this source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions to control fugitive landfill emissions would result in minimal health benefits. Fugitive landfill emissions result in 84 percent of the cancer incidence for this source category. Based upon results of the risk analysis and our evaluation of the technical feasibility and cost of the option(s) to reduce landfill fugitive emissions, we are proposing that the current MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) provides an ample margin of safety to protect the public health.

3. Adverse Environmental Effect

For the MSW Landfills source category, we did not identify emissions of any environmental HAP. Because we did not identify environmental HAP emissions, we expect no adverse environmental effects.

C. What are the results and proposed decisions based on our technology review?

To fulfill the obligations under CAA section 112(d)(6), we conducted a technology review to identify developments in practices, processes, and control technologies that may warrant revisions to the current MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). In conducting our technology review, we researched data reported to the U.S. EPA GHGRP (40 CFR part 98, subpart HH), the U.S. EPA LMOP Landfill and LFG Energy Database, state regulations, Federal regulations other than the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), permits, the RACT/BACT/LAER Clearinghouse, enforcement consent decrees, and literature sources.

Our research identified three types of developments that could lead to additional control of HAP from MSW landfills. The three potential developments are practices to reduce HAP formation within a landfill, to collect more landfill gas for control or treatment, and to achieve a greater level of HAP destruction in the collected landfill gas. After analyzing these options, we determined that changes to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) are not warranted at this time, because each option is either not technically feasible or the cost is not justified for the level of emission reduction achievable.

1. Reduce HAP Formation

To reduce HAP formation in a landfill requires a program to divert or restrict certain types of wastes from disposal in an MSW landfill. Restricting certain wastes would reduce emissions because the quantity of HAP emitted is a function of the amount of waste disposed and the composition of the waste. For example, household wastes could contain numerous components that emit HAP, *e.g.,* paints, solvents, paint thinners, used motor oil, insecticides, pesticides, and household cleaning products. Diverting these materials from MSW landfills will reduce both the volume and HAP concentration of landfill gas emitted. Many states already have programs to prohibit landfill disposal of such products and other materials, such as electronic devices, tires, plastics, batteries, and yard waste.

We have determined that mandating programs for landfill operators to ban or recycle wastes is not technically feasible. Although some successful programs exist for waste diversion, recycling, and alternative disposal, these programs are not typically operated by landfill owners or operators, but often involve rules that affect generators, haulers, and third party processors. A landfill owner or operator could require waste separation by banning certain materials from entering the landfill. However, it would not be feasible for the landfill owner or operator to enforce such bans, because policing the content of every truck passing the gate of a landfill is economically unreasonable and technically impracticable.

2. Collect More Landfill Gas

More gas could be collected by requiring the GCCS to be installed earlier, requiring the GCCS to be expanded more frequently than currently required by the NESHAP, or requiring the GCCS to remain in place longer than currently required. The current MSW Landfills NESHAP (40

CFR part 63, subpart AAAA) requires that landfills with a design capacity of 2.5 million Mg and 2.5 million m^3 and an NMOC emission rate exceeding 50 Mg/yr must install controls. The GCCS must be installed within 30 months of the initial NMOC report that exceeds the 50 Mg/yr emission threshold and then expanded every 5 years in active fill areas, or every 2 years in closed areas.

Earlier gas collection is technically feasible. Earlier gas collection could be accomplished by lowering the NMOC emission rate below 50 Mg/yr either alone or in conjunction with the design capacity to below 2.5 million Mg and 2.5 million m^3. Earlier gas collection could also be accomplished by shortenting the initial 30-month lag time for installing a GCCS or reducing the amount of time required before the GCCS is expanded. Although earlier gas collection, or more frequent expansion of a GCCS expansion, could require some technical design changes (*e.g.,* horizontal gas collection system), this equipment is commercially available and in use at many landfills today. Horizontal collection trenches can be installed during the filling of the landfill so that gas collection can commence earlier than with the more typically used vertical gas wells, although sufficient waste must be placed on top of the trenches before vacuum can be applied to the trench, in order to minimize air intrustion. Passive flares have been demonstrated to operate more effectively than active flares when the quantity of gas generation is low or the quality of the gas decreases to lower methane content, or if the landfill gas is contained by impermeable liners on the bottom, sides, and top of the landfill. Our evaluation of available data from the GHGRP and LMOP indicate that 1,199 landfills have installed a GCCS in 2014, compared to between 625 and 700 landfills that are estimated to have installed controls, based on modeling under the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). These data demonstrate that earlier gas collection is technically feasible. Additionally, the 2016 MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) both employ an NMOC emission rate of 34 Mg/yr, but it is not known how many landfills are controlling pursuant to these new 2016 regulations. Moreover, states, including California, Minnesota, Wisconsin, and Pennsylvania, use different regulatory metrics to require gas collection earlier than required by the NESHAP.

Another means of increasing the collection efficiency of GCCSs is to install cover material earlier. Studies have shown increased collection efficiencies, depending on the type of cover. However, the effectiveness of early final cover installation depends on site-specific circumstances such as the filling sequence and cell design of the landfill. We identified no state regulations, permit conditions, or other research that prescribed conditions under which regulating the timing of final cover installation is a technically and economically feasible strategy for improving gas collection.

We also considered whether a biocover provides more HAP control than a traditional clay cover. A biocover is a layer of media containing methanotrophic bacteria that digest and oxidize organic matter. Although these bacteria can be found in soil, other materials can be used as cover material or added to clay covers to enhance the environmental conditions for bacteria growth, which increases the oxidation. Most biocover research and most installations have been directed at methane emission reductions. However, a few studies have indicated that biocovers can microbially degrade volatile organic compounds as well, including some of the HAP contained in landfill gas. Although a number of landfills have reported using a biocover on at least a portion of the surface, the long-term HAP reduction performance of oxidative covers has not yet been adequately demonstrated in a full-scale industrial setting at a landfill.

Biocovers and earlier installation of final covers were not deemed technically feasible, and, therefore, the cost and reductions for these control practices were not further analyzed. Because earlier GCCS installation was technically feasible, we evaluated the cost for three options for enhanced gas collection, which are as follows:

- Reduce the NMOC emission threshold for initial installation of GCCS from 50 Mg/yr to 34 Mg/yr for all landfills that are open in 2015. For landfills that closed in 2014 or earlier, these remained at the baseline level of 50 Mg/yr NMOC.
- Retain the baseline NMOC emission threshold (50 Mg/yr NMOC) but reduce the expansion lag (EL) time from an average of 4 to 3 years for landfills that closed after 2014. The ''expansion lag time'' is the amount of time allotted for the landfill to expand the GCCS into new areas of the landfill. The rule currently allows 5 years for active areas and 2 years for areas that are closed or at final grade, but the EPA understands most landfills are choosing the 5-year option and, therefore, the average lag time of 4 years was modeled. A modeled EL of 3 years could represent a reduction from 5 years to 3 years in active areas.
- Retain the baseline NMOC emission threshold (50 Mg/yr NMOC) but reduce the EL time from an average of 4 to 2 years for landfills that closed after 2014. A modeled EL of 2 years could represent a requirement for all landfills to expand their system within two years.

For each scenario, we estimated the incremental net annualized costs of each regulatory option in 2023 relative to a baseline of the current NESHAP requirements. The costs incorporate the annualized capital costs to install the GCCS, operation and maintenance costs for the GCCS, and costs for monthly wellhead monitoring and continuous combustor monitoring. The costs have been offset by the revenue anticipated from electricity sales for any landfills that would likely operate cost-effective energy recover projects. Table 4 of this preamble shows the incremental cost effectiveness of 14 different HAP compounds if requiring earlier gas collection as well as the incremental HAP cost effectivness of total HAP, inclusive of 47 different HAP. Of these 14 HAP, toluene, ethyl benzene, dichloromethane, hexane, and xylenes are five of the most prevalent (HAP) in LFG, while the remaining nine HAP, although less prevalent, are driving our estimates of health risks. The LFG emissions vary each year because the emissions profile follows a first-order decay equation pattern over time, as a landfill accepts additional waste. Additionally, the number of landfills controlling in any given year and the site-specific collection efficiency of the controlling landfills varies given the GCCS installation and expansion lag times. The EPA selected the year 2023 to quantify the impacts because it is 3 years after the final MSW Landfill NESHAP amendments are expected to be finalized, which is the maximum time allowable under the General Provisions of part 63.

TABLE 4—COST EFFECTIVENESS OF EARLIER GAS COLLECTION

Compound	Cost effectiveness ($100,000 per Mg HAP), year 2023		
	Reduce from 50 Mg/yr to 34 Mg/yr	Reduce EL from 4 to 2 years	Reduce EL from 4 to 3 years
Toluene	6.75	5.38	6.36
Hexane	11.48	9.15	10.82
Xylenes (Mixture of o, m, and p Isomers)	14.28	11.38	13.46
Ethyl Benzene	37.10	29.55	34.96
Methylene Chloride	37.84	30.14	35.66
1,4-Dichlorobenzene	119	94.56	112
Benzene	122	97.36	115
Trichloroethylene	160	128	151
Vinyl Chloride	215	171	202
Ethylene Dichloride	785	625	739
1,1,2-Trichloroethane	1,022	814	963
Naphthalene	1,183	943	1,115
1,3-Butadiene	1,695	1,350	1,597
Ethylene Dibromide	10,534	8,392	9,927
Total HAP [1]	2.07	1.64	1.94

[1] Total HAP includes 47 of the 48 HAP based on the *Updated MSW Landfill Emission Factors for RTR Risk Modeling* in 2018. No reductions were estimated for mercury as a result of earlier gas collection. Factors are available at: *https://www.epa.gov/stationary-sources-air-pollution/updated-msw-landfill-emission-factors-rtr-risk-modeling.*

Considering the high costs per ton of HAP reduced, we did not consider these control options to be cost effective for further reducing HAP emissions from MSW landfills. With respect to the non-air environmental impacts, the options for earlier gas collection may result in additional LFG becoming available for LFG energy production. Considering these costs, we concluded that requiring additional collection of landfill gas is not warranted pursuant to CAA section 112(d)(6).

3. Increased HAP Destruction

The NESHAP currently provides three options for controlling HAP from the collected landfill gas:

- An open flare that meets specified design and operating requirements;
- A control device that reduces NMOC by 98 weight-percent or 20 ppmv NMOC as hexane adjusted to 3-percent oxygen; or
- A treatment system that processes the collected gas for subsequent sale or use.

Another means of reducing HAP is to require increased destruction of HAP in the collected gas. Our technology review identified three potential methods: enclosed flares, thermal oxidation, and increased use of certain energy recovery technologies for beneficial use of landfill gas.

Enclosed flares. An open flare meeting the NESHAP design and operating requirements can achieve approximately 98-percent organic HAP reduction from landfill gas. Note that in this proposed action, flares must be designed and operated in accordance with 40 CFR 63.11, which is equivalent to 40 CFR 60.18 as referenced by the MSW Landfills NSPS (40 CFR part 60, subparts WWW and XXX). About 17 percent of landfills report using an enclosed flare. The achievable destruction efficiency varies between 99.5 and 99.9 percent depending on local regulations for emissions of other pollutants (oxides of nitrogen and carbon monoxide (CO)) and how the flare is operated.[24] [25] The HAP-specific destruction efficiencies were not reported.

While the technical feasibility of an enclosed flare for landfills is widely demonstrated, an enclosed flare is more expensive and, for landfill gas, is more complex to operate. As a result, the capital and operating cost of an enclosed flare is estimated at about 1.5 to 2 times greater. Open flares provide greater operational flexibility for handling large variations in flow rate and British thermal units (Btu) content, managing certain trace gas constituents, and serving as a backup for landfills with energy recovery projects. We estimate that to require landfills to replace all open flares with enclosed flares would reduce emissions by between 630 to 800 Mg/yr NMOC in 2023. There is a significant range in these estimates depending on the destruction efficiency. Also, because many landfills already employ at least one enclosed flare or energy recovery project, it is unknown how many conversions would actually occur. Table 5 shows the cost for converting to enclosed flares. The costs are estimated for the same 14 HAP, which represent the five most prevalent HAP and the nine HAP driving health risk and takes into consideration the variations in flare peformance and flare cost. The table also shows incremental HAP cost effectivness of total HAP, inclusive of 47 different HAP. With respect to the non-air environmental impacts, the options for requiring conversion to enclosed flares could negatively impact the number of LFG energy projects, because open flares tend to serve as back-up destruction devices at landfills with energy projects in place. Additionally, enclosed flares may require supplemental pilot fuels to operate. We conclude that the requirement to use enclosed flares is not cost effective.

[24] *LFG Technologies Brochure. http://lfgtech.com/wp-content/uploads/docs/low-emissions-brochure.pdf.*

[25] John Zink. *https://www.johnzinkhamworthy.com/products-applications/landfill-biogas/.*

TABLE 5—COST EFFECTIVENESS OF ENCLOSED FLARES

Compound	Cost effectiveness ($100,000 per Mg HAP), year 2023 [1]
	Conversion of open flares to enclosed flares
Toluene	$5–14
Hexane	9–23
Xylenes (Mixture of o, m, and p Isomers)	11–29
Ethyl Benzene	30–75
Methylene Chloride	30–77
1,4–Dichlorobenzene	95–240
Benzene	98–250
Trichloroethylene	130–330
Vinyl Chloride	170–440
Ethylene Dichloride	630–1,590
1,1,2–Trichloroethane	820–2,070
Naphthalene	950–2,400
1,3–Butadiene	1,360–3,440
Ethylene Dibromide	8,430–21,400
Total HAP [2]	1.65–4.17

[1] The minimum cost effectiveness range represents a cost factor increase of 1.5 compared to an open flare and an assumed HAP destruction efficiency of 99.9 percent. The maximum of the cost effectiveness range represents a cost factor increase of 2 compared to an open flare and an assumed HAP destruction efficiency of 99.5 percent.

[2] Total HAP includes 47 of the 48 HAP based on the *Updated MSW Landfill Emission Factors for RTR Risk Modeling* in 2018. No reductions were estimated for mercury as a result of earlier gas collection. Factors are available at: *https://www.epa.gov/stationary-sources-air-pollution/updated-msw-landfill-emission-factors-rtr-risk-modeling.*

Thermal oxidizers. The technical feasibility of installing thermal oxidizers appears to be limited to landfills that employ an energy project with gas purification equipment or other gas treatment equipment that involves a tail gas. Flares are better equipped than thermal oxidizers to manage the large fluctuations in flow rates that can occur at landfills where the primary control device is not associated with an energy recovery project. Our technical review concludes that thermal oxidizers have not been commercially demonstrated to be technologically feasible as an alternative for the destruction of landfill gas at all landfills.

Energy recovery devices. Some types of energy recovery projects can achieve destructions higher than the 98-percent reduction or 20 ppmv NMOC as required by the NESHAP. About 47 percent of landfills that have GCCS installed use some form of energy recovery system. Energy recovery systems that are capable of additional HAP control are gas turbines (including microturbines) to combust landfill gas to produce electricity and gas purification systems to produce renewable natural gas for pipeline injection or direct sale.

The technical feasibility of the landfill gas cleaning that is required to implement any energy recovery project must be assessed by in-depth engineering analysis of the site-specific conditions at each individual landfill. The economic feasibility depends on the available flow rate for the extracted landfill gas over the expected lifetime of the project; landfill gas quality; and physical and market access to either the electrical grid, a natural gas pipeline, end-users with a consistent energy demand, or an alternative fueling station (*i.e.,* compressed natural gas or liquid natural gas) with an adequate market to consume the landfill gas-derived vehicle fuel. Research has not identified specific objective criteria for stipulating when a specific energy recovery system is economically feasible for landfill gas. Accordingly, we conclude that requiring specific energy recovery devices for landfill gas is not technologically feasible or cost effective given that it is highly dependent on engineering analyses of site-specific conditions.

We request comment on the technologies and practices considered for this technology review as well as the basis for estimating the cost effectivness of those technologies at MSW landfills.

D. What other actions are we proposing?

In addition to the proposed decisions resulting from the RTR described above, we are proposing revisions to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) that promote consistency between MSW landfills regulations under CAA sections 111 and 112. We are also proposing changes to the wellhead temperature operating standards, and associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature. We are proposing to adjust provisions for GCCS removal to provide additional flexibility for landfill owners and operators. In addition, we are proposing updates to SSM requirements and electronic reporting requirements.

1. Overall Rule Reorganization

We are proposing to streamline the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) by incorporating the landfill gas control, operational standards, monitoring, recordkeeping, and reporting rule requirements (*i.e.,* the major compliance provisions) from the NSPS program directly into the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), thus, minimizting cross referencing to another subpart. While the original MSW Landfills NESHAP references the 1996 MSW Landfills NSPS (40 CFR part 60, subpart WWW), updated requirements from the 2016 MSW Landfills NSPS (40 CFR part 60, subpart XXX) are incorporated where appropriate. These include sections for GCCS installation and removal (40 CFR 63.1957), GCCS operational standards (40 CFR 63.1958), NMOC calculation procedures (40 CFR 63.1959), compliance provisions (40 CFR 63.1960), monitoring (40 CFR 63.1961), specifications for active collection systems (40 CFR 63.1962), reporting (40

CFR 63.1981), and recordkeeping (40 CFR 63.1983). These changes modernized and streamlined the original NSPS. An MSW landfill would have up to 18 months after publication of the final rule to comply with these reorganized provisions. Before this time, landfills would comply with the provisions in the MSW Landfills NSPS (40 CFR part 60, subpart WWW), which continue to be cross referenced in the short term. Incorporating these provisions consolidates requirements between the MSW Landfills NSPS (40 CFR part 60, subparts WWW and XXX) and the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) and is expected to reduce confusion because many landfills are subject to an NSPS and the NESHAP.

To help distinguish the applicability of the two MSW Landfills NSPS, the EPA proposes to revise the title of 40 CFR part 60, subpart WWW, to identify the subpart's applicability dates. Specifically, the revised title for 40 CFR part 60, subpart WWW would read, ''Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification on or after May 30, 1991, but before July 18, 2014.'' The EPA is making a similar change to 40 CFR part 60, subpart WWW at 40 CFR 60.750(a) to say that the provisions of 40 CFR part 60, subpart WWW apply to each MSW landfill that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014.

To enhance consistency between the regulations and streamline compliance, we are also proposing minor edits to the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and the EG (40 CFR part 60, subpaft Cf) that would allow MSW landfills affected by the MSW Landfills NSPS and EG to demonstrate compliance with the ''major compliance provisions'' of the MSW Landfills NESHAP (GCCS operational standards at 40 CFR 63.1958, compliance provisions at 40 CFR 63.1960, and monitoring at 40 CFR 63.1961) in lieu of NSPS and EG.

With the incorporation of the major compliance provisions from the MSW Landfills NSPS (40 CFR part 60, subpart XXX), we are, thus, incorporating corresponding revisions from the MSW Landfills NSPS (40 CFR part 60, subpart XXX) that were finalized in 2016, including removing the requirement to monitor and take corrective action for oxygen and nitrogen monitoring at the wellhead, refining the procedures for taking corrective action (40 CFR 63.1960), and adding flexibility for when to cap, remove, or decommission the GCCS (40 CFR 63.1957(b)). Revisions for consistency with the MSW Landfills NSPS (40 CFR part 60, subpart XXX) also include other conforming changes that were finalized in 2016, such as allowing the use of portable gas composition analyzers to monitor the oxygen level at a wellhead (40 CFR 63.1961(a)), the requirement to report more precise locational data for each surface emissions exceedance (40 CFR 63.1961(f)), changes to the procedure for submitting a design plan (40 CFR 63.1981(d)), and changes to definitions (40 CFR 63.1990). These are described below and in the preamble to the final MSW Landfills NSPS (81 FR 59332, August 29, 2016).

To further enhance consistency between the MSW landfills regulations, we are adopting in the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) the same requirements for SSM that the MSW Landfills NSPS (40 CFR part 60, subpart XXX) adopted (40 CFR 63.1930(b)). Consistent with other CAA regulations, we are proposing additional revisions to the SSM provisions of the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) in order to ensure that they are consistent with the decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), in which the Court vacated provisions that exempted sources from the requirement to comply with applicable CAA section 112 emission standards during periods of SSM. We are also adding electronic reporting (40 CFR 63.1981(l)).

We request comment on this re-organization of the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) structure to create a more uniform set of standards for all affected landfills. The EPA specifically requests comments from landfill owners and operators, as well as state regulatory agencies, on whether reorganization of the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) and amendments to NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) clarifies compliance for sources affected by both the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) and the NSPS (40 CFR part 60, subpart XXX) or EG (40 CFR part 60, subpart Cf).

2. Operational Standards for Gas Collection Systems

To ensure proper operation of the gas collection system, the current MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) requires wellhead monitoring of the collected landfill gas and establishes standards at the wellhead for negative pressure, temperature, and concentration of either nitrogen or oxygen, as described in the MSW Landfills NSPS (40 CFR part 60, subpart WWW). If an operational limit is exceeded, then corrective action is required to return the measured parameter to the required level. Consistent with the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf), we are proposing to eliminate the operational standard and the corresponding corrective action for nitrogen and oxygen concentration, because we concluded that nitrogen and oxygen concentration by itself is not an effective indicator of proper landfill gas system operation. This conclusion is explained in the preamble to the 2016 NSPS (81 FR 59332, August 29, 2016). In addition, we propose to further amend the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) by increasing the operational standard for temperature at wellheads from 131 degrees Fahrenheit (°F) to 145 °F (40 CFR 63.1958(c)). The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) maintains the existing operational standards for negative pressure (40 CFR 63.1958(b)). The proposed changes to eliminate the nitrogen and oxygen operating standard and increase the wellhead temperature operating standard would reduce the burden on regulated entities and delegated state, local, and tribal agencies addressing inquiries related to operating standards in several ways. First, this proposed change removes the requirement to take corrective action for nitrogen and oxygen limits. Second, this change would reduce the number of requests and burden associated with submitting and reviewing the requests for higher operating values for oxygen and nitrogen. Third, the proposed increase in temperature operating limit is expected to reduce the number of requests for higher operating values. Similarly, the higher temperature standard is expected to reduce the frequency of corrective action for exceeding the temperature limit. In addition to reducing the burden associated with these wellhead operating standards, these changes are expected to promote greater flexibility and autonomy to landfill owners and operators with regards to wellhead operations. For example, landfill owners or operators may employ cover practices or GCCS best management practices that are suitable for their sites and GCCS designs, thereby allowing them to collect more LFG and reduce emissions without the risk of exceeding a wellhead operating parameter.

The purpose of the wellhead monitoring is to prevent fires and avoid conditions that inhibit anaerobic decomposition of the waste. In revising the NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf), the EPA received substantial comments that operation at a specific fixed level of nitrogen and oxygen concentration does not achieve the intended objectives and can become a barrier that prevents proactive landfill gas collection practices, such as connecting the gas collection system to the leachate collection system or installing early gas collectors (81 FR 59346 and 81 FR 59292, August 29, 2016). Although landfill owners or operators are not required to maintain specific nitrogen and oxygen operating limits, we propose to retain the requirement to monitor nitrogen and oxygen and maintain records at the wellhead because this parameter is an important factor for the landfill operator to evaluate along with other factors to determine how well the landfill is being operated to effectively capture landfill gas, promote efficient anaerobic decomposition, and prevent fires (40 CFR 63.1961(a)). The landfill owner or operator must make these records available to the Administrator (EPA Administrator or administrator of a state air pollution control agency or his or her designee) upon request (40 CFR 63.1983(i)).

Regarding temperature, the EPA did not increase the operating standard in the 2016 MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (81 FR 59276, August 29, 2016). Although several commenters supported removing the temperature parameters, other commenters were concerned with fire risks if the parameter was removed. At the time, the EPA consulted with EPA Regions about approaches taken in consent decrees and other enforcement actions involving elevated temperature values. Since the 2016 revisions to the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf), the EPA has reviewed several consent decrees in additional detail.[26] [27] [28] These consent decrees have temperature operating limits ranging between 131 °F to 185 °F. With higher temperatures come several addditional monitoring requirements. In addition, higher operating value guidance from Ohio EPA indicated that Ohio EPA generally will concur with requests for operating limits up to 150 °F, as long as additional data are made available.[29] The EPA has also reviewed data on requests for higher temperature operating values in EPA Region 5. Based on these data, 64 percent of all higher operating value (HOV) requests were at 145 °F or less and 95 percent of requests were below 150 °F.[30] Additionally, a Solid Waste Assosciation of North America (SWANA) manual of practice for LFG GCCS indicates that polyvinyl chloride piping begins to fail at 145 °F and fails at 165 °F, temperatures above 140 °F could indicate aerobic conditions, and landfill gas temperature over 135 °F indicates a possible subsurface oxidation event (SOE). Optimal range for mesophilic bacteria is 77–104 °F, and for thermophilic bacteria is 131–149 °F (see page 9–8).[31]

Based on the review of these additional data, the EPA is proposing to increase the temperature operating standard 14 °F, from 131 °F to 145 °F (40 CFR 63.1958(c)). We propose to require the landfill owner or operator to report any temperature readings that exceed 145 °F in semi-annual reports and maintain records of all temperature monitoring at the wellhead because this parameter is an important factor for the landfill operator to evaluate along with other factors to determine how well the landfill is being operated to effectively capture landfill gas, promote efficient anaerobic decomposition, and prevent fires. The landfill owner or operator must make these records available to the Administrator (EPA Administrator or administrator of a state air pollution control agency or his or her designee) upon request (40 CFR 63.1983(i)).

We request comment on the removal of oxygen and nitrogen wellhead operating standards and increased temperature operating standard.

3. Enhanced Monitoring and Reporting for Elevated Wellhead Temperature

Given previous concerns with fire risks from elevated temperatures, and the fact that parameters other than temperature can be indicators of SOE, and based on review of the aforementioned consent decrees and guidance materials, the EPA is also proposing enhanced wellhead monitoring and visual inspections for SOE (40 CFR 63.1961(a)), and in some cases more frequent reporting, for any landfill with wellhead temperature exceeding 145 °F. These requirements would apply to all wells with an exceedance, unless a higher operating value has been approved, in which case the stipulations of the approved HOV applies (40 CFR 63.1961(a)). The EPA is proposing to require weekly observations for SOE, as well as weekly monitoring of CO, oxygen, and methane. Temperature readings will also be required weekly at the wellhead and at downwell increments for every 10 vertical feet in the well (40 CFR 63.1961(a)).

The EPA is proposing to require an independent laboratory analysis of each CO measurement, using EPA Method 10 (40 CFR 63.1961(a)(5)(vi)(A)). The EPA is proposing to monitor methane with a methane meter using EPA Method 3C or EPA Method 18 or a portable gas composition analyzer provided that the analyzer is calibrated and the analyzer meets all quality assurance and quality control requirements for EPA Method 3C or EPA Method 18 (40 CFR 63.1961(a)(5)). The EPA is proposing downwell temperature measurements with either a removable thermotet or temporary or permanat thermocouples installed in the well. All of these data will be required to be submitted in the semi-annual report and maintained as records (40 CFR 63.1981(h)). Each report will also include a trend analysis of the weekly monitoring results over time, for each well. Enhanced monitoring will begin for 7 days and continue until the measured wellhead operating temperature is 145 °F or less, or the higher operating value is approved, whichever comes first.

For landfills that have any temperature reading of 170 °F or above at either the wellhead or on any of the downwell measurements, and a CO reading of 1,500 ppmv or above, a 24-hour electronic report will be required to notify the delegated agency about the well.

We request comment on the enhanced monitoring and reporting requirements for elevated temperatures.

4. Corrective Action

Under the current MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), if a landfill exceeds a wellhead operating parameter, the landfill owner or operator must initiate corrective action within 5 days of the measurement as described in the MSW Landfills NSPS (40 CFR part 60, subpart

[26] *United States* v. *Forward, Inc.,* Consent Decree, Case No. 2:11–cv–00590 EFB (E.D.Cal. May 2, 2012).

[27] *United States of America* v. *County of Maui,* Consent Decree, Case No. 1:12–cv–00571–LEK–RLP (D.Haw. December 27, 2012).

[28] Waimanalo: *United States of America* v. *Waste Management of Hawaii, Inc., and City and County of Honolulu,* Consent Decree, Case No. 1:13 cv–00095 (D.Haw. April 18, 2013).

[29] Ohio EPA. *Guidance Document for Higher Operating Value Demonstrations. http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc.*

[30] See docketed memorandum, *Analysis of HOV Requests for Wellhead Temperature.*

[31] SWANA/National Renewable Energy Laboratory (NREL). *Landfill Gas Operation and Maintenance Manual of Practice.* 1997. NREL/SR–430–23070.

WWW). If the exceedance cannot be corrected within 15 days, the landfill owner or operator must prepare to expand the GCCS within 120 days or obtain approval by the EPA or the delegated state agency for an alternative operating limit. Commenters on the revised NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) that were proposed in 2015 stated that exceedances of elevated nitrogen and oxygen concentration are often not solved by expanding the gas collection system, especially in older areas of the landfill. Commenters also stated that wellhead corrective action often requires site-specific and highly technical solutions other than expanding a collection system. The commenters also stated that despite the 1998 amendments to the MSW Landfills NSPS (63 FR 32748, June 16, 1998), which clarified procedures for landfill owners or operators to submit an alternative timeline for correcting exceedances, there is inconsistency in how delegated state and local agencies are inconsistently interpreting when a landfill must expand the GCCS (see additional discussion at 81 FR 59332, August 29, 2016) or when landfills must submit requests for alternative timelines to correct exceedances. Commenters also expressed concern that many requests for alternative timelines are not approved in a timely manner. Since the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) references the regulatory language for corrective action in the MSW Landfills NSPS (40 CFR part 60, subpart WWW), these same concerns with implementation of corrective action affect landfills subject to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA).

For those reasons, we are proposing to eliminate the requirements for corrective action for nitrogen and oxygen as we have eliminated the operating standard for nitrogen and oxygen, as previously discussed. We are also proposing changes to the corrective action procedures to address positive pressure and elevated temperature to provide flexibility to owners or operators in determining the appropriate remedy, as well as the timeline for implementing the remedy (40 CFR 63.19620(a)). The proposed changes to the timeline and the process for correcting for positive pressure would make the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) requirements the same as the current requirements of the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf). Because the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is also proposing changes to the temperature wellhead operating standard, the requirements for corrective action procedures being proposed are tied to the exceedance of the 145 °F (instead of 131 °F) standard, otherwise the proposed changes are consistent with the current requirements of the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf). Under these proposed provisions, corrective action must be initiated within 5 days of the measured exceedance (40 CFR 63.1960(a)). If the exceedance cannot be corrected within 15 days, then the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but within no later than 60 days of the measured exceedance. If corrective actions cannot be implemented within 60 days, then the owner or operator must prepare a corrective action analysis and an implementation schedule to complete the corrective actions within 120 days. The root cause analysis and the corrective action analysis for restoring flow does not have to be submitted or approved but must be kept on site as a record. If the exceedance cannot be corrected within 120 days, then within 75 days of the exceedance the owner or operator must submit the root cause analysis, corrective action analysis, and the corresponding implementation timeline to the Administrator for approval.

For the corrective action required to address positive pressure or elevated temperature, the owner or operator must keep a record of the root cause analysis conducted, including a description of the recommended corrective actions; the date for corrective actions already completed following the positive pressure reading or wellhead temperature measurement above 145 °F; and for actions not already completed within 60 days of the initial positive pressure reading or wellhead temperature measurement above 145 °F, a schedule for implementation, including proposed commencement and completion dates. For corrective actions taking longer than 60 days to correct the exceedance, the owner or operator would also include in the annual report the root cause analysis, recommended corrective actions, date corrective actions were completed, and schedule for implementing corrective actions. The owner or operator must also notify the Administrator within 75 days. For corrective actions that take longer than 120 days to correct the exceedance, the owner or operator would include, in a separate notification submitted to the Administrator for approval as soon as practicable, but no later than 75 days after the initial positive pressure reading or wellhead temperature measurement above 145 °F, the root cause analysis, recommended corrective actions, date corrective actions taken to date were completed, and proposed schedule for implementing corrective actions (40 CFR 63.1960(a)).

For any wells that have any temperature reading of 170 °F or above at either the wellhead or on any of the downwell measurements, and a CO reading of 1,500 ppmv or above, a shortened period of corrective action, not to exceed 15 days, is being proposed (40 CFR 63.1960(a)). High temperatures in combination with high levels of CO are considered a positive indication of an active underground landfill fire. As such, timely corrective action of such operating conditions is required to minimize fire risk.

We request comment on the revisions to the corrective action process.

5. Criteria for Removing GCCS

Consistent with the MSW Landfills NSPS and EG (81 FR 59357), the EPA is proposing to add flexibility to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) for determining when it is appropriate to cap, remove, or decommission a portion of the GCCS (40 CFR 63.1957(b)). The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) requires three criteria to be met to remove controls: (1) The landfill is closed, (2) the calculated NMOC emission rate at the landfill is less than 50 Mg/yr on three successive test dates, and (3) the GCCS has operated for at least 15 years. We are proposing to edit the third criteria to allow the landfill owner or operator to choose between the 15 years of GCCS operation, or demonstrate that the GCCS will be unable to operate for 15 years due to declining gas flows. The additional flexibility recognizes that site-specific conditions such as age of the waste, an arid climate, or low organic content. The provision allows the owner or operator to provide data that could be used to demonstrate a GCCS is unable to operate for 15 years such as supplemental fuel use or LFG measurements showing methane content lower than what is viable for combustion in the destruction device.

We request comment on the criteria for removing the GCCS.

6. Definition of Cover Penetration

The MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) requires owners

or operators to conduct surface monitoring of methane emissions on a quarterly basis. The intent of surface monitoring provisions is to maintain a tight cover that minimizes landfill gas emissions through the landfill surface. Methane concentration readings must be taken at specified intervals (distances) and where visual observations, such as distressed vegetation and cracks or seeps in the cover, indicate elevated concentrations of landfill gas. Since the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) was finalized, there have been concerns with inconsistent interpretation and implementation of surface monitoring requirements. The EPA proposed amendments to the MSW Landfills NSPS (40 CFR part 60, subpart WWW), which is referenced by the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), in September 8, 2006 (71 FR 53277). Those amendments were never finalized. In that 2006 notice, the EPA stated that while the regulatory language gives distressed vegetation and cracks as an example of a visual indication that gas may be escaping, this example does not limit the places that should be monitored by landfill staff or by enforcement agency inspectors. In the 2016 amendments to the NSPS (40 CFR part 60, subpart XXX) and EG, the EPA reiterated this interpretation (79 FR 41812, July 17, 2014), and to provide clarity, included the phrase ''. . . and all cover penetrations'' in the regulatory text. The MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) provided examples of cover penetrations in the preambles to those final rules (81 FR 59343, 81 FR 59288, August 29, 2016) but the rules did not define cover penetrations.

To clarify the implementation concerns, we are proposing to add the phrase, ''. . . at all cover penetrations'' to the regulatory text of the MSW Landfills NESHAP (40 CFR 63.1958(d)), consistent with this phrase in the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf), and we are also proposing the following definition to be added to the rule: Cover penetration means *a wellhead, a part of a landfill gas collection or operations system, and/or any other object that completely passes through the landfill cover. The landfill cover includes that portion which covers the waste, as well as the portion which borders the waste extended to the point where it is sealed with the landfill liner or the surrounding land mass. Examples of what is not a penetration for purposes of this subpart include but are not limited to: Survey stakes, fencing including litter fences, flags, signs, utility posts, and trees so long as these items do not pass through the landfill cover.*

We request comment on the proposed definition and specific examples of what has and has not historically been interpreted to be a cover penetration by both regulatory agencies and affected sources.

7. Electronic Reporting

The EPA proposes to require owners or operators of new or modified landfills to submit electronic copies of certain required performance test reports, NMOC emission rate reports, and semi-annual reports and bioreactor 40-percent moisture reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI) (40 CFR 63.1981(l)). Owners or operators are allowed to maintain electronic copies of the records in lieu of hardcopies to satisfy Federal recordkeeping requirements. The requirement to submit performance test data electronically to the EPA applies to those performance tests conducted using test methods that are supported by the Electronic Reporting Tool (ERT). The proposed rule requires that performance test results collected using test methods that are supported by the EPA's ERT as listed on the ERT website: (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. When the EPA adds new methods to the ERT, a notice will be sent out through the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv (*https://www.epa.gov/airemissions-inventories/emissionsinventory-listservs*) and a notice of availability will be added to the ERT website. You are encouraged to check the ERT website regularly for up-to-date information on methods supported by the ERT.

The EPA is requiring owners and operators of MSW landfill facilities to submit electronic copies of certain required performance test reports, periodic reports, annual reports through the EPA's CDX using the CEDRI.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In 40 CFR 63.1981(n), the EPA addresses the situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. In 40 CFR 63.1981(o), the EPA addresses the situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

8. Changes to the SSM Provisions

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's

requirement that some CAA section 112 standards apply continuously.

We are proposing to eliminate the SSM exemption, which is contained at 40 CFR 63.1960 of subpart AAAA. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA, as explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement to develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has proposed alternate standards for those periods.

a. Periods of SSM

Consistent with *Sierra Club* v. *EPA* (551 F.3d 1019 (D.C. Cir. 2008)), the EPA is proposing that standards in CFR part 63, subpart AAAA, apply at all times. The 40 CFR part 63 General Provisions, which define SSM, were written for typical industrial or manufacturing sources and associated processes. Many of these sources and processes may, at times, be shut down entirely for clean-out, maintenance, or repairs, and then restarted. Applying the standards at all times, including periods of startup and shutdown, is intended to minimize excess emissions when the source or process ceases operation or commences operation, or malfunctions. Landfill emissions, however, are produced by a continuous biological process that cannot be stopped or restarted. For landfills, the primary SSM concern is with operation of the landfill GCCS and associated monitoring equipment, not with the startup, shutdown, or malfunction of the entire source. Thus, SSM provisions in the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) focus on the gas collection system, gas control system, and gas treatment system, which is part of the emission control system.

b. Periods of Malfunction

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, a malfunction is an infrequent and not reasonably preventable failures of emissions control, process or monitoring equipment (40 CFR 63.2). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (D.C. Cir. 2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources '' 'says nothing about how the performance of the best units is to be calculated.' '' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013) (quoting *Sierra Club* v. *EPA,* 167 F.3d at 661). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corporation,* accounting for malfunctions in setting numerical or work practice emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. The Court stated, ''As for work-practice standards, the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.'' 830 F.3d at 608. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (internal citation omitted) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' ''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (internal citation omitted) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for

malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunctions that result in releases from pressure relief devices or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers (80 FR 75178, 75211–75214, December 1, 2015). The EPA can consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation. See 40 CFR 63.2 (definition of malfunction).

c. Proposed Work Practice for SSM Events

Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], by reference to 40 CFR part 60, subpart WWW, the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) exempts periods of SSM that do not exceed 5 days for the collection system or 1 hour for the treatment or control device. See 40 CFR 60.755(e). However, this exclusion is inconsistent with the *Sierra Club* 2008 decision, which ruled that emission standards apply at all times. Accordingly, we are proposing that the provisions of 40 CFR part 63, subpart AAAA, apply at all times after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. We also propose an additional work practice requirement that would apply whenever the collection and control system is not operating. The work practice requirement is proposed at 40 CFR 63.1958(e). To prevent free venting of landfill gas to the atmosphere when the collection or control system is not operating for any reason, the gas mover system must be shut down and all valves in the collection and control system contributing to venting of gas to the atmosphere must be closed within 1 hour. The additional work practice standard also requires all repairs to the GCCS proceed expeditiously so that the amount of downtime is minimized. This standard reflects the fact that many or most repairs to restore the GCCS to operation can be completed in 1 or 2 days, but some may require longer periods of time to complete. Regardless of the quantity of work necessary to repair the system, the source should proceed promptly to address GCCS downtime.

The standard requires that the GCCS be in operation at all times. The additional work practice standard to shut down the gas mover equipment and all valves contributing to venting of gas to the atmosphere and to make all repairs to the GCCS exeditiously is an additional requirement that applies while the control system is not operating. Compliance with the work practice requirement does not constitute compliance with the applicable MSW Landfills NESHAP standards in 40 CFR part 63, subpart AAAA. The operating standards of 40 CFR 63.1958, which require operation of the gas collection system vented to a control system that complies with the applicable requirements of 40 CFR 63.1957, apply at all times after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Compliance with the work practice requirement is necessary, but not in all cases sufficient, to demonstrate compliance with the general duty in 40 CFR 63.1955(c) to minimize emissions at all times. The EPA will determine whether a landfill owner/opertor has complied with the general duty to minimize emissions at all times based on compliance with the work practice requirements, actions taken to minimize the duration of the period of SSM when the GCCS is not operating under normal conditions, and other relevant case-specific factors.

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

d. Revisions to the 40 CFR Part 63 General Provisions

We are proposing revisions to Table 1 to Subpart AAAA of Part 63 to specify the sections of the General Provisions that apply and those that do not apply to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). We also are proposing that certain elements of the 40 CFR part 63 General Provisions (subpart A) that are inconsistent with the *Sierra Club* 2008 decision pertaining to SSM do not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. We propose that the provisions that the emission standards apply at all times, including the SSM work practice requirements and the elimination of the SSM plan and associated recordkeeping and reporting, would become effective 18 months AFTER DATE OF PUBLICATION of the rule revision. The lag time is necessary to allow sufficient time for landfill owners and operators to plan and implement procedures for complying with the revised SSM provisions. For periods of SSM, the SSM plan and associated requriements will continue to apply until such time as these proposed rule changes take effect. The paragraphs below in this section explain the proposed changes to Table 1 of 40 CFR part 63, subpart AAAA.

40 CFR 63.1956(e) General duty. We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.6(e)(1)(i) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.1955(c) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty

entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.1955(c) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.6(e)(1)(ii) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.1956(e).

SSM plan. We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that paragraphs 40 CFR 63.6(e)(3)(i) through (ix) do not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. The EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

Compliance with Standards. We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.6(f)(1) and (h)(1) do not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM, and 40 CFR 63.6(h)(1) exempts sources from opacity standards. As discussed above, the Court in *Sierra Club* v. *EPA,* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing to revise standards in this rule to apply at all times.

40 CFR 63.1959 Performance testing. We are proposing to add a performance testing requirement at 40 CFR 63.1959(f). The performance testing requirements of 40 CFR 63.7 of the General Provisions do not apply for this subpart after [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. The performance testing requirements that we are proposing to add differ from the General Provisions performance testing provisions in several respects. The proposed regulatory text does not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. We are proposing that, upon request, the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test.''

40 CFR 63.1983 Recordkeeping. We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) entry for 40 CFR 63.10(b)(2) that 40 CFR 63.10(b)(2)(i) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. We are instead proposing to add recordkeeping requirements for startup and shutdown to 40 CFR 63.1983. Because 40 CFR 63.1958(e) specifies a different standard for periods when the collection and control system is not operating under normal conditions (which would include periods of startup, shutdown, and maintenance or repair), it will be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard. Thus, the EPA is proposing to add language to 40 CFR 63.1983(c)(6) requiring that a landfill owner or operator must report the date, time, and duration of each startup and shutdown period.

We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.10(b)(2)(ii) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.1983(c)(6). The regulatory text we are proposing differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.1983(c)(7), a requirement that sources keep records that include a list of the affected equipment and actions taken to minimize emissions. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

After [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], we will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.10(b)(2)(iv) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.1983.

We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.10(b)(2)(v) does not apply after [DATE 18 MONTHS AFTER DATE OF

PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) entry for 40 CFR 63.10(c) to specify that 40 CFR 63.10(c)(15) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

40 CFR 63.1981 Reporting. We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) that 40 CFR 63.10(d)(5)(i) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Section 63.10(d)(5)(i) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.1981. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the annual report already required under this rule. We are proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), and a list of the affected equipment. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. The proposed amendments, therefore, eliminate this reporting requirement, which is contained in 40 CFR 63.6(e)(3). This reporting is no longer necessary because malfunction events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to specify in the General Provisions table (Table 1 to Subpart AAAA of Part 63) entry for 40 CFR 63.10(d)(5) to specify that 40 CFR 63.10(d)(5)(ii) does not apply after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. 40 CFR 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, and malfunctions when a source fails to meet an applicable standard but does not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We request comments on the proposed approach for updating the SSM provisions in the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) to be consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019. In addition, we specifically request comment on the following topics:

- Periods of time when GCCS downtime is unavoidable, mandatory, necessary for safety, and/or necessary to minimize emissions.
- Practices or techniques that can be delpoyed to avoid or reduce GCCS downtime to a minimum during periods of repairs. These may include predictive and preventative maintentance, redundancy, and correction measures.
- The work practice requiring sources to effectuate repairs to the GCCS in a manner that the shutdown timeframe is kept to a minimum.

9. Other Clarifications and Changes To Conform With the MSW Landfills NSPS

Changes to the MSW Landfills NSPS (40 CFR part 60, subpart XXX) in 2016 were designed to refine requirements and to simplify and streamline implementation of the rule. With incorporation of compliance provisions from the MSW Landfills NSPS (40 CFR part 60, subpart XXX) into the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), we are likewise including the following provisions:

Portable gas analyzers. We are allowing the use of portable gas composition analyzers to monitor the oxygen level at a wellhead (40 CFR 63.1961(a)). This change allows owners or operators to employ proven, reliable devices that are commonly used in practice to measure wellhead parameters.

More precise location data. We are proposing to require owners and operators to report more precise locational data for each surface emissions exceedance (40 CFR 63.1961(f)). This change will provide a more robust and long-term record of GCCS performance. In addition, more precise locational data will help ensure that the owner or operator can easily locate and correct breaches in the landfill cover, while helping the EPA and states enforce the rule.

Update and approval of design plan. We are proposing to refine the criteria for updating a design plan, consistent with the MSW Landfills NSPS (40 CFR part 60, subpart XXX). Landfill owners or operators must submit an updated design plan for approval based on the following criteria: (1) Within 90 days of expanding operations to an area not covered by the previously approved design plan; and (2) before installing or expanding the gas collection system in a way that is not consistent to the previous design plan (40 CFR 63.1981(e)). These changes help ensure that the as-built GCCS is consistent with the design plan.

Uses of treated landfill gas. Consistent with the MSW Landfills NSPS (40 CFR part 60, subpart XXX), we are proposing to clarify that the use of treated landfill gas is not limited to use as a fuel for a stationary combustion device, but also includes other uses such as the production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process (40 CFR 63.1959(b)). This revision allows other beneficial uses of landfill gas that are being implemented.

Control system and collection and control system. We propose to standardize the terms ''control system'' and ''collection and control system'' throughout the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) in order to use consistent terminology throughout the regulatory text.

Exemption. We propose to exempt owners/operators of boilers and process heaters with design capacities of 44 megawatts or greater from the requirement to conduct an initial performance test because large boilers

and process heaters consistently achieve the required level of control (67 FR 36478, May 23, 2002).

Temperature monitoring. We propose to remove the term ''combustion'' from the requirement to monitor temperature of enclosed combustors. For some enclosed combustors, it is not possible to monitor temperature inside the combustion chamber to determine combustion temperature. The proposed amendment clarifies that the ''combustion'' temperature does not have to be monitored. Temperature could be monitored at another location, as long as the monitored temperature relates to proper operation of the enclosed combustor (71 FR 53276, September 8, 2006).

Definitions. We refined multiple definitions in the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and are pulling those definitions forward into the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) to ensure consistency in terms across these Federal landfills regulations (40 CFR 63.1990). Revised definitions include Treated Landfill Gas, Treatment System and Treatment System Monitoring, Modification, Household waste, and Segregated Yard Waste.

We request comments on these changes to the regulatory text of MSW Landfills NSPS (40 CFR part 60, subpart XXX).

E. What compliance dates are we proposing?

The EPA is proposing that facilities may have up to 18 months after the effective date of the final rule to begin complying with the final rule. Before this date, facilities have the option to comply with the rule as it was finalized in 2003. This allowance is being made considering that the rule text has been significantly re-organized, introduces new electronic reporting requirements, and makes other adjustments to certain operating standards and associated recordkeeping, reporting, and monitoring requirements. Although these requirements are very simlar to the requirements finalized in the MSW Landfills NSPS (40 CFR part 60, subpart XXX), the EPA recognizes that not all MSW landfills have become subject to the MSW Landfills NSPS (40 CFR part 60, subpart XXX). The EPA requests comment on this timeframe.

The EPA recognizes that many owners and operators have already submitted reports under different subparts. For example, most MSW landfills have already submitted an initial NMOC emission rate report. If an MSW landfill owner or operator has previously submitted an initial NMOC emission rate report under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or 40 CFR part 62, subpart GGG (the MSW Landfills Federal Plan) or an EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc, or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the initial NMOC emission rate report in the MSW Landfills NESHAP and you do not need to re-submit the report. However, in the first semi-annual report required in this rule, you must include a statement certifying prior submission of the report and the date of that submittal.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

We anticipate that approximately 738 active or closed MSW landfills in the United States and territories will be affected by these proposed amendments in the year 2023. This number is based on all landfills that accepted waste after November 8, 1987, that have a design capacity of at least 2.5 million Mg and 2.5 million m^3. In addition, this number relects the subset of landfills meeting these two criteria with modeled emission estimates of 50 Mg/yr NMOC or greater that have installed controls on or before 2023. While the EPA recognizes some uncertainty regarding which landfills have actually exceeded the emission threshold, given the allowance of sites to estimate emissions using Tiers 1, 2, or 3, and the site-specific nature of NMOC concentrations, the number of landfills that are co-located major sources and, therefore, also subject to control requirements under this rule is also unknown. Therefore, 738 is the best estimate of the affected sources.

B. What are the air quality impacts?

The proposed amendments are expected to have a minimal impact on air quality. While these amendments do not require stricter control requirements or work practice standards on landfills to comply with the proposed amendments, some landfills may find that the adjustments made to the oxygen and nitrogen and temperature wellhead operating standards provide enough operational flexibility to install, expand, and operate additional voluntary GCCS, which could reduce emissions. The other proposed revisions that affect testing, monitoring, recordkeeping, and reporting will ensure that the GCCS equipment continues to perform as expected and provide reliable data from each facility to be reported for compliance.

C. What are the cost impacts?

The EPA has estimated $0 compliance costs for all new and existing sources affected by this proposal, beyond what is already required under the existing MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) and what is already included in this NESHAP's Information Collection Request (ICR). Furthermore, landfills that commenced construction, modification, or reconstruction after July 17, 2014, must comply with the similar, yet, more stringent requirements of the MSW Landfills NSPS (40 CFR part 60, subpart XXX). The proposed changes to the operational standards for wellhead temperature and oxygen and nitrogen are likely to reduce the number of requests for HOVs, which in turn could decrease compliance costs. Many of the proposed changes in these amendments allow the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) to better align with the requirements of the MSW Landfills NSPS (40 CFR part 60, subpart XXX), and simplify compliance, which in turn could reduce costs. Potential cost savings of these changes are unquantified. Addtionally, the proposed removal of the requirement to develop an SSM plan does not result in a cost savings for existing facilities versus the 2003 NESHAP. However, there would be a cost savings for new or modified facilities. The latest ICR renewal for the 2003 NESHAP (ICR Number 1938.07, OMB Control Number 2060–0505) quantifies costs for 13 new or modified landfills per year to preapre an SSM plan. The labor cost for these 13 landfills is approximately $52,850 per year. In addition, approximately 5 percent of controlling landfills, or 39 landfills per year, is expected to prepare a notification for a deviation from the SSM plan at a labor cost of $7,500 per year. Thus, landfill respondents under the 2003 NESHAP incur costs of approximately $60,350 per year for SSM plans and deviations. In addition, the ICR estimates that the EPA or delegated state agencies must review SSM plans at a labor cost of $5,700 and deviations of SSM reports at a labor cost of $3,100. Thus, the agency burden associated with SSM is approximately $8,800 annually. This proposal does not require an SSM plan, thus, there are cost savings related to the provisions applying at all times: Approximately $60,350 for landfill respondents and approximately $8,800 for agency respondents. We request comment on these potential cost savings due to no longer needing to prepare an SSM plan. See the docketed memorandum, *Cost Impacts of National Emission Standards*

for Hazardous Air Pollutants: Municipal Solid Waste (MSW) Landfills Risk and Technology Review, for additional discussion about the cost impacts.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. Because there are no costs associated with the current proposal, no economic impacts are anticipated.

E. What are the benefits?

As stated above in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with adjustments made to the oxygen and nitrogen wellhead operating standards, although this proposed change has the potential to reduce emissions. Any reduction in HAP emissions would be expected to provide health benefits in the form of improved air quality and less exposure to potentially harmful chemicals.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

We are also specifically interested in comments related to the changes we are proposing that are descibed in section IV.D of this preamble. The respective topics in section IV.D close with details on the specific information the EPA seeks in comments. From section IV.D of this preamble, we are requesting comments on overall rule reorganization; wellhead temperature operating standards, and associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature; and revisions to the GCCS removal criteria to provide additional flexibility for landfill owners and operators. In addition, the EPA is soliciting comments on potential methane emissions measurement methodologies and concerns identified by stakeholders regarding areas with declinging gas flow, as described in this section of the preamble. Comments on areas with declining gas flow will help the EPA determine the extent of the potential issue and, if necessary, identify potential remedies. The EPA will evaluate all comments and any new information and, if warranted, will initiate a subsequent rulemaking to address any issues raised from this solicitiation of comment.

A. Methane Emissions Measurement Methodologies

Current modeling approaches for estimating landfill emissions, which rely on the decomposition rate of different waste streams buried in a landfill, are prone to uncertainties due to inaccuracies in input data and often unverifiable assumptions. New methane emissions measurement methodologies are emerging that are anticipated to provide landfill methane emission rates (mass per unit time) over time, thereby reducing significantly the uncertainty associated with current modeling and emission measurements approaches. Two promising examples of new methane measurement methodologies being used by research groups to quantify landfill methane emissions are mobile tracer correlation (TC) [32] [33] [34] [35] [36] [37] [38] [39] and discrete area source eddy covariance (DASEC).[40]

1. Mobile Tracer Correlation

This methodology provides a ''snap-shot in time'' assessment of whole facility methane emissions using on-site release of atmospheric tracer gases. It provides a total mass emission rate of methane (or other gas) per unit of time. An instrumented vehicle driving 1 km to 4 km downwind of the landfill simultaneously measures the emitted landfill methane plume along with the superimposed tracer gas release. The landfill methane emission rate is determined through a simple ratio to the known tracer gas release rate. The technique has been demonstrated using a variety of tracer gases and instruments by a number of groups to investigate emissions from landfills and other sources. The mobile TC approach is under development as a Best Available Technique measurement reference document under the European Intergovernmental Panel on Climate

[32] *Methodologies for measuring fugitive methane emissions from landfills—A review;* Jacob, M; Kjeldsen, P.; Scheutz, C.,Waste Management (2019), *https://doi.org/10.1016/j.wasman.2018.12.047.*

[33] *Guidelines for landfill gas emission monitoring using the tracer gas dispersion method;* Scheutz, C.; Kjeldsen, P., Waste Management 85 (2019): 351–360.

[34] *Validation and error assessment of the mobile tracer gas dispersion method for measurement of fugitive emissions from other area sources;* Fredenslund, A.M.; Rees-White, T.C.; Beaven, R.P.; Delre, A.; Finlayson, A.; Helmore, J.; Allen G.; Scheutz, C., Waste Management, 2019, 83, pp. 68–78.R.; Swan, N.D.; Chanton, J.P. Atmos. Environ. 2015, 102 (0), 323–330. *https://doi.org/10.1016/j.wasman.2018.10.036.*

[35] *Development of a mobile tracer correlation method for assessment of air emissions from landfills and other area sources;* Foster-Wittig, T.A.; Thoma, E.D.; Green, R.B.; Hater, G.R.; Swan, N.D.; Chanton, J.P. Atmos. Environ. 2015, 102 (0), 323–330.

[36] *Quantification of methane emissions from 15 Danish landfills using the mobile tracer dispersion method;* Mønster, J.; Samuelsson, J.; Kjeldsen, P.; Scheutz, C. Waste Manage. 2015, 35 (0), 177–186.

[37] *Methane Emissions Measured at Two California Landfills by OTM–10 and an Acetylene Tracer Method;* Green, R.B., Hater, G.R., Thoma, E.D., DeWees, J., Rella, C.W., Crosson, E.R., Goldsmith, C.D., Swan, N., Proceedings of the Global Waste Management Symposium, San Antonio, TX, October 3–6, 2010.

[38] *Development of Mobile Measurement Method Series OTM 33;* Thoma, E.D.; Brantley, H.L.; Squier, B.; DeWees, J.; Segall, R.; Merrill, R.; Proceedings of the Air and Waste Management Conference and Exhibition, Raleigh, NC, June 22–25, 2015.

[39] *Impact of Changes in Barometric Pressure on Landfill Methane Emission;* Xu, L., Lin, X., Amen, J., Welding, K. and McDermitt, D. Global Biogeochemical Cycles 2014, 28(7), pp. 679–695.

[40] *Using Eddy Covariance to Quantify Methane Emissions from a Dynamic Heterogeneous Area;* Li, J.; Green, R.B.; Magnusson, D.A.; Amen, J.; Thoma, E.D.; Foster-Wittig, T.A.; McDermitt, D.K.; Xu, L.; Burba, G., 2015, June. In Proceedings of the Air and Waste Management Conference and Exhibition (pp. 22–25).

Chang (IPCC), Industrial Emissions Directive.

2. Eddy Covariance (EC)

This micrometeorological method estimates the source emission rate from the vertical wind speed and gas concentration above the emitting surface. This technique measures the emissions flux in mass of methane (or other gas) per unit area. The technique is well-established for measurement of emission fluxes from spatially-extended homogenous sources, such as very large, flat fields. The DASEC is an application of EC to finite, heterogeneous area sources. This application of EC has been recently demonstrated on landfills, although method development questions on the effects of topography and variable observational footprint remain. The DASEC provides the potential for long term (near continuous) measurements of discrete sections of a landfill using solar-powered onsite instrumentation. Development of this type of long term measurement capability is critical to better understand and track changes in landfill emissions over time that may be caused by both site management and atmospheric factors.

In sum, as noted above, these techniques are still being investigated and additional work will be needed before the EPA can deem them ready for use in this application. Once additional research is completed, we believe that DASEC used in combination with mobile TC will provide a characterization of methane landfill emissions with significantly reduced uncertainty over current models or measurement techniques. However, the EPA requests comments on these and other potential alternative approaches to emission monitoring at MSW landfills.

B. Areas With Declining Gas Flow

In the proposed revisions to the MSW Landfills NSPS (79 FR 41817, July 17, 2014), the EPA recognized that there are situations in which the quantity of gas production has greatly declined in separate closed areas of some landfills, and the methane content has fallen such that the area is producing insufficient gas to properly operate a GCCS and control device. Thus, the EPA finalized a provision in the MSW Landfills NSPS (81 FR 59343, August 29, 2016) that allows the use of actual flow data when estimating NMOC emissions for the purposes of excluding low- or non-productive areas of the landfill from control. To use this provision, the non-productive area must be physically separated and closed. The EPA requests comments on how these provisions could potentially be improved in the future to better address areas with declining gas flows.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2002–0047 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

VIII. Incorporation by Reference (IBR)

We are proposing to incorporate by reference ASTM D6522–11—Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (proposed to be IBR approved for 40 CFR 63.1961(a)(2)(ii) and 40 CFR 63.1961(a)(2)(iii)(B)), which is an alternative for determining oxygen for wellhead standards. For this test method, a gas sample is continuously extracted from a duct and conveyed to a portable analyzer for determination of nitrogen oxides, carbon monoxide, and oxygen gas concentrations using electrochemical cells. Analyzer design specifications, performance specifications, and test procedures are provided to ensure reliable data. This method is an alternative to EPA methods and is consistent with the methods already allowed under the MSW Landfills NSPS (40 CFR part 60, subpart XXX) and MSW Landfills EG (40 CFR part 60, subpart Cf). The ASTM standards are available from American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org.*

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0505. The only burden created by the proposed rule is limited to affected sources becoming familiar with the changes in the proposed rule. The burden for respondents to review rule requirements each year is already accounted for in the previously approved information collection activities contained in the existing regulations (40 CFR part 63, subpart

AAAA), which were assigned OMB control number 2060–0505. Additionally, changes to 40 CFR part 60, subpart WWW, subpart XXX and subpart Cf only add clarifying language for affected sources and provide alternatives for any deviations from the respective standards. These changes would not increase any burden for affected sources.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action is projected to affect 738 MSW landfills, and approximately 60 of these facilities are owned by a small entity. The small entities subject to the requirements of this proposed rule may include private small business and small governmental jurisdictions that own or operate landfills, but the cost for complying with the proposed amendments is expected to be $0. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While state, local, or tribal governments own and operate landfills subject to these proposed amendments, the impacts resulting from this regulatory action are far below the applicable threshold.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The database used to estimate impacts of these proposed amendments identified one tribe, the Salt River Pima-Maricopa Indian Community, that owns three landfills potentially subject to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA). Two of these landfills are already controlling emissions—the Salt River Landfill and the Tri Cities Landfill. Although the permits for these landfills indicate they are subject to this subpart, these proposed changes are not estimated to increase the costs. The other landfill, North Center Street Landfill, is not estimated to install controls under the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA).

The EPA will consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation will be provided in the docket for this action once completed.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and C and sections IV.B and C of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. For the proposed MSW Landfills NESHAP, the EPA has decided to use EPA Methods 2, 2E, 3, 3A, 3C, 10, 18, 21, 25, 25A, and 25C of 40 CFR part 60, appendix A. The EPA searched for voluntary consensus standards (VCS) using the Enhanced National Standards Service Network (NSSN) Database managed by the American National Standards Institute (ANSI). The EPA also contacted VCS organizations and accessed and searched their databases. Searches were conducted for EPA Methods 2, 2E, 3, 3A, 3C, 10, 18, 21, 25, 25A, and 25C of 40 CFR part 60, appendix A. No applicable VCS were identified for EPA Methods 2E, 21, and 25C. However, the EPA identified three VCS as acceptable alternatives to EPA test methods for the purposes of this rule.

The VCS ASTM D6522–11, ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers'' is an acceptable alternative to EPA Method 3A when used at the wellhead before combustion.

The EPA's search identified 15 additional VCS that are potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, the EPA determined that 15 candidate VCS (ASTM D3154–00 (2014), ASTM D3464–96 (2014), ASTM D3796–09 (2016), ISO 10780: 1994 (2016), ASME B133.9–1994 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ISO 10396:(2007), ISO 12039:2001 (2012), ASTM D5835–95 (2013), CAN/CSA Z223.2–M86 (Rl999), CAN/CSA Z223.21–M1978, ASTM D3162–12, ASTM D6060–17, ISO 14965:2000 (2012), EN 12619 (2013)) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations.

The EPA's review, including review of comments for these 15 methods, is documented in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review,* in the docket for this rulemaking (EPA–HQ–OAR–2002–0047).

In this rule, the EPA is proposing regulatory text for 40 CFR part 63, subpart AAAA that includes IBR in accordance with requirements of 1 CFR 51.5. Specifically, the EPA is incorporating by reference ASTM D6522–11. The ASTM standards are available from American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org.*

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of the MSW landfills has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and emissions reductions from the proposed revisions will benefit these groups the most.

The documentation for this decision is contained in section IV.B and C of this preamble, and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Municipal Solid Waste Landfill Source Category Operations,* which is available in the docket for this action.

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 27, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Subpart Cf is amended by revising the title of the subpart to read as follows:

Subpart Cf—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

■ 3. Section 60.34f is amended by revising the introductory paragraph to read as follows:

§ 60.34f Operational standards for collection and control systems.

For approval, a state plan must include provisions for the operational standards in this section (as well as the provisions in § 60.36f and § 60.37f), or the operational standards in § 63.1958 of this chapter (as well as the provisions in § 63.1960 and § 63.1961) for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1958 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c) must:

* * * * *

■ 4. Section 60.36f is amended by revising the introductory paragraph and paragraph (a)(3)(ii) to read as follows:

§ 60.36f Compliance provisions.

For approval, a state plan must include the compliance provisions in this section (as well as the provisions in § 60.34f and § 60.37f), or the compliance provisions in § 63.1960 of this chapter (as well as the provisions in § 63.1958 and § 63.1961) for an MSW landfill with a gas collection and control system used to comply with the provisions of §§ 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1960 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) * * *

(3) * * *

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.38f(h)(7) as part of the next annual report. The owner or operator must keep records according to § 60.39f(e)(4).

* * * * *

■ 5. Section 60.37f is amended by revising the introductory paragraph to read as follows:

§ 60.37f Monitoring of operations.

For approval, a state plan must include the monitoring provisions in this section, (as well as the provisions in § 60.34f and § 60.36f) except as provided in § 60.38f(d)(2), or the monitoring provisions in § 63.1961 of this chapter (as well as the provisions in § 63.1958 and § 63.1960) for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

* * * * *

■ 6. Section 60.38f is amended by revising introductory paragraph (h) and paragraph (h)(7) and adding paragraph (n) to read as follows:

§ 60.38f Reporting guidelines.

* * * * *

(h) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.33f(e)(2) using an active collection system designed in accordance with § 60.33f(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system. The initial annual report must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX.

The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.39f(c)(1). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 60.34f, 60.36f, and 60.37f, the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) in lieu of paragraph (1) of this section.

* * * * *

(7) For any corrective action analysis for which corrective actions are required in § 60.36f(a)(3) or § 60.36f(a)(5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

* * * * *

(n) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at in §§ 60.34f, 60.36f, and 60.37f, must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 7. Section 60.39f is amended by revising introductory text of paragraph (e) and adding paragraph (e)(6) to read as follows:

§ 60.39f Recordkeeping guidelines.

* * * * *

(e) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at in §§ 60.34f, 60.36f, and 60.37f, must keep the records in paragraph (e)(6) of this section and must keep records according to § 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

* * * * *

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at in §§ 60.34f, 60.36f, and 60.37f, must keep records of the date upon which you the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter.

* * * * *

Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills

■ 8. Subpart WWW is amended by revising the heading of the subpart to read as follows:

Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, But Before July 18, 2014

■ 9. Section 60.750 is amended by revising paragraph (a) to read as follows:

§ 60.750 Applicability, designation of affected facility, and delegation of authority.

(a) The provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction or modification on or after May 30, 1991, but before July 18, 2014.

* * * * *

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

■ 10. Section 60.762 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 60.762 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(iv) *Operation.* Operate the collection and control device installed to comply with this subpart in accordance with the provisions of §§ 60.763, 60.765, and 60.766; or the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter. Once the owner or operator begins to comply with the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of §§ 60.763, 60.765, and 60.766.

* * * * *

■ 11. Section 60.765 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 60.765 Compliance provisions.

(a) * * *

(5) * * *

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.767(g)(7) as part of the next annual report. The owner or operator must keep records according to § 60.768(e)(4).

* * * * *

■ 12. Section 60.767 is amended by revising introductory paragraph (g) and paragraph (g)(7) and adding paragraph (m) to read as follows:

§ 60.767 Reporting requirements.

* * * * *

(g) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.762(b)(2) using an active collection system designed in accordance with § 60.762(b)(2)(ii) must submit to the Administrator, following the procedure specified in paragraph (i)(2) of this section, annual reports of the recorded information in paragraphs (g)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system, and must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.768(c). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of paragraph (1) of this section.

* * * * *

(7) For any corrective action analysis for which corrective actions are required in § 60.765(a)(3) or § 60.765(a)(5) and that take more than 60 days to correct the exceedance, the root cause analysis

conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

* * * * *

(m) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961, as allowed at § 60.762(b)(2)(iv), must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 13. Section 60.768 is amended by revising introductory paragraph (e) and adding paragraph (e)(6) to read as follows:

§ 60.768 Recordkeeping requirements.

* * * * *

(e) Except as provided in § 60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961, as allowed at § 60.762(b)(2)(iv)), must keep the records in paragraph (e)(6) of this section and must keep records according to §§ 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

* * * * *

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv)), must keep records of the date upon which youthe owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 14. The authority citation for part 63 continues to read as follows:

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

■ 15. Section 63.14 is amended by redesignating paragraphs (h)(94) through (h)(111) as paragraphs (h)(95) through (h)(112) and adding new paragraph (h)(94) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(94) ASTM D6522–11 Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (Approved December 1, 2011), IBR approved for § 63.1961(a).

* * * * *

■ 16. Subpart AAAA is revised to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

Sec.

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?
§ 63.1935 Am I subject to this subpart?
§ 63.1940 What is the affected source of this subpart?
§ 63.1945 When do I have to comply with this subpart?
§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?
§ 63.1950 When am I no longer required to comply with this subpart?
§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

Standards

§ 63.1955 What requirements must I meet?
§ 63.1957 Requirements for gas collection and control system installation and removal.
§ 63.1958 Operational standards for collection and control systems.
§ 63.1959 NMOC calculation procedures.
§ 63.1960 Compliance provisions.
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§ 63.1962 Specifications for active collection systems.

General and Continuing Compliance Requirements

§ 63.1964 How is compliance determined?
§ 63.1965 What is a deviation?
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Notifications, Records, and Reports

§ 63.1981 What reports must I submit?
§ 63.1982 What records and reports must I submit and keep for bioreactors or liquids addition other than leachate?
§ 63.1983 What records must I keep?

Other Requirements and Information

§ 63.1985 Who enforces this subpart?
§ 63.1990 What definitions apply to this subpart?
Tables for Subpart AAAA
Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills.

(a) Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], all landfills described in § 63.1935 must meet the requirements of 40 CFR part 60, subpart WWW, or an approved state or federal plan that implements 40 CFR part 60, subpart Cc, and requires timely control of bioreactors and additional reporting requirements. Landfills must also meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions as specified in Table 1 to Subpart AAAA of Part 63 and must demonstrate compliance with the operating conditions by parameter monitoring results that are within the specified ranges. Specifically, landfills must meet the following requirements of this subpart that apply before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] as set out in: §§ 63.1955(a) and (b), 63.1965(a) and (c), 63.1975, 63.1981(a) and (b), and 63.1982, and the definitions of ''Controlled landfill'' and ''Deviation'' in § 63.1990.

(b) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], all landfills described in § 63.1935 must meet the requirements of this subpart. A landfill may chose to meet the requirements of this subpart rather than the requirements identified in § 63.1930(a) at any time before [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. The requirements of this subpart apply at all times including during periods of SSM, and the SSM requirements of the general provisions of this part do not apply.

§ 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 63.1959.

(b) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 and that is not permanently closed as of January 16, 2003.

§ 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is an MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003, or at the time you begin operating, whichever is later.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b). If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003, and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must install and operate a collection and control system that meets the criteria in § 63.1959(b)(2) according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in §§ 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006, or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW; the Federal plan; or an EPA approved and effective State plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in §§ 63.1980(e) and (f) to determine when the bioreactor moisture content reaches 40 percent.

§ 63.1950 When am I no longer required to comply with this subpart?

(a) You are no longer required to comply with the requirements of this subpart when your landfill meets the collection and control system removal criteria in § 63.1957(b).

§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraph (a) or (b) of this section.

(a) Your affected source meets the control system removal criteria in § 63.1950 or the bioreactor meets the criteria for a nonproductive area of the landfill in § 63.1962(a)(3)(ii).

(b) The bioreactor portion of the landfill is a closed landfill as defined in § 63.1990, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in § 63.1981(g).

Standards

§ 63.1955 What requirements must I meet?

(a) Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions have already been approved under 40 CFR part 60, subpart WWW or the federal plan, or an EPA approved and effective state or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1981(h), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3-hour monitoring block average. Beginning no later than [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the collection and control system design plan may include for approval collection and control systems that include any alternatives to the operational standards, test methods,

procedures, compliance measures, monitoring, recordkeeping or reporting provisions, as provided in § 63.1981(d)(2).

(b) If you own or operate a bioreactor that is located at an MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must meet the requirements of this subpart, including requirements in paragraphs (b)(1) and (2) of this section.

(1) You must comply with this subpart starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area.

(c) At all times, beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1957 Requirements for gas collection and control system installation and removal.

(a) *Operation.* Operate the collection and control device in accordance with the provisions of §§ 63.1958, 63.1960, and 63.1961.

(b) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(1) The landfill is a closed landfill (as defined in § 63.1990). A closure report must be submitted to the Administrator as provided in § 63.1981(f);

(2) The gas collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flow; and

(3) Following the procedures specified in § 63.1959(c), the calculated NMOC emission rate at the landfill is less than 50 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

§ 63.1958 Operational standards for collection and control systems.

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 63.1957 must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the semi-annual reports as provided in § 63.1981(h);

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the Administrator as specified in § 63.1981(d)(2);

(c) Operate each interior wellhead in the collection system as specified in § 60.753(c), except:

(1) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], operate each interior wellhead in the collection system with a landfill gas temperature less than 62.8 degrees Celsius (145 degrees Fahrenheit).

(2) The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the Administrator for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.,* neither causing fires nor killing methanogens is acceptable).

(d)(1) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(2) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] the owner or operator must:

(A) Conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 63.1960(d).

(B) Conduct surface testing at all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required.

(C) Determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(e) Operate the system as specified in § 60.753(e), except:

(1) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], operate the system in accordance to § 63.1955(c) such that all collected gases are vented to a control system designed and operated in compliance with § 63.1959(b)(2)(iii). In the event the collection or control system is not operating:

(i) The gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating; and

(ii) Efforts to repair the collection or control system must be initiated and completedin a manner such that downtime is kept to a minimum, and

the collection and control system must be returned to operation.

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action must be taken as specified in § 63.1960(a)(3) and (5) or § 63.1960(c). If corrective actions are taken as specified in § 63.1960, the monitored exceedance is not a deviation of the operational requirements in this section.

§ 63.1959 NMOC calculation procedures.

(a) Calculate the NMOC emission rate using the procedures specified in § 60.754(a), except:

(1) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] the landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for k, 170 cubic meters per megagram for L_O, and 4,000 parts per million by volume as hexane for the C_{NMOC}. For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^{n} 2\,k\,L_o M_i \left(e^{-kt_i}\right)(C_{NMOC})\,(3.6x1010^{-9}) \quad \text{(Eq. 1)}$$

Where:

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year.
k = Methane generation rate constant, year^{-1}.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of solid waste in the ith section, megagrams.
t_i = Age of the ith section, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_oR\,(e^{-kc} - e^{-kt})\,C_{NMOC}(3.6 \times 10^{-9}) \quad \text{(Eq. 2)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.
L_o = Methane generation potential, cubic meters per megagram solid waste.
R = Average annual acceptance rate, megagrams per year.
k = Methane generation rate constant, year^{-1}.
t = Age of landfill, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
c = Time since closure, years; for active landfill c = 0 and $e^{-kc} = 1$.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 50 megagrams per year.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 50 megagrams per year, then the landfill owner or operator must submit an NMOC emission rate report according to § 63.1981(c) and must recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section.

(ii) If the calculated NMOC emission rate as calculated in paragraph (a)(1) of this section is equal to or greater than 50 megagrams per year, then the landfill owner must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, according to paragraphs (b)(2)(ii) and (iii) of this section;

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25 or 25C of appendix A–7 to part 60. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples are taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from Method 25 or 25C of

appendix A–7 to part 60 by 6 to convert from C_{NMOC} as carbon to C_{NMOC} as hexane. If the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results according to § 63.1981(i).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (ii) of this section and use the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 50 megagrams per year, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to § 63.1981(c) and must recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section. The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 50 megagrams per year, the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months according to paragraphs (b)(2)(ii) and (iii) of this section; or

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in Method 2E of appendix A–1 to part 60. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using a site-specific methane generation rate constant, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 50 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 50 megagrams per year, the owner or operator must:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(e) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, according to paragraphs (b)(2)(ii) and (iii) of this section.

(B) [Reserved]

(ii) If the NMOC mass emission rate is less than 50 megagrams per year, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in § 63.1981(c). The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (a)(4) of this section if the method has been approved by the Administrator.

(b) Each owner or operator of an affected source having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in paragraph (a) of this section. The NMOC emission rate must be recalculated annually, except as provided in § 63.1981(c)(1)(ii)(A).

(1) If the calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator must:

(i) Submit an annual NMOC emission rate emission report to the Administrator, except as provided for in § 63.1981(c)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in paragraph (a)(1) of this section until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (b) of this section, is equal to or greater than 50 megagrams per year, the owner or operator must either: Comply with paragraph (b)(2) of this section or calculate NMOC emissions using the next higher tier in paragraph (a) of this section.

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided for in § 63.1981(f).

(2) If the calculated NMOC emission rate is equal to or greater than 50 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either:

(i) Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified in § 63.1981(d) or calculate NMOC emissions using the next higher tier in paragraph (a) of this section. The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) Collection system. Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(B) or (C) and (b)(2)(iii) of this section within 30 months after:

(A) The first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 50 megagrams.

(B) An active collection system must:

(*1*) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment;

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade;

(*3*) Collect gas at a sufficient extraction rate; and

(*4*) Be designed to minimize off-site migration of subsurface gas.

(C) A passive collection system must:

(*1*) Comply with the provisions specified in paragraphs (b)(2)(ii)(B)(1), (2), and (3) of this section; and

(*2*) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under § 258.40.

(iii) Control system. Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B), or (C) of this section.

(A) A non-enclosed flare designed and operated in accordance with the parameters established in § 63.11(b) except as noted in paragraph (f) of this section; or

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in paragraph (e) of this section. The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(*1*) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(*2*) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §§ 63.1961(b) through (e);

(C) A treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (b)(2)(iii)(A) or (B) of this section.

(D) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(c) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in § 63.1957(b)(3), using Equation 3:

$$MNMOC = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC} \text{ (Eq. 3)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.

Q_{LFG} = Flow rate of landfill gas, cubic meters per minute.

C_{NMOC} = Average NMOC concentration, parts per million by volume as hexane.

1.89×10^{-3} = Conversion factor.

(1) The flow rate of landfill gas, Q_{LFG}, must be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of Method 2E of appendix A–1 of part 60.

(2) The average NMOC concentration, C_{NMOC}, must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25 or Method 25C of appendix A–7 to part 60. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from Method 25 or Method 25C of appendix A–7 to part 60 by 6 to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance test, including any associated fuel analyses, according to § 63.1981(i).

(ii) [Reserved]

(d) For the performance test required in § 63.1959(b)(2)(iii)(B), Method 25 or 25C (Method 25C of appendix A–7 to part 60 may be used at the inlet only) of appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20 parts per million by volume outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 63.1981(d)(2). Method 3, 3A, or 3C of appendix A–7 to part 60 must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), Method 25A should be used in place of Method 25. Method 18 may be used in conjunction with Method 25A on a limited basis (compound specific, *e.g.,* methane) or Method 3C may be used to determine methane. The methane as carbon should be subtracted from the Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landowner or operator must divide the NMOC concentration as carbon by 6 to convert from the C_{NMOC} as carbon to C_{NMOC} as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out})/(NMOC_{in}) \text{ (Eq. 4)}$$

Where:

$NMOC_{in}$ = Mass of NMOC entering control device.

$NMOC_{out}$ = Mass of NMOC exiting control device.

(e) For the performance test required in § 63.1959(b)(2)(iii)(A), the net heating

value of the combusted landfill gas as determined in § 63.11(b)(6)(ii) is calculated from the concentration of methane in the landfill gas as measured by Method 3C. A minimum of three 30-minute Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under § 63.11(b)(7).

(1) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by § 63.1959(c) or (e) according to § 63.1981(i).

(2) [Reserved]

(f) The performance tests required in §§ 63.1959(b)(2)(iii)(A) and (B), must be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

§ 63.1960 Compliance provisions.

(a) Except as provided in § 63.1981(d)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas collection system is in compliance with § 63.1959(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 63.1959(b)(2)(ii)(C)(1), either Equation 5 or Equation 6 must be used. The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator. The methane generation rate constant (k) and methane generation potential (L_o) kinetic factors should be those published in the most recent Compilation of Air Pollutant Emission Factors (AP–42) or other site specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 63.1959(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Qm = 2L_oR\,(e^{-kc} - e^{-kt}) \qquad \text{(Eq. 5)}$$

Where:

Qm = Maximum expected gas generation flow rate, cubic meters per year.

L_o = Methane generation potential, cubic meters per megagram solid waste.

R = Average annual acceptance rate, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years.

c = Time since closure, years (for an active landfill c = 0 and $e^{-kc} = 1$).

2 = Constant

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^{n} 2kL_oM_i\left(e^{-kt_i}\right) \qquad \text{(Eq. 6)}$$

Where:

Qm = Maximum expected gas generation flow rate, cubic meters per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of solid waste in the ith section, megagrams.

t_i = Age of the ith section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 in paragraphs (a)(1)(i) or (ii) of this section or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 63.1959(b)(2)(ii)(B)(*2*), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 63.1959(b)(2)(ii)(B)(*3*), the owner or operator must measure gauge pressure in the gas collection header applied to each individual well monthly. Any attempted corrective measure must not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval. If a positive pressure exists, follow the procedures as specified in § 60.755(a)(3), except:

(i) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if a positive pressure exists, action must be initiated to correct the exceedance within 5 days, except for the three conditions allowed under § 63.1958(b).

(A) If negative pressure cannot be achieved without excess air infiltration within 15 days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after positive pressure was first measured. The owner or operator must

keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(5).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(j). The owner or operator must keep records according to § 63.1983(e)(5).

(ii) [Reserved]

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), for the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must follow the procedures as specified in § 60.755(a)(5), except:

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), the owner or operator must monitor each well monthly for temperature for the purpose of identifying whether excess air infiltration exists. If a well exceeds the operating parameter for temperature as provided in § 63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(A) If a landfill gas temperature less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit) cannot be achieved within 15 days of the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) was first measured. The owner or operator must keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit). The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(4).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(h)(7) and § 63.1981(j). The owner or operator must keep records according to § 63.1983(e)(5).

(D) If a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured, according to the procedures in § 63.1961(a)(5)(vi) is greater than or equal to 1,500 ppmv the corrective action(s) must be completed within 15 days.

(5) An owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(ii)(B)(*4*) through the use of a collection system not conforming to the specifications provided in § 63.1962 must provide information satisfactory to the Administrator as specified in § 63.1981(c)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 63.1958(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in § 63.1981(b). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in § 63.1958(d).

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of Method 21 of appendix A–7 of part 60, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 63.1958(d).

(i) The location of each monitored exceedance must be marked and the location and concentration recorded.

(A) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the location must be recorded using an instrument with an accuracy of at least 4 meters.

(B) (i) [Reserved]

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane

concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device must be installed within 120 days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of Method 21 of appendix A of part 60, except that ''methane'' replaces all references to ''VOC''.

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 parts per million in air.

(3) To meet the performance evaluation requirements in section 8.1 of Method 21 of appendix A of part 60, the instrument evaluation procedures of section 8.1 of Method 21 of appendix A of part 60 must be used.

(4) The calibration procedures provided in sections 8 and 10 of Method 21 of appendix A of part 60 must be followed immediately before commencing a surface monitoring survey.

(e)(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standards in introductory paragraph § 63.1958(c), the provisions of this subpart apply at all times, except during periods of startup, shutdown, or malfunction, provided that the duration of startup, shutdown, or malfunction does not exceed 5 days for collection systems and does not exceed 1 hour for treatment or control devices. You must comply with the provisions in Table 1 to subpart AAAA that apply before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(2) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(c)(1), the provisions of this subpart apply at all times, including periods of startup, shutdown, or malfunction. During periods of startup, shutdown, and malfunction, you must comply with the work practice requirement specified in § 63.1958(e) in lieu of the compliance provisions in § 63.1960.

§ 63.1961 Monitoring of operations.

Except as provided in § 63.1981(d)(2):

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii)(B) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 63.1960(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using Method 3C of Appendix A–2 to part 60 of this chapter, unless an alternative test method is established as allowed by § 63.1981(d)(2).

(ii) Unless an alternative test method is established as allowed by § 63.1981(d)(2), the oxygen level must be determined by an oxygen meter using Method 3A or 3C of Appendix A–2 to part 60 of this chapter or ASTM D6522–11 (incorporated by reference, see § 63.14). Determine the oxygen level by an oxygen meter using Method 3A or 3C of Appendix A–2 to part 60 of this chapter or ASTM D6522–11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10 and 12 percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required; and

(E) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for Method 3A of Appendix A–2 to part 60 of this chapter or ASTM D6522–11 (incorporated by reference, see § 63.14).

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), the owner or operator must follow the procedures as specified in § 60.756(a)(2) and (3) of this chapter. Monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of Method 2 of Appendix A–1 to part 60 of this chapter.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of Method 2 of Appendix A–1 to part 60 of this chapter. Keep records specified in § 63.19.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), unless a higher operating temperature value has been approved by the Administrator, you must initiate enhanced monitoring at all wells with a measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) and less than 76.7 degrees Celsius (170 degrees Fahrenheit), as follows:

(i) Visual observations for subsurface oxidation events (smoke, smoldering ash, damage to well) within the radius of influence of the well;

(ii) Monitor oxygen concentration as provided in paragraph (a)(2) of this section;

(iii) Monitor temperature of the landfill gas at the wellhead as provided in paragraph (a)(4) of this section;

(iv) Monitor temperature of the landfill gas every 10 vertical feet of the well. This temperature can be monitored either with a removable thermometer, or using temporary or permanent thermocouples installed in the well;

(v) Monitor the methane concentration with a methane meter using Method 3C of appendix A–6 to part 60, Method 18 of appendix A–6 to part 60, or a portable gas composition

analyzer to monitor the methane levels provided that the analyzer is calibrated and the analyzer meets all quality assurance and quality control requirements for Method 3C or Method 18;

(vi) Monitor carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyzing that sample by an independent offsite laboratory that uses Method 10 of appendix A–4 to part 60, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; and

(B) Collect and analyze the sample from the wellhead using Method 10 of Appendix A–4 to part 60 to measure carbon monoxide concentrations.

(vii) The enhanced monitoring in paragraph (a)(4) of this section must be conducted on a weekly basis, beginning seven days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit); and

(viii) The enhanced monitoring in paragraph (a)(4) of this section can be stopped once a higher operating value is approved, at which time the monitoring provisions issued with the higher operating value should be followed, or once the measurement of landfill gas temperature at the wellhead is less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit).

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame; and

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the Administrator as provided in § 63.1981(d)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator must review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in § 63.1962 or seeking to monitor alternative parameters to those required by § 63.1958 through § 63.1961 must provide information satisfactory to the Administrator as provided in §§ 63.1981(d)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500 parts per million surface methane operational standard in § 63.1958(d) must monitor surface concentrations of methane according to the procedures in § 63.1960(c) and the instrument specifications in § 63.1960(d). If you are complying with the 500 parts per million surface methane operational standard in § 63.1958(d)(2), for location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters and the coordinates must be in decimal degrees with at least five decimal places. In the semi-annual report in 63.1981(i), you must report the location of each exceedance of the 500 parts per million methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii)(C) using a landfill gas treatment system must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], each owner or operator must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in § 63.1983(b)(5)(ii). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (a), (b), (c), (d), and (g) of this section apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and

required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable. Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph §§ 63.1958(c)(1), 63.1958(d)(2), and 63.1958(e)(1), the standards apply at all times.

§ 63.1962 Specifications for active collection systems.

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(i) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator as provided in §§ 63.1981(d)(2) and (3):

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: Depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 63.1983(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area and must be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request. A separate NMOC emissions estimate must be made for each section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2\ k\ L_o M_i (e^{-kt_i})\ (C_{NMOC})\ (3.6 \times 10^{-9})\ \text{(Eq. 7)}$$

Where:

Q_i = NMOC emission rate from the ith section, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of the degradable solid waste in the ith section, megagram.

t_i = Age of the solid waste in the ith section, years.

C_{NMOC} = Concentration of nonmethane organic compounds, parts per million by volume.

3.6×10^{-9} = Conversion factor.

(B) If the owner/operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.,* separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in § 63.1959(c) or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for k and C_{NMOC} determined in field testing must be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for k, L_o and C_{NMOC} provided in § 63.1959(a)(1) or the alternative values from § 63.1959(a)(5) must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii) must construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any

necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must convey the landfill gas to a control system in compliance with § 63.1959(b)(2)(iii) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with § 63.1960(a)(1).

General and Continuing Compliance Requirements

§ 63.1964 How is compliance determined?

Compliance is determined using performance testing, collection system monitoring, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data collected under §§ 63.1961(b)(1), (c)(1), and (d) are used to demonstrate compliance with the operating standards for control systems. If a deviation occurs, you have failed to meet the control device operating standards described in this subpart and have deviated from the requirements of this subpart.

(a) Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you must develop a written SSM plan according to the provisions in § 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

(b) After [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the SSM provisions of § 63.6(e) no longer apply to this subpart and the SSM plan developed under paragraph (a) of this section no longer applies. Compliance with the emissions standards and the operating standards of § 63.1958 of this subpart is required at all times.

§ 63.1965 What is a deviation?

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in § 63.1983(c)(1) are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], a deviation occurs when a SSM plan is not developed or maintained on site and when an affected source fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW (§ 60.758(b)(2)(i) for average combustion temperature and § 60.758(c) for 3-hour average combustion temperature for enclosed combustors), except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], averages are calculated according to §§ 63.1983(b)(2)(i) and 63.1983(c)(1)(i) and the data collected during the events listed in paragraphs (a) through (d) of this section are included in any average computed under this subpart.

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1981 What reports must I submit?

You must submit the reports specified in this section and the reports specified in Table 1 to this subpart. If you have previously submitted a design capacity report, amended design capacity report, initial NMOC emission rate report, initial or revised collection and control system design plan, closure report, equipment removal report, or initial performance test under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or the federal plan (40 CFR part 62, subpart GGG) or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the design capacity report in paragraph (a) of this section, the amended design capacity report in paragraph (b) of this section, the initial NMOC emission rate report in paragraph (c) of this section, the initial collection and control system design plan in paragraph (d) of this section, the revised design plan in paragraph (e) of this section, the closure report in paragraph (f) of this section, the equipment removal report in paragraph (g) of this section, and the initial performance test report in paragraph (i) of this section. You do not need to re-submit the report(s). However, you must include a statement certifying prior submission of the respective report(s) and the date of submittal in the first semi-annual report required in this section.

(a) *Initial design capacity report.* The initial design capacity report must contain the information specified in § 60.757(a)(2), except beginning no later than [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] the report must contain:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume

to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) *Amended design capacity report.* An amended design capacity report must be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 63.1983(f).

(c) *NMOC emission rate report.* Each owner or operator subject to the requirements of this subpart must submit a copy of the latest NMOC emission rate report that was submitted according to § 60.757(b) or submit an NMOC emission rate report to the Administrator initially and annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate. If you have submitted an annual report under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or the federal plan (40 CFR part 62, subpart GGG) or an EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the annual NMOC emission rate report in this paragraph. You do not need to re-submit the annual report for the current year. Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the report must meet the the following requirements:

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 63.1959(a) or (b), as applicable.

(i) The initial NMOC emission rate report must be submitted no later than 90 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(ii) Subsequent NMOC emission rate reports must be submitted annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section.

(A) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 50 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the Administrator. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(B) The report must be submitted following the procedure specified in paragraph (l)(2) of this section.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 63.1959(b)(2), during such time as the collection and control system is in operation and in compliance with §§ 63.1958 and 63.1960.

(d) *Collection and control system design plan.* Each owner or operator subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator for approval according to § 60.757(c) and the schedule in § 60.757(c)(1) and (2). Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], each owner or operator subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator according to paragraphs (d)(1) through (6) of this section. The collection and control system design plan must be prepared and approved by a professional engineer.

(1) The collection and control system as described in the design plan must meet the design requirements in § 63.1959(b)(2).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§ 63.1957 through 63.1983 proposed by the owner or operator.

(3) The collection and control system design plan must either conform with specifications for active collection systems in § 63.1962 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 63.1962.

(4) Each owner or operator of an MSW landfill affected by this subpart must submit a collection and control system design plan to the Administrator for approval within 1 year of becoming subject to this subpart.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (d)(6) of this section. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

(e) *Revised design plan.* Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator who has already been required to submit a design plan under paragraph (d) of this section must

submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (d) of this section.

(f) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of waste acceptance cessation. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 63.9(b).

(g) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report as provided in § 60.757(e). Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the equipment removal report must contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, or information that demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 63.1957(b) have been met.

(h) *Semi-annual report.* The owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in accordance with § 63.1959(b)(2)(ii) must submit to the Administrator semi-annual reports. Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you must submit the report, following the procedure specified in paragraph (l) of this section. The initial report must be submitted within 180 days of installation and startup of the collection and control system and must include the initial performance test report required under § 63.7, as applicable. In the initial report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 63.1983(c). The semi-annual reports must contain the information in paragraphs (h)(1) through (8) of this section.

(1) Number of times that applicable parameters monitored under §§ 63.1958(b) through (e) were exceeded. For each instance, report the date, time, and duration of each failure.

(i) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(3) were exceeded. For each instance, report the date, time, and duration of each failure.

(ii) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(4) were exceeded. For each instance, report the date, time, and duration of each failure.

(iii) Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], number of times the parameters for the site-specific treatment system in § 63.1961(g) were exceeded.

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 63.1961.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for location, you record the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 63.1960(a)(3) through (4), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 63.1960(a)(3)(i), or § 63.1960(a)(5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(8) Each owner or operator required to conduct enhanced monitoring in § 63.1961(a)(5) must include the results of all monitoring activities conducted during the period.

(i) For each monitoring point, report the date, time, and well identifier along with the value and units of measure for oxygen, temperature (wellhead and

downwell), methane and carbon monoxide.

(ii) Include a summary trend analysis for each well subject to the enhanced monitoring requirements to chart the weekly readings over time for oxygen, temperature (wellhead and downwell), methane, and carbon monoxide.

(iii) Include the date, time, staff person name, and description of findings for each visual observation for subsurface oxidation event.

(i) *Initial performance test report.* Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must include the following information with the initial performance test report required under § 63.7:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit information regarding corrective actions according to paragraphs (j)(1) and (2) of this section.

(1) For corrective action that is required according to § 63.1960(a)(3) or § 63.1960(a)(4) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(2) For corrective action that is required according to § 63.1960(a)(3) or § 63.1960(a)(4) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(k) *24-hour high temperature report.* Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1) and a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured is greater than or equal to 1,500 ppmv, then you must report the date, time, well identifier, temperature and carbon monoxide reading via email to the Administrator within 24 hours of the measurement.

(l) *Electronic reporting.* Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator must submit reports electronically according to paragraphs (l)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (l)(1)(i) through (iii) of this section.

(i) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test. Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(ii) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (l)(1)(i) of this section.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX. The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the Administrator at the appropriate address listed in § 63.13. Once the form has been available in CEDRI for 90 days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(m) *Claims of EPA system outage.* Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to comply timely with the reporting requirement. To assert a claim of EPA system outage, you must meet the following requirements:

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(n) *Claims of force majeure.* Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to comply timely with the reporting requirement. To assert a claim of force majeure, you must meet the following requirements:

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 63.1982 What records and reports must I submit and keep for bioreactors or liquids addition other than leachate?

Submit reports as specified in this section and § 63.1981. Keep records as specified in this section and § 63.1983.

(a) For bioreactors at new affected sources you must submit the initial semi-annual compliance report and performance test results described in § 63.1981(h) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2).

(b) If you must submit a semi-annual compliance report for a bioreactor as well as a semi-annual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semi-annual compliance report for the bioreactor according to paragraphs (b)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semi-annual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semi-annual compliance report for the bioreactor until the date the initial or subsequent semi-annual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semi-annual compliance report by no more than 12 months after the due date for submitting the initial semi-annual compliance report and performance test results described in § 63.1981(h) for the bioreactor. The report must cover the time period since the previous semi-annual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semi-annual report, all subsequent semi-annual reports for the bioreactor must be submitted every 6 months on the same date the semi-annual report for the conventional portion of the landfill is due.

(c) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947 and 63.1955(b) and paragraphs (a) and (b) of this section, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(d) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (e) of this section for 5 years. Within 90 days after the bioreactor achieves 40 percent moisture content, report the results of the calculation, the date the bioreactor achieved 40 percent moisture content by weight, and the date you plan to begin collection and control system operation to the Administrator. Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the reports should be submitted following the procedure specified in § 63.1981(l)(2).

§ 63.1983 What records must I keep?

You must keep records as specified in this subpart. You must also keep records as specified in the general provisions of 40 CFR part 63 as shown in Table 1 to this subpart.

(a) Except as provided in § 63.1981(d)(2), each owner or operator

of an MSW landfill subject to the provisions of §§ 60.762(b)(2)(ii) and (iii) must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered § 60.762(b), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in § 63.1960(a)(1).

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in §§ 63.1962(a)(1) and (2).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 63.1959(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(B)(1) through use of a boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(A) through use of a non-enclosed flare, the flare type (*i.e.,* steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in § 63.11; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(C) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan.* Beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator must prepare a site-specific treament monitoring plan to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) List of responsible staff (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems.

(c) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill subject to the provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 63.1961 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under § 63.1981(h):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with § 63.1959(b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under §§ 63.1961(b)(2)(ii), 63.1961(c)(2)(ii), and 63.1961(g)(2).

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 63.1959(b)(2)(iii) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state, local, tribal, or federal regulatory requirements.

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 63.1961(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in accordance with § 63.1959(b)(2)(ii) must keep records of periods when the collection system or control device is not operating.

(6) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), the date, time, and

duration of each startup and/or shutdown period, recording the periods when the affected source was subject to the standard applicable to startup and shutdown.

(7) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), in the event that an affected unit fails to meet an applicable standard, record the information below in this paragraph:

(i) For each failure record the date, time and duration of each failure and the cause of such events (including unknown cause, if applicable).

(ii) For each failure to meet an applicable standard; record and retain a list of the affected sources or equipment.

(iii) Record actions taken to minimize emissions in accordance with the general duty of § 63.1955(c) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(d) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under § 63.1960(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 63.1962(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 63.1962(a)(3)(ii).

(e) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the following:

(1) All collection and control system exceedances of the operational standards in § 63.1958, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the control provisions of this subpart must keep records of each wellhead temperature monitoring value of greater than 55 degrees Celsius (131 degrees Fahrenheit), each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent, except:

(i) When an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the compliance provisions for wellhead temperature in § 63.1958(c)(1), but no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the records of each wellhead temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above instead of values greater than 55 degrees Celsius (131 degrees Fahrenheit).

(i) Each owner or operator required to conduct the enhanced monitoring provisions in § 63.1961(a)(4), must also keep records of all enhanced monitoring activities.

(ii) Each owner or operator required to submit the *24-hour high temperature report in* § 63.1981(k), must also keep a record of the email transmission.

(3) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(A) or § 63.1960(a)(4)(i)(A), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(b) or § 63.1960(a)(4)(i)(B), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(iii) or § 63.1960(a)(4)(i)(C), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the Administrator.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of ''design capacity'', must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 63.1961(a)(1) through (5).

(h) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), you must keep the following records.

(1) Records of the landfill gas temperature on a monthly basis as monitored in § 63.1960(a)(4).

(2) Records of enhanced monitoring data at each well with a measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) and less than 76.7 degrees Celsius (170 degrees Fahrenheit) as gathered in § 63.1961(a)(5).

(i) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency as well as the EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the standards in §§ 63.1955 through 63.1962. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, Cf, WWW, and XXX; 40 CFR part 62, subpart GGG, and 40 CFR part 63 subpart A, and this section that follows:

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Bioreactor means an MSW landfill or portion of an MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

Closed area means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under § 63.9(b). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i) if submitted before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] or in compliance with § 63.1959(b)(2)(i) if submitted after [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

Cover penetration means a wellhead, a part of a landfill gas collection or operations system, and/or any other object that completely passes through the landfill cover. The landfill cover includes that portion which covers the waste, as well as the portion which borders the waste extended to the point where it is sealed with the landfill liner or the surrounding land mass. Examples of what is not a penetration for purposes of this subpart include but are not limited to: Survey stakes, fencing including litter fences, flags, signs, utility posts, and trees so long as these items do not pass through the landfill cover.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

*Deviation before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]*,means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emissions limitation (including any operating limit) or work practice requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Deviation beginning no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]*, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, or operating limit, or work practice requirement; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emissions limitation means any emission limit, opacity limit, operating limit, or visible emissions limit.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subparts Cc or Cf. An approved state plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

EPA approved Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc or subpart Cf.

Federal plan means the EPA plan to implement 40 CFR part 60, subparts Cc or Cf for existing MSW landfills located in States and Indian country where state plans or tribal plans are not currently in effect. On the effective date of an EPA approved state or tribal plan, the federal plan no longer applies. The federal plan implementing 40 CFR part 60, subpart Cc is found at 40 CFR part 62, subpart GGG.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (*i.e.,* fan, blower, compressor) used to transport landfill gas through the header system.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, parts 264 and 265 of this chapter. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Leachate recirculation means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

Modification means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity after November 7, 2000. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of § 63.1959.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of an exceedance of a standard operating parameter at a wellhead.

Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities.

Sludge means the term sludge as defined in § 258.2.

Solid waste means the term solid waste as defined in § 258.2.

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this subpart.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

Treated landfill gas means landfill gas processed in a treatment system as defined in this subpart.

Treatment system means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As specified in this subpart, you must meet each requirement in the following table that applies to you.

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 citation	Description	Applicable to subpart AAAA before [date 18 months + 1 day after date of publication of final rule in the **Federal Register**]	Applicable to subpart AAAA after [date 18 months after date of publication of final rule in the **Federal Register**]	Explanation
§ 63.1(a)	Applicability: general applicability of NESHAP in this part.	Yes	Yes.	
§ 63.1(b)	Applicability determination for stationary sources.	Yes	Yes.	
§ 63.1(c)	Applicability after a standard has been set.	No [a]	Yes.	
§ 63.1(e)	Applicability of permit program before relevant standard is set.	Yes	Yes.	
§ 63.2	Definitions	Yes	Yes.	
§ 63.3	Units and abbreviations	No [a]	Yes.	
§ 63.4	Prohibited activities and circumvention.	Yes	Yes.	
§ 63.5(a)	Construction/reconstruction	No [a]	Yes.	
§ 63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	Yes	Yes.	
§ 63.5(d)	Application for approval of construction or reconstruction.	No [a]	Yes.	
§ 63.5(e)–(f)	Approval of construction and reconstruction.	No [a]	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements -applicability.	No [a]	Yes.	
§ 63.6(b)–(c)	Compliance dates for new, reconstructed, and existing sources.	No [a]	Yes.	
§ 63.6(e)(1)(i)–(ii)	Operation and maintenance requirements.	Yes	No	See § 63.1955(c) for general duty requirements.
63.6(e)(3)(i)–(ix)	Startup, shutdown, and malfunction plan.	Yes	No.	
63.6(f)(1)	Exemption of nonopacity emission standards during SSM.	Yes	No.	
§ 63.6(f)(2)–(3)	Compliance with nonopacity emission standards.	Yes	Yes.	
§ 63.6(g)	Use of an alternative nonopacity standard.	No [a]	Yes.	
§ 63.6(h)	Compliance with opacity and visible emission standards.	No [a]	No	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.7	Performance testing	No [a]	Yes.	
§ 63.8	Monitoring requirements	No [a]	Yes.	
§ 63.9(a)–(d)	Notifications	No [a]	Yes.	
§ 63.9(e)	Notification of compliance test	No [a]	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test.	No [a]	No	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.9(g)	Notification when using CMS	No [a]	Yes.	
§ 63.9(h)	Notification of compliance status	No [a]	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines.	No [a]	Yes.	
§ 63.9(j)	Change in information already provided.	No [a]	Yes.	
§ 63.10(a)	Recordkeeping and reporting—general.	No [a]	.	
§ 63.10(b)(1)	General recordkeeping	No [a]	Yes.	
§ 63.10(b)(2)(i)	Startup and shutdown records	Yes	No	See § 63.1983(c)(6) for recordkeeping for periods of startup and shutdown.
§ 63.10(b)(2)(ii)	Recordkeeping of failures to meet a standard.	Yes	No	See § 63.1983(c)(6)–(7) for recordkeeping for any exceedance of a standard.
§ 63.10(b)(2)(iii)	Recordkeeping of maintenance on air pollution control equipment.	Yes	Yes.	

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA—Continued

Part 63 citation	Description	Applicable to subpart AAAA before [date 18 months + 1 day after date of publication of final rule in the **Federal Register**]	Applicable to subpart AAAA after [date 18 months after date of publication of final rule in the **Federal Register**]	Explanation
§ 63.10(b)(2)(iv)–(v)	Actions taken to minimize emissions during SSM.	Yes	No	See § 63.1983(c)(7) for recordkeeping of corrective actions to restore compliance.
§ 63.10(b)(vi)	Recordkeeping for CMS malfunctions.	No [a]	Yes.	
§ 63.10(b)(vii)–(xiv)	Other Recordkeeping of compliance measurements.	No [a]	Yes.	
§ 63.10(c)	Additional recordkeeping for sources with CMS.	No [a]		See § 63.1983 for required CMS recordkeeping.
§ 63.10(d)(1)	General reporting	No [a]	Yes.	
§ 63.10(d)(2)	Reporting of performance test results.	No [a]	Yes.	
§ 63.10(d)(3)	Reporting of visible emission observations.	No [a]	Yes.	
§ 63.10(d)(4)	Progress reports for compliance date extensions.	No [a]	Yes.	
§ 63.10(d)(5)	SSM reporting	Yes	No	All exceedances must be reported in the semi-annual report required by § 63.1981(h).
§ 63.10(e)	Additional reporting for CMS systems.	No [a]	Yes.	
§ 63.10(f)	Recordkeeping/reporting waiver	No [a]	Yes.	
§ 63.11	Control device requirements/flares.	No [a]	Yes	§ 60.18 is required before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. However, § 60.18 and 63.11 are equivalent.
§ 63.12(a)	State authority	Yes	Yes.	
§ 63.12(b)–(c)	State delegations	No [a]	Yes.	
§ 63.13	Addresses	No [a]	Yes.	
§ 63.14	Incorporation by reference	No [a]	Yes.	
§ 63.15	Availability of information and confidentiality.	Yes	Yes.	

[a] Before [DATE 18 MONTHS + 1 DAY AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this subpart requires affected facilities to follow 40 CFR part 60, subpart WWW, which incorporates the General Provisions of 40 CFR part 60.

[FR Doc. 2019–14473 Filed 7–26–19; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 751

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2019–0080; FRL–9995–76]

RIN 2070–AK34

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule to address certain persistent, bioaccumulative, and toxic chemicals identified pursuant to section 6(h) of the Toxic Substances Control Act (TSCA). These five chemicals are: Decabromodiphenyl ether; phenol, isopropylated phosphate (3:1), also known as tris(4-isopropylphenyl) phosphate; 2,4,6-tris(tert-butyl)phenol; hexachlorobutadiene; and pentachlorothiophenol. This proposed rule would restrict or prohibit manufacture (including import), processing, and distribution in commerce for many uses of four of these five chemical substances. EPA has evaluated the uses of hexachlorobutadiene and is proposing no regulatory action. For the other four, this proposal includes recordkeeping requirements. Additional downstream notification requirements are proposed for phenol, isopropylated phosphate (3:1).

DATES: Comments must be received on or before September 27, 2019. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 28, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0080, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* 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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Cindy Wheeler, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 566–0484; email address: *wheeler.cindy@epa.gov;* or Peter Gimlin, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: *gimlin.peter@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.*

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I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, distribute in commerce, or commercially use decabromodiphenyl ether (DecaBDE); phenol, isopropylated phosphate (3:1) (PIP (3:1)), also known as tris(4-isopropylphenyl) phosphate; 2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP); hexachlorobutadiene (HCBD); or pentachlorothiophenol (PCTP) or products containing these chemicals, especially electronics, plastic products, additives, hydraulic fluids, or other industrial fluids. 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:

- Pipe, Duct and Boiler Insulation (NAICS Code 238290);
- Nonwoven Fabric Mills (NAICS Code 313230);
- Fabric Coating Mills (NAICS Code 313320);
- Petroleum Refineries (NAICS Code 324110);
- Petroleum Lubricating Oil and Grease Manufacturing (NAICS Code 324191);
- Petrochemical Manufacturing (NAICS Code 325110);
- Other Basic Inorganic Chemical Manufacturing (NAICS Code 325180);
- All Other Basic Organic Chemical Manufacturing (NAICS Code 325199);

- Plastics Material and Resin Manufacturing (NAICS Code 325211);
- Paint and Coating Manufacturing (NAICS Code 325510);
- Adhesive Manufacturing (NAICS Code 325520);
- Polish and Other Sanitation Good Manufacturing (NAICS Code 325612);
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- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS Code 325998);
- Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing (NAICS Code 326113);
- Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing (NAICS Code 326130);
- Urethane and Other Foam Product (except Polystyrene) Manufacturing (NAICS Code 326150);
- All Other Plastics Product Manufacturing (NAICS Code 326199);
- All Other Rubber Product Manufacturing (NAICS Code 326299);
- Cement Manufacturing (NAICS Code 327310);
- Copper Rolling, Drawing, Extruding, and Alloying (NAICS Code 331420);
- Machinery Manufacturing (NAICS Code 333);
- Computer and Peripheral Equipment Manufacturing (NAICS Code 3341);
- Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing (NAICS Code 334220);
- Other Communications Equipment Manufacturing (NAICS Code 334290);
- Audio and Video Equipment Manufacturing (NAICS Code 334310);
- Other Communication and Energy Wire Manufacturing (NAICS Code 335929);
- Motor Vehicle Manufacturing (NAICS Code 3361), *e.g.,* automobile, aircraft, ship, and boat manufacturers and motor vehicle parts manufacturers;
- Other Motor Vehicle Parts Manufacturing (NAICS Code 336390);
- Aircraft Manufacturing (NAICS Code 336411);
- Guided Missile and Space Vehicle Manufacturing (NAICS Code 336414);
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- Sporting and Athletic Goods Manufacturing (NAICS Code 339920);
- Doll, Toy, and Game Manufacturing (NAICS Code 33993);
- Automobile and Other Motor Vehicle Merchant Wholesalers (NAICS Code 423110);
- Motor Vehicle Supplies and New Parts Merchant Wholesalers (NAICS Code 423120);
- Furniture and Home Furnishing Merchant Wholesalers (NAICS Code 4232);
- Insulation Materials (except Wood) Merchant Wholesalers (NAICS Code 423330);
- Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers (NAICS Code 423620);
- Sporting and Recreational Goods and Supplies Merchant Wholesalers (NAICS Code 423910);
- Toy and Hobby Goods and Supplies Merchant Wholesalers (NAICS Code 423920);
- Other Chemical and Allied Products Merchant Wholesalers (NAICS Code 424690);
- Farm Supplies Merchant Wholesalers (NAICS Code 424910);
- New Car Dealers (NAICS Code 441110);
- Boat Dealers (NAICS Code 441222);
- Automotive Parts and Accessories Stores (NAICS Code 441310);
- Furniture Stores (NAICS Code 442110);
- All Other Home Furnishing Stores (NAICS Code 442299) ;
- Gasoline Stations with Convenience Stores (NAICS Code 447110);
- Other Gasoline Stations (NAICS Code 447190);
- Children's and Infant's Clothing Stores (NAICS Code 448130);
- Sporting Goods Stores (NAICS Code 451110);
- Hobby, Toy, and Game Stores (NAICS Code 451120)
- General Merchandise Stores (NAICS Code 452);
- Aircraft Maintenance and Repair Services (NAICS Code 488190);
- All Other Consumer Goods Rental (NAICS Code 532289);
- Hazardous Waste Treatment and Disposal (NAICS Code 562211);
- Solid Waste Combustors and Incinerators (NAICS Code 562213);
- Marinas (NAICS Code 713930);
- General Automotive Repair (NAICS Code 811111).

If you have any questions regarding the applicability of this proposed action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

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

Section 6(h) of TSCA, 15 U.S.C. 2601 *et seq.,* directs EPA to issue a proposed rule under TSCA section 6(a) on certain persistent, bioaccumulative, and toxic (PBT) chemical substances. More specifically, EPA must take action on those chemical substances identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 1) that, with certain exceptions, EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals: Methods Document (Ref. 2) EPA published in 2012 (or a successor scoring system), and exposure to which is likely under the conditions of use. For the purposes of this proposed rule, these specific chemical substances are hereinafter collectively referred to as the PBT chemicals. TSCA section 6(a) regulatory requirements include: (1) Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of such substances; (2) Prohibit or otherwise restrict manufacturing, processing, or distribution in commerce of such substances for particular uses or for uses in excess of a specified concentration; (3) Require minimum warning labels and instructions; (4) Require recordkeeping or testing; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or otherwise regulate any manner or method of disposal by a manufacturer, processor, or any other person who uses or disposes of the chemical for commercial purposes; and (7) Direct manufacturers and processors to give notice of the determination to distributors and the public and replace or repurchase substances. EPA must apply one or more of these requirements to the extent necessary to meet the TSCA section 6(h)(4) statutory standard, which is discussed in Unit II.C.

C. What action is the Agency taking?

EPA is proposing to restrict or prohibit certain actions with respect to four of the five PBT chemicals subject to this rulemaking. As of the effective date of the final rule, affected persons would be required to maintain, for three years from the date the record is generated, ordinary business records that demonstrate compliance with the restrictions, prohibitions, and other requirements.

The extent of exposure, the severity of the hazard, and thus the likely risk of these chemicals varies significantly. For example, the evidence suggests that human exposure to hexachlorobutadiene is very limited due in large part to the high waste treatment efficiencies achieved by the chemical manufacturers. Additionally, the amount and type of hazard information

varies substantially, from relatively well studied chemicals (*e.g.* decabromodiphenyl ether) to data-sparse chemicals (*e.g.,* pentachlorothiophenol).

1. Decabromodiphenyl ether. DecaBDE (Chemical Abstracts Registry Service Number (CASRN) 1163–19–5) is a flame retardant that has been widely used in textiles, plastics, adhesives, and polyurethane foam. For DecaBDE, this proposal would prohibit the manufacture (including import), processing, and distribution in commerce of DecaBDE, and articles and products to which DecaBDE has been added except for the following:

- Manufacture, processing, and distribution in commerce for use in parts for new aircraft and aerospace vehicles, and distribution in commerce of the new vehicles containing such parts, for a period of three years;
- Manufacture, processing, and distribution in commerce for use in curtains in the hospitality industry, and the distribution of the curtains themselves, for a period of 18 months;
- Manufacture, processing, and distribution in commerce for use in replacement parts for the automotive and aerospace industries, and distribution in commerce of the replacement parts themselves;
- Processing for recycling and distribution in commerce for recycling of plastic that contained DecaBDE before the plastic was recycled (*i.e.,* the plastic to be recycled is from articles and products that were originally made with DecaBDE), so long as no new DecaBDE is added during the recycling process; and
- Processing and distribution in commerce of articles and products made from recycled plastic that contained DecaBDE before the plastic was recycled, so long as no new DecaBDE was added during the recycling process or to the articles and products made from the recycled plastic.

2. Phenol, isopropylated phosphate (3:1). PIP (3:1) (CASRN 68937–41–7) is a flame retardant, a plasticizer, and an anti-compressibility and anti-wear additive. It is used in lubricants and hydraulic fluids and in the manufacture of other compounds. For PIP (3:1), which is also known as tris(4-isopropylphenyl) phosphate, this proposal would prohibit processing and distribution in commerce of the chemical substance, and products containing the chemical substance except for the following:

- Processing and distribution in commerce for use in aviation hydraulic fluid;
- Processing and distribution in commerce for use in lubricants and greases; and
- Processing and distribution in commerce for use in new and replacement parts for automobiles and other motor vehicles, and the distribution in commerce of the parts to which PIP (3:1) has been added.

In addition, this rule would prohibit releases to water from the non-prohibited processing, distribution in commerce, and commercial use activities. Persons manufacturing, processing, and distributing PIP (3:1), and products containing PIP (3:1), in commerce would be required to notify their customers of these restrictions.

3. 2,4,6-tris(tert-butyl)phenol. 2,4,6-TTBP (CASRN 732–26–3) is an antioxidant that can be used as a fuel additive or lubricant additive, as an intermediate in the manufacture of other compounds, and as a waste fuel. For 2,4,6-TTBP, this proposal would prohibit the distribution in commerce of 2,4,6-TTBP and products containing 2,4,6-TTBP in any container with a volume of less than 55 gallons for any use, in order to effectively prevent the use of 2,4,6-TTBP as a fuel additive or fuel injector cleaner by consumers and small commercial operations (*e.g.,* automotive repair shops, marinas). It is EPA's intent that the 55-gallon container restriction will ensure the continued fuel additive or fuel injector cleaner use of this PBT only by commercial operators who have the capacity to protect their workers who may come into contact with 2,4,6-TTBP and whose workplaces are generally subject to the standards promulgated by the Occupational Safety and Health Administration (OSHA). This restriction also would prohibit processing and distribution in commerce of 2,4,6-TTBP, and products containing 2,4,6-TTBP, for use as an oil or lubricant additive, regardless of container size.

4. Hexachlorobutadiene. HCBD (CASRN 87–68–3) is produced as a byproduct in the production of chlorinated solvents and has also been used in the past as an absorbent for gas impurity removal and as an intermediate in the manufacture of rubber compounds. For HCBD, EPA has evaluated the uses of hexachlorobutadiene and is proposing no regulatory action for the reasons described in Unit III.E.

5. Pentachlorothiophenol. PCTP (CASRN 133–49–3) is used in the manufacture of rubber compounds. For PCTP, this proposal would prohibit the manufacture (including import), processing, and distribution in commerce of PCTP, and products containing PCTP, unless in concentrations at or below 1% by weight.

D. Why is the Agency taking this action?

EPA is issuing this proposed rule to fulfill EPA's obligations under TSCA section 6(h) to take timely regulatory action on PBT chemicals—specifically, ''to address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and [. . .] to reduce exposure to the substance to the extent practicable.'' PBT chemicals remain in the environment for a significant period of time and can accumulate in biota. Congress directed EPA in TSCA section 6(h) to take expedited regulatory action for certain PBT chemicals. As required by the statute, the Agency is proposing risk management actions to reduce exposures to the PBT chemicals to the extent practicable for the general population, potentially exposed or susceptible subpopulations, and the environment. Although EPA did not make an affirmative determination that risks are presented by the five PBT chemicals due to the language of TSCA section 6(h), this proposal nevertheless meets the standards of TSCA section 6(h)(4).

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of these proposed restrictions and prohibitions and the associated reporting and recordkeeping requirements. The ''Economic Analysis for Proposed Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA section 6(h)'' (Economic Analysis) (Ref. 3), which is available in the docket, is discussed in Unit IV, and is briefly summarized here. Total quantified annualized social costs for the proposed rule under the proposed option are approximately $43.5 million (at both 3% and 7% discount rates). As discussed in more detail in Unit II.C., EPA did not perform risk evaluations for these chemical substances, nor did EPA develop quantitative risk estimates. Thus, EPA was not able to quantify the benefits of reducing human and environmental exposures to these PBT chemicals; therefore, the Economic Analysis (Ref. 3) qualitatively discusses the benefits of reducing exposure under the proposed option and the primary alternative regulatory action for the five PBT chemicals.

F. What should I consider as I prepare my comments for EPA?

See the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets* when preparing and submitting your comments. Do not submit CBI to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be 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.

EPA requests comment on all aspects of this proposal, including the proposed regulatory actions for each of the PBT chemicals, the primary alternative regulatory actions, and any other options that EPA has considered or should consider. In particular, EPA is requesting comment on its proposed determinations with respect to whether exposure is likely and whether EPA's proposed regulatory actions achieve the statutory directives to ''address the risks of injury to health and the environment that the Administrator determines are presented by the chemical substance and [. . .] reduce exposure to the substance to the extent practicable.'' EPA also requests comment on all aspects of the Economic Analysis (Ref. 3) accompanying this action. In taking final action on this proposal, following review of comments, EPA may require exposure reductions beyond those proposed here, or may reduce the scope of the proposed exposure reductions.

II. Background

A. Why PBT Chemicals Are of Concern

Toxic chemicals that persist and bioaccumulate are of concern because they remain in the environment for long periods of time and accumulate in the organisms exposed to them (*i.e.,* can build up or concentrate in body tissue). A chemical's persistence refers to the length of time the chemical can exist in the environment before being degraded at rates that prevent substantial buildup of the parent chemical in the environment. Bioaccumulation is the net accumulation of a chemical by an aquatic organism as a result of uptake from all environmental sources. The term refers to both uptake of chemicals by aquatic species from water (bioconcentration) and from ingested food and sediment residues. PBT chemicals are toxic chemicals that are not removed from the environment at rates adequate to prevent exposure to aquatic or terrestrial organisms. Following exposure, PBT chemicals increase in concentration in the exposed organism's tissues relative to the concentrations in environmental media to which they are exposed. Chemicals that persist and bioaccumulate have been found in humans, other aquatic and terrestrial mammals, fish, shellfish, and birds.

Biomagnification is the increase in concentration of a chemical in the tissue of organisms along a series of predator-prey associations, primarily through the mechanism of dietary accumulation and can be an additional characteristic of PBT chemicals. Biomagnification in food webs results in apex predators (*e.g.,* eagles and orcas) being subject to higher exposures of PBT chemicals via food. When humans consume organisms from higher trophic levels (*e.g.,* predator fish like tuna or swordfish), humans often have increased tissue concentrations of PBT chemicals due to biomagnification and therefore are exposed to increased concentrations of the chemical.

B. Overview of TSCA Sections 6(c) and 26 Considerations

1. TSCA section 6(c)(2) considerations. TSCA section 6(c)(2) requires EPA to consider and publish a statement based on reasonably available information with respect to the:

- Health effects of the chemical substance or mixture and the magnitude of human exposure;
- Environmental effects of the chemical substance or mixture and the magnitude of exposure of the environment;
- Benefits of the chemical substance or mixture for various uses; and
- Reasonably ascertainable economic consequences of the rule, including: The likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health; the costs and benefits of the proposed and final rule and of the one or more primary alternative regulatory actions that EPA considered; and the cost effectiveness of the proposed rule and of the one or more primary alternative regulatory actions that EPA considered.

In addition, in selecting among prohibitions and other restrictions available under TSCA section 6(a), EPA must factor in, to the extent practicable, these considerations. Further, in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, EPA must also consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment would be reasonably available as a substitute when the proposed prohibition or other restriction takes effect.

EPA's summary of the health and environmental effects of and the potential for exposure to the five chemical substances subject to this action can be found in Unit II.E., which discusses the Exposure and Use Assessment (Ref. 4) and the Hazard Summary (Ref. 5).

With respect to the costs and benefits of this proposal and the alternatives EPA considered, as well as the impacts on small businesses, the full analysis is presented in the economic analysis document (Ref. 3). Due to the lack of risk information, EPA was not able to quantify the benefits of this proposal and the alternatives. A qualitative discussion of the potential benefits associated with the proposed option for each chemical is provided in Unit IV.C. EPA requests comment on all aspects of the benefits attributable to this proposed action, including the impacts that the selection of substitutes for those uses proposed to be restricted or prohibited may have on the anticipated benefits.

EPA considered the estimated costs to regulated entities as well as the cost to administer and enforce the options. EPA took into account reasonably available information about the functionality and performance efficacy of the regulatory options and the ability to implement the use of chemical substitutes or other alternatives. A discussion of the costs EPA considered can be found in Units IV.A. and IV.B., along with a discussion of the alternatives that EPA considered. In addition, a discussion of the impacts on small businesses can be found in Unit VI.D.

With respect to the cost effectiveness of the proposed regulatory action and the primary alternative regulatory action, EPA is unable to perform a traditional cost-effectiveness analysis of the proposed actions and alternatives for the PBT chemicals. The cost effectiveness of a policy option would properly be calculated by dividing the annualized costs of the option by a final outcome, such as cancer cases avoided, or to intermediate outputs such as tons of emissions of a pollutant curtailed. Without the supporting analyses for a risk determination, EPA is unable to calculate either a health-based or environment-based denominator. Thus, EPA is unable to perform a quantitative cost-effectiveness analysis of the proposed and alternative regulatory actions. However, by evaluating the

practicability of the proposed and alternative regulatory actions, EPA believes that it has considered elements related to the cost effectiveness of the actions, including the cost and the effect on exposure to the PBT chemicals of the proposed and alternative regulatory actions.

With respect to the anticipated effects of this proposal on the national economy, EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers (Ref. 3).

The benefits of the five PBT chemicals subject to this proposal for their various uses are discussed in Unit II.D. The technical feasibility, economic feasibility, and reasonable availability of alternatives that benefit health or the environment is discussed in Unit III., in the Economic Analysis (Ref. 3), and in the document entitled ''Persistence, Bioaccumulation, Environmental Hazard and Human Health Hazard Ratings for Alternatives to PBT Chemicals Proposed for Regulation'' (Ref. 5).

The dates that the proposed restrictions would take effect are discussed in Unit III.

Finally, with respect to this proposal's effect on technological innovation, EPA expects this action to spur innovation, not hinder it (Ref. 3). In most cases, a wide variety of alternatives are available for the uses that this proposal would prohibit or restrict.

2. TSCA section 26 considerations. EPA has used scientific information, technical procedures, measures, and methodologies that are fit for purpose and consistent with the best available science. For example, EPA based its proposed determination that human and environmental exposures are likely to the five PBT chemicals subject to this action on the Exposure and Use Assessment (Ref. 4) discussed in Unit II.E.1, which underwent a peer review and public comment process, as well as using best available science and methods sufficient to make that determination. The extent to which the various information, procedures, measures, and methodologies, as applicable, used in EPA's decision-making have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rule. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and the Agency's response to comments, can be found in the public docket for this action (EPA–HQ–OPPT–2019–0080). In addition, in accordance with TSCA section 26(i), EPA has made scientific decisions based on the weight of the scientific evidence.

C. TSCA Section 6(h) and the 2014 Update to the TSCA Work Plan for Chemical Assessments

1. TSCA sections 6(h) and 6(a). TSCA section 6(h) requires EPA to take expedited regulatory action under TSCA section 6(a) for certain PBT chemicals identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments. More specifically, under TSCA section 6(h)(1)(A), the subject chemical substances are those that:

- EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the 2012 TSCA Work Plan Chemicals: Methods Document or a successor scoring system;
- Are not a metal or a metal compound; and
- Are chemical substances for which EPA has not completed a TSCA Work Plan Problem Formulation, initiated a review under TSCA section 5, or entered into a consent agreement under TSCA section 4, prior to June 22, 2016, the date that the Frank R. Lautenberg Chemical Safety for the 21st Century Act became law.

In addition, in order for a chemical substance to be subject to expedited action, TSCA section 6(h)(1)(B) states that EPA must find that exposure to the chemical substance under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator (such as infants, children, pregnant women, workers or the elderly), or to the environment on the basis of an exposure and use assessment conducted by EPA. EPA also considers consumers to be a potentially exposed or susceptible subpopulation for the purposes of this rule in addition to the groups identified in the statutory definition at TSCA section 3(12), such as workers.

For chemical substances subject to TSCA section 6(h), EPA must issue a proposed rule by June 22, 2019, and a final rule no later than 18 months after the proposal is issued. The statute further provides that the Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to TSCA section 6(h)(1).

TSCA section 6(a) prohibitions and other restrictions can include one or more, or a combination of, the following actions:

- A requirement either prohibiting or otherwise restricting the manufacturing, processing, or distribution in commerce of such substance or mixture, or limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce (TSCA section 6(a)(1)).
- A requirement either prohibiting or otherwise restricting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement (TSCA section 6(a)(2)).
- A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate minimum warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities (TSCA section 6(a)(3)).
- A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture or monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection (TSCA section 6(a)(4)).
- A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture (TSCA section 6(a)(5)).
- A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes (TSCA section 6(a)(6)).
- A requirement directing manufacturers or processors of such substance or mixture to give notice of such determination to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, to give public notice of such determination, and to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed. Prohibit or otherwise restrict the manufacturing,

processing, or distribution in commerce of such substances (TSCA section 6(a)(7)).

TSCA section 6(h)(4) directs EPA, in selecting among the prohibitions and restrictions in section 6(a), to ''address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and [. . .] reduce exposure to the substance to the extent practicable.'' EPA interprets the directive in TSCA section 6(h) regarding issuance of a TSCA section 6(a) rule to require EPA to issue a rule to satisfy TSCA section 6(h) requirements, using the regulatory prohibitions and other restrictions identified in TSCA section 6(a)(1)–(7), applying other provisions of TSCA section 6 applicable to TSCA section 6(a) rules consistent with the direction in TSCA section 6(h), but not applying those provisions of TSCA section 6(c) that conflict with TSCA section 6(h), in the sense that those provisions assume the existence of a TSCA section 6(b) risk evaluation, whereas TSCA section 6(h)(2) specifically provides that EPA is not required to conduct a risk evaluation. EPA invites public comment on this interpretation and seeks input on other possible interpretations.

2. Address risks and reduce exposure to the extent practicable. TSCA section 6(h)(1) through (4) requires EPA to issue a TSCA section 6(a) rule to ''address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and [. . .] reduce exposure to the substance to the extent practicable.''

EPA began by compiling use information on each of the five PBT chemicals that EPA preliminarily determined met the criteria for expedited action. Separate use documents were developed for each of the five PBT chemicals and made available for public comment in August of 2017 (Refs. 6, 7, 8, 9, and 10).

EPA then conducted a review of available literature with respect to the PBT chemicals discussed in this proposal to identify, screen, extract, and evaluate exposure information reasonably available for each. The information gathered is presented in the document entitled ''Exposure and Use Assessment of Five Persistent, Bioaccumulative and Toxic Chemicals'' (Exposure and Use Assessment) (Ref. 4). The exposure information presented in the Exposure and Use Assessment document was not intended to comprehensively discuss all possible nor use-specific exposure scenarios presented by the PBT chemicals evaluated, but rather to describe a broad range of potential exposures that would enable EPA to determine whether exposure to these PBT chemicals is likely for the purposes of TSCA section 6(h)(1)(B). The Exposure and Use Assessment was peer reviewed; the peer review comments and the Agency's responses can be found in the public docket at EPA–HQ–OPPT–2018–0314.

In addition, EPA compiled hazard information on the five PBT chemicals discussed in this proposal. The information is presented in the document entitled ''Environmental and Human Health Hazards of Five Persistent, Bioaccumulative, and Toxic Chemicals'' (Hazard Summary) (Ref. 5). To create this document, which presents a limited summary of the hazards of these chemical substances, environmental and human health hazard data were compiled from various primary and secondary sources of reasonably available information. The information in the Hazard Summary does not represent an exhaustive literature review nor is it an analysis of relative importance or comparative dose-response among hazards. The hazard data are reported from the literature with no additional analysis or assessment.

The information compiled by EPA in the Exposure and Use Assessment is useful in characterizing the exposures by these PBT chemicals. EPA identified and included available information about potentially exposed and susceptible subpopulations during the development of both the Exposure and Use Assessment (Ref. 4) and the Hazard Summary (Ref. 5).

The statute provides that EPA shall: (1) ''Address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance'' and (2) ''reduce exposure to the substance to the extent practicable.'' (TSCA section 6(h)(4)). With respect to the first requirement, EPA reviewed the hazard and exposure information on the five PBT chemicals as described previously. While this information identified hazards and exposures for the PBT chemicals, the information for these five chemicals did not provide a basis for EPA to develop scientifically robust and representative risk estimates to evaluate whether or not any of the chemicals present a risk of injury to health or the environment. EPA does not interpret TSCA section 6(h)(4), specifically the language directing EPA to ''address the risks of injury to health or the environment that the Administrator determines are presented,'' to require EPA to determine, through a risk assessment or risk evaluation, whether risks are presented. EPA believes this reading gives EPA the flexibility Congress intended for issuance of an expedited rule for PBTs without compelling a risk evaluation to support this rulemaking. EPA did not perform a systematic review or a weight of the scientific evidence assessment for the hazard characterization of these chemicals. As a result, the characterization is not definitive or comprehensive. Other information on these chemicals may exist in addition to the studies summarized in the Hazard Summary that could refine the characterization. EPA does not believe that a systematic review would change our proposed risk management determinations as TSCA section 6(h)(4) requires EPA to reduce exposure to the substance to the extent practicable, regardless of risk. EPA is seeking public comment on the decision not to pursue a systematic review for these five chemicals and the impact of this decision on the PBT rulemaking.

As required by the statute, the Agency is proposing risk management actions to reduce exposures to the PBT chemicals to the extent practicable. Although EPA did not make an affirmative determination that risks are presented by the five PBT chemicals due to the language of TSCA section 6(h), this proposal nevertheless meets the standards of TSCA section 6(h)(4).

With respect to the second requirement, the term ''practicable'' is not defined in TSCA. EPA interprets this requirement as generally directing the Agency to consider such factors as achievability, feasibility, workability, and reasonableness. In addition, EPA's approach to determining whether particular prohibitions or restrictions are practicable is informed in part by a consideration of certain other provisions in TSCA section 6. For example, TSCA section 6(c)(2)(A) provides a list of factors that EPA must consider in promulgating a rule under TSCA section 6(a), and EPA's statement on those factors can be found in Unit II.B. Those factors include the costs and benefits of the rule, along with the effects on health and the environment, the magnitude of human and environmental exposure, the benefits of the chemical substance for various uses, and other factors, such as the effect of the rule on the national economy, small business, and technological innovation. In addition, pursuant to TSCA section 6(c)(2)(B), in selecting the appropriate TSCA section 6(a) regulatory approach to take, EPA is directed to ''factor in, to the extent practicable'' those same considerations. EPA invites public comment on the

factors that should be considered in determining whether a particular prohibition or restriction is practicable.

3. The TSCA Work Plan for Chemical Assessments. The 2012 TSCA Work Plan Chemicals identified a list of chemicals for assessment by EPA (Ref. 11). The screening process for identifying these chemicals is described in the TSCA Work Plan Chemicals: Methods Document (Ref. 2). Chemicals were evaluated and received a score through the application of a numerical algorithm. This score was based on three characteristics: hazard, exposure, and potential for persistence/bioaccumulation. Using this system, chemicals were sorted into one of four bins. Chemicals able to be scored on all three characteristics were scored as High (3), Moderate (2), or Low (1) based on their available information. The data used to determine the hazard score for each chemical were obtained through specified data sources (Ref. 2, Appendix A). The hazard data reviews on each chemical were not exhaustive and did not rise to the level of assessments. Chemicals were scored on the basis of readily available data, and no judgment was made concerning gaps in or completeness of the available data set for a given chemical. The hazard score was determined based on three hazard levels, and each hazard level had a corresponding hazard rank (High-3, Moderate-2, and Low-1). The concentration ranges or characteristics corresponding to each hazard level are identified in the TSCA Work Plan Chemicals: Methods Document (Ref. 2, pp. 8–9). The highest hazard rank score a chemical received for any single human health or environmental toxicity endpoint became its hazard score (Ref. 2).

Persistence scoring consisted of the evaluation of the potential half-life in air, water, soil, and sediment while considering the expected partitioning characteristics of the chemicals and all potential removal pathways based on standard physical-chemical properties and environmental fate parameters. Specified data sources (Ref. 2, Appendix B) were searched to locate studies on biotic and abiotic transformation (*e.g.,* biodegradation, hydrolysis, photolysis) to estimate half-lives for the chemicals in the environment. Bioaccumulation scoring consisted of evaluation of bioaccumulation/bioconcentration (measured or estimated BAF/BCF) data. When BAF data were not available, bioconcentration data (measured or estimated) were used to evaluate the potential for a chemical to bioaccumulate in organisms in the environment. In the absence of test data establishing the chemical's measured persistence or bioaccumulation potential, EPA used its EPI Suite™ model to derive a ranking for the chemical (Ref. 2).

Scores were assigned independently for persistence potential and bioaccumulation potential; the independent scores were added together to derive a single score for persistence/bioaccumulation. Chemicals with a combined score of 5–6 were scored as High (3) for persistence/bioaccumulation, a combined persistence and bioaccumulation score of 3–4 was scored as Moderate (2), and a combined score of 1–2 was scored as Low (1). Chemicals with High or Moderate hazard or persistence/bioaccumulation scores that could not be scored for exposure because of an absence of data, together with chemicals that could not be scored for hazard, were identified separately as potential candidates for information gathering. In 2014, EPA applied the screening process for exposure information described in the TSCA Work Plan Chemicals: Methods Document (Ref. 2) to update its list of chemicals on the TSCA Work Plan for Chemical Assessments. This update focused primarily on updating the exposure score to reflect updated industry data submitted to EPA through the Toxics Release Inventory (TRI) (40 CFR part 372) in 2011 and the TSCA Chemical Data Reporting (CDR) rule (40 CFR part 711) in 2012 on chemical releases and potential exposures, respectively. The 2014 Update to the TSCA Work Plan for Chemical Assessments included a list of 90 chemicals and chemical categories; the TSCA amendments passed in 2016 as part of the Frank R. Lautenberg Chemical Safety for the 21st Century Act reference the 2014 Update to the TSCA Work Plan for Chemical Assessments in several places, including TSCA section 6(h).

In accordance with TSCA section 6(h)(1), chemical substances that meet the criteria described therein are subject to expedited rulemaking without the risk evaluations required for other TSCA Work Plan chemicals prior to initiating TSCA section 6(a) risk management actions. EPA interprets the TSCA section 6(h)(1)(A) provision pertaining to chemical substances ''that the Administrator has a reasonable basis to conclude are toxic,'' as referring to the toxicity score identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments, and likewise focused on toxicity scores of high or moderate. In addition, EPA conducted the screening level literature search described in the peer-reviewed Hazard Summary to provide additional information and support for the hazard score assigned to these five chemicals in the 2014 Update to the TSCA Work Plan for Chemical Assessments. The information EPA has collected and reviewed in developing this proposal provides no basis to call into question the scoring for persistence, bioaccumulation, and toxicity performed in 2014 for these five PBT chemicals pursuant to the screening process described in the TSCA Work Plan Chemicals: Methods Document.

EPA is proposing to determine that five chemical substances meet the TSCA section 6(h)(1)(A) criteria for expedited action. These substances are: DecaBDE; PIP (3:1); 2,4,6-TTBP; HCBD; and PCTP.

A manufacturer of two other chemical substances on the 2014 Update to the TSCA Work Plan for Chemical Assessments submitted a timely request to EPA for risk evaluations pursuant to TSCA section 6(h)(5). As a result of the request, these two chemicals: Ethanone, 1-(1,2,3,4,5,6,7,8-octahydro-2,3,5,5-tetramethyl-2-naphthalenyl) and Ethanone, 1-(1,2,3,4,5,6,7,8-octahydro-2,3,8,8-tetramethyl-2-naphthalenyl) are excluded from this proposed rule (Ref. 12).

D. Overview of the Chemicals Subject to This Proposed Action

The use information presented in this Unit is based on the EPA's review of the available information, as presented in the use documents developed for each of the PBT chemicals (Refs. 6, 7, 8, 9, and 10), as well as public comments on the use documents and other stakeholder input.

1. Decabromodiphenyl ether (DecaBDE). (i) Use background: DecaBDE is used as an additive flame retardant in plastic enclosures for televisions, computers, audio and video equipment, textiles and upholstered articles, wire and cables for communications and electronics, and other applications (Ref. 6). DecaBDE is also used as a flame retardant for multiple applications in the aerospace and automotive industries, including replacement parts for aircraft and cars (Refs. 13 and 14). Examples of products that have been made with DecaBDE as a flame retardant include:

- Consumer products made of both hard and soft plastics, such as furniture and furnishings, foam in furniture or mattresses, computer casings, and other plastic products including toys and other children's products (such as play structures);
- Fabrics and textiles, such as apparel, furniture and furnishings,

curtains, and construction and building materials;

- Rubber articles, such as wire casings and other rubber articles; and
- Complex articles in road vehicles and other vehicles for passengers and goods, such as cars, trucks, and airplanes; and machinery and mechanical appliances.

DecaBDE can also be found in plastic materials recycled from plastic products originally made with DecaBDE.

EPA presented its initial research into DecaBDE uses in the August 2017 ''*Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal*'' document on DecaBDE (Ref. 6). EPA received comments from 12 entities on the Preliminary Information document. EPA also communicated with dozens of companies, industry groups, chemical users, academic experts, states, and other stakeholders to identify and verify uses of DecaBDE (Ref. 6). These interactions and comments further informed EPA's understanding of the current status of uses for DecaBDE. Public comments and stakeholder meeting summaries are available in the public docket at EPA–HQ–OPPT–2016–0724.

In 2009, based on the EPA-Industry DecaBDE Phase-Out Initiative, domestic manufacturers and importers of commercially available DecaBDE agreed to voluntarily phase out the manufacture and import of the chemical no later than December 31, 2013 (Ref. 15). For the 2012 and 2016 CDR periods, data reported to EPA indicate that five sites manufactured (including imported) DecaBDE in the United States between 2011 and 2015 (Refs. 16 and 17). The total volume of DecaBDE manufactured (including imported) in the United States in 2011 was 18,110,827 lbs (Ref. 16). For the 2016 reporting period, the total volume of DecaBDE manufactured (including imported) in the United States was 16,696,951 lbs in 2012, between 1,000,000 and 10,000,000 lbs in 2013, between 100,000 and 500,000 lbs in 2014, and between 500,000 and 1,000,000 lbs in 2015. Actual production volume for years 2013 through 2015 is claimed in CDR as confidential business information (Ref. 17). Data reported to EPA from TRI show a general decline of DecaBDE releases, with 259,102 lbs of total on- and off-site reported releases of DecaBDE from 24 sites in 2016, and 67,248 lbs of total on- and off-site reported releases of DecaBDE from 17 sites in 2017. Of these 17 sites, one site reported import of the chemical, 14 reported processing of DecaBDE, and at the other two sites the specific activities are unknown (Refs. 18 and 19). EPA requests comment as to why some companies are still processing and using DecaBDE despite phase-out initiatives and the availability of relatively inexpensive substitutes.

(ii) What are the beneficial properties of DecaBDE for various uses? DecaBDE is a brominated flame retardant that has been added to plastics, textiles, and other materials. When fire occurs, DecaBDE and other polybrominated diphenyl ethers (PBDEs), are part of vapor-phase chemical reactions that interfere with the combustion process, thus delaying ignition and inhibiting the spread of fire. DecaBDE has been considered an economical flame retardant because relatively small quantities are necessary to be effective (Ref. 6).

(iii) What are the 2014 Update to the TSCA Work Plan for Chemical Assessments scores for DecaBDE? DecaBDE scored high (3) for hazard (based on developmental effects in mammals and aquatic toxicity); high (3) for exposure (based on its use in textiles, plastics, and polyurethane foam; and information reported to CDR and TRI); and high (3) for persistence and bioaccumulation (based on high environmental persistence and high bioaccumulation potential). The overall screening score for DecaBDE was high (9).

(iv) Regulatory actions pertaining to DecaBDE. DecaBDE is regulated as a PBT chemical by federal, state, and international agencies. They are briefly summarized in this unit. More detailed information can be found in the Economic Analysis (Ref. 3). In addition, the OSHA regulations discussed in Unit III.A apply to commercial and industrial workplaces.

At the Federal level, under TSCA, DecaBDE was one of the chemical substances required to be tested for dioxin/furan contamination as outlined in 40 CFR part 766. DecaBDE manufacturing, processing, and use information is reportable under CDR (40 CFR part 711). Under the CDR rule, EPA collects basic exposure-related information on the types, quantities and uses of chemical substances produced domestically and imported into the U.S. Under TSCA section 8(e), manufacturers (including importers), processors, and distributors must immediately notify EPA if they obtain information that supports the conclusion that a chemical substance or mixture presents a substantial risk of injury to health or the environment. Four such notifications were received for DecaBDE between 1996 and 2002. Under the Emergency Planning and Community Right-to-Know Act (EPCRA), DecaBDE has been on the TRI list of reportable chemicals since 1988 (Ref. 20). TRI tracks the management of certain toxic chemicals that may pose a threat to human health and the environment. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment or managed through recycling, energy recovery and treatment. A release of a chemical for TRI purposes means that it is emitted to the air or water, or placed in some type of land disposal.

Several states have taken action on DecaBDE. In California, DecaBDE is listed as a candidate chemical by the Department of Toxic Substances Control and as a priority chemical through the California Environmental Contaminant Biomonitoring Program. Starting in 2020, California will also prohibit the use of flame retardants (including DecaBDE) above 1000 parts per million (ppm) in children's products, mattresses, and upholstered furniture. Hawaii prohibits the manufacture, use, sale, and distribution of televisions, computers, upholstered furniture, mattresses, and mattress pads containing DecaBDE greater than 0.1% by weight. In Maine, DecaBDE is listed as a chemical of high concern; it is banned in the use of new shipping pallets (though recycled pallets are exempted), and manufacturers or distributors who use DecaBDE in certain children's products are required to report to the Department of Environmental Protection. In Maryland, the sale of products that contain more than 0.1% DecaBDE by mass is prohibited, though the recycling of articles containing DecaBDE is exempted. New Jersey and Pennsylvania include DecaBDE on their hazardous substances lists under right-to-know legislation. DecaBDE is one of Oregon's 66 high priority chemicals of concern for children's health. Vermont prohibits DecaBDE in certain home products and manufacturers using DecaBDE must report to the Vermont Health Department. Washington prohibits the use of DecaBDE in children's products, mattresses, electronics, and residential furniture (Ref. 3).

International actions on DecaBDE include Australia listing it as a priority existing chemical, which requires the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) to fully assess the human health and environmental risks of DecaBDE. The draft NICNAS report on DecaBDE was completed in May 2019. Canada added DecaBDE to its Prohibition of Certain Toxic Substances Regulation, which prohibits the

manufacture, use, sale, offer for sale, or import of DecaBDE unless present in a manufactured article. The European Member State Committee has identified DecaBDE as a Substance of Very High Concern due to its PBT chemical properties. The European Chemical Agency (ECHA) has prohibited the manufacture and use of DecaBDE (including in most articles at concentrations greater than 0.1% by weight) as of March 2019 under Annex XVII to the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) regulation. DecaBDE is also listed as a persistent organic pollutant (POP) under the Stockholm Convention, which requires parties to take measures to eliminate production and use of the chemical (Ref. 3).

2. Phenol, isopropylated phosphate (3:1) (PIP (3:1). (i) Use background: PIP (3:1) is used as a plasticizer, a flame retardant, an anti-wear additive, and/or an anti-compressibility additive in hydraulic fluid, lubricating oils, lubricants and greases, epoxy coatings for decks of marine shipping vessels, coatings for pipes and insulation in construction, adhesives and sealants for insulation, and articles. For example, in lubricating oils, PIP (3:1) acts as a flame retardant, an anti-wear additive, anti-compressibility additive, or some combination of the three, while in adhesives and sealants PIP (3:1) acts as a plasticizer and flame retardant (Ref. 4).

PIP (3:1) has been identified as a possible component in plastic products and articles, including children's products, automotive, and aerospace products (Ref. 7).

PIP (3:1) also is added to articles as a plasticizer or flame-retardant additive in plastic components, adhesives and sealants, and paints and coatings. Use of PIP (3:1) in complex articles (such as in casings of electronics or components of automobiles), plastic articles including furniture and furnishings, and toys intended for children's use, has been identified (Ref. 7). PIP (3:1) is sold as a plastic flame-retardant additive and is a component of some flame-retardant additives for flexible polyurethane foam (Ref. 7). EPA is aware that PIP (3:1) is used in antifouling paint; however, EPA does not consider this a TSCA use because any pesticide, when manufactured, processed, or distributed in commerce as a pesticide does not meet the definition of ''chemical substance'' under TSCA section 3. To ensure that this is clear, EPA is proposing to incorporate the statutory definition of ''chemical substance'' into 40 CFR part 751, subpart E.

EPA presented its initial research into PIP (3:1) uses in the August 2017 *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal* document on PIP (3:1) (Ref. 7). EPA received comments from 15 entities on the Preliminary Information document. EPA also communicated with companies, industry groups, chemical users, states, and other stakeholders to identify and verify uses of PIP (3:1) (Ref. 4). These interactions and comments further informed EPA's understanding of the uses for PIP (3:1). Public comments and stakeholder meeting summaries are available in EPA's docket at EPA–HQ–OPPT–2016–0730.

For the 2012 CDR period, data indicate that four sites manufactured (including imported) PIP (3:1) in the United States. For the 2016 CDR period, data indicate nine sites manufactured (including imported) PIP (3:1) in the United States (Ref. 17). The total volume of PIP (3:1) manufactured (including imported) in the United States was 14,904,236 lbs in 2011, 3,191,017 lbs in 2012, 2,968,861 lbs in 2013, 5,632,272 lbs in 2014, and 5,951,318 in 2015 (Ref. 17).

(ii) What are the beneficial properties of PIP (3:1) for the various uses? PIP (3:1) has multiple functional uses, including as a plasticizer, flame retardant, anti-wear additive, or as an anti-compressibility additive (Ref. 4). When PIP (3:1) is included in a formula, it is often for a combination of these functional uses, for example as flame retardant and an anti-wear additive. Additionally, PIP (3:1) is an isomer mixture, and through manufacturing, the proportion of various isomers can be manipulated to achieve specific properties which can affect the performance of a formula (Ref. 21).

PIP (3:1) is a component of additives to help lubricating oils and hydraulic fluids meet safety and specific performance standards from both military and industry, particularly in the aviation sector (EPA–HQ–OPPT–2016–0730–0009) (Refs. 22, 23, 24, 25 and 26). It is present in lubricating fluids which need to perform at extreme temperatures, both hot and cold, as a flame retardant and anti-wear additive (Ref. 4). Some lubricants containing PIP (3:1) are formulated to the military performance specifications such as MIL–PRF–32014 for use in a multipurpose, water resistant, high speed grease in a wide temperature range (Refs. 22 and 23). In aviation hydraulic fluid, some phosphate ester-based hydraulic fluids contain PIP (3:1) as a flame retardant, anti-wear additive, and anti-compressibility additive. While multiple hydraulic fluids meet industry performance standards for most commercial and military airplanes, for some commercial models, the information reasonably available to EPA indicates that only hydraulic fluids containing PIP (3:1) can meet safety and air worthiness standards. This includes those models which are designed to operate at higher pressure systems, that is, 5,000 pounds per square inch (PSI) or greater (Ref. 23, 24, and 25). For these systems, additives containing PIP (3:1) allow the fluid to remain functional under this high pressure at various temperatures and minimize wear in the hydraulic system (Refs. 22, 23, 24 and 25).

(iii) What are the 2014 TSCA Work Plan for Chemical Assessments scores for PIP (3:1)? While not among the chemicals screened in 2012, PIP (3:1) came to the Agency's attention as part of EPA's analysis of flame-retardant chemicals and was subsequently scored using the TSCA Work Plan Chemicals: Methods Document (Ref. 2) and added to the 2014 Update to the TSCA Work Plan for Chemical Assessments. PIP (3:1) scored high (3) for hazard (based on neurotoxicity in mammals and aquatic toxicity); high (3) for exposure (based on use as a flame retardant in industrial and consumer products); and high (3) for persistence and bioaccumulation (based on high environmental persistence and high bioaccumulation potential). The overall screening score for PIP (3:1) was high (9).

(iv) Regulatory actions pertaining to PIP (3:1). PIP (3:1) is regulated by federal, state, and international agencies. They are briefly summarized in this unit. More detailed information can be found in the Economic Analysis (Ref. 3). In addition, the OSHA regulations discussed in Unit III.A. apply to commercial and industrial workplaces.

PIP (3:1) was added to the Priority Testing List by the TSCA Interagency Testing Committee in May 2012 (77 FR 30855). In addition, a high-volume use of PIP (3:1) is in aviation and industrial hydraulic fluid and lubricants and greases. If such fluids, lubricants, and greases meet the definition of ''used oil'' under 40 CFR 279.1, they are subject to Resource Conservation and Recovery Act (RCRA) regulations for managing used oil (40 CFR part 279) (Ref. 3).

With respect to state regulations, PIP (3:1) is listed as a candidate chemical and identified as a potential priority monitoring chemical in California, and Washington has identified PIP (3:1) as a Chemical of High Concern to Children (Ref. 3).

Internationally, PIP (3:1) is included in the ECHA Classification and Labeling Inventory. The ECHA Classification and Labeling Inventory is in line with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS); OSHA has also incorporated the GHS in its Hazard Communication Standard. In Canada, PIP (3:1) was placed on the Domestic Substance List (DSL) in 1994 as an Existing Substance not subject to the New Substance Notification Regulations. The inclusion of PIP (3:1) on the DSL designates it as an existing, rather than a new, substance in Canada, the equivalent of being included on the TSCA inventory as an active chemical (Ref. 3).

3. 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP). (i) Use background: Uses of 2,4,6-TTBP include domestic manufacture, use as an intermediate/reactant in processing, incorporation in formulations and mixtures destined for fuel and fuel related additives, as well as formulations intended for the maintenance or repair of motor vehicles and machinery. Although EPA has not identified current users of 2,4,6-TTBP for liquid lubricant and grease additives/antioxidants, it found indications of current use, and a manufacturer has reported that, it is aware that some customers may use its products for this end use, although it does not actively market products with 2,4,6-TTBP for lubricant applications. Therefore, the Agency proposes, for purposes of this rulemaking, to address the use of 2,4,6-TTBP in liquid lubricant and grease additives/antioxidants.

2,4,6-TTBP is an alkylphenol whose primary value is as an antioxidant. It is a widely used antioxidant for jet, automotive, and marine fuels. Several stakeholders submitted comments to the public docket following posting of the document, ''*Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: 2,4,6-Tris(tert-butyl)phenol,* August 2017'' (Ref. 8), which presented EPA's initial research into the uses of 2,4,6-TTBP. One chemical processor stated that they sell 2,4,6-TTBP as part of an antioxidant in fuel additives for use in gasoline fuels with a concentration of one to 15% 2,4,6-TTBP; the gasoline fuels, after blending, are packaged and sold in mild steel drums (55-gallon volume) or stainless-steel totes (350-gallon volume) (EPA–HQ–OPPT–2016–0734–0015). The Aerospace Industries Association also identified critical uses of 2,4,6-TTBP as a fuel, lubricant, and oil additive/antioxidant in formulations designed to meet specific technical performance requirements that are documented in a number of engineering specifications over the service life of complex aerospace products (EPA–HQ–OPPT–2016–0734–0010). The American Petroleum Institute also confirmed that their members use 2,4,6-TTBP as an antioxidant in gasoline, diesel, and aviation fuels at concentrations of between 5 and 50 parts per million to reduce gasoline deposits in engines and subsequently reduce emissions (EPA–HQ–OPPT–2016–0734–0006).

Based on EPA's research and public comments submitted, the only large volume domestic manufacturer, and the only manufacturer currently reporting to the EPA's CDR with production volumes of 2,4,6-TTBP that meet the CDR threshold, is SI Group. Historical CDR data indicate that in the 1986 to 1998 reporting years, the aggregate range of production of 2,4,6-TTBP was between 1 and 10 million pounds per year, and increased to a range of 10 to 50 million pounds per year in reporting years 2002 and 2006. The range of production in 2012, 2013, 2014, and 2015 was claimed as CBI in the 2016 CDR (Ref. 3). There have not been any indications of substantial importation of 2,4,6-TTBP into the United States from other countries.

SI Group stated that proprietary chemical mixtures (primarily two, Isonox® 133 and Ethanox® 4733) contain detectable percentages of 2,4,6-TTBP and are used to meet several military specifications for use in jet fuel that is supplied and used by the U.S. military (Ref. 27). SI Group also stated that they do not sell, supply, or distribute into commerce 2,4,6-TTBP in a pure (neat) form, and none of their proprietary blended chemical mixtures containing 2,4,6-TTBP are sold directly to consumers; however, SI Group customers use these mixtures to formulate other products containing 2,4,6-TTBP that are intended for consumer applications (Ref. 27). SI Group also stated that none of its proprietary chemical mixtures containing 2,4,6-TTBP are actively marketed for use as a lubricant additive; however, some of SI Group's customers may use the proprietary chemical mixtures for this use (Ref. 27). SI Group also confirmed the sale of an excess material stream containing 2,4,6-TTBP, that is used as a waste fuel for energy value, which is burned and destroyed during use (Ref. 27).

2,4,6-TTBP is a co-product with a closely related alkylphenol, 2,6 di(tert-butyl) phenol (2,6-DTBP), which is also a primary substitute for it. Neither chemical can be effectively produced commercially without co-production of the other. Approximately 94% of the 2,4,6-TTBP produced by SI Group is consumed by the company in internal processes (feedstock for further production of alkylphenols). An additional 4% is sold as a waste fuel for energy use. Both uses result in the destruction of the chemical.

The remaining 2% of 2,4,6-TTBP produced by SI Group is sold as an antioxidant primarily for use in fuel for all uses: Aviation, military, industrial, commercial, and consumer use. The chemical is sold in a mixture with its co-products, primarily 2,6-DTBP, at a concentration of approximately 85% 2,6-DTBP and 12% 2,4,6-TTBP. The 2,4,6-TTBP is destroyed when the fuel is consumed in the combustion process when the fuel is burned (Ref. 8).

Antioxidant additives are essential to the storage and transport of fuel, as without them, fuel quickly begins to degrade and form harmful sludge and varnish. The 2,4,6-TTBP mixtures are the primary antioxidants used in aviation, marine, and automotive fuel streams in the United States. Many current performance specifications for fuel require their use; including for specialty fuels for aviation and the military. The majority of the 2,4,6-TTBP mixtures sold are blended into the fuel at the refinery or soon after at tank farms prior to commercial distribution of the fuel.

A portion (approximately 6%) of the 2,4,6-TTBP mixtures are sold to processors who blend and distribute antioxidant products that are intended to be added to the fuel tanks/systems in vehicles or machinery by repair shops or the owner/operators of the equipment themselves. These fuel stabilizer products are sold to consumers at various retail locations, as well as online. These additives are typically sold in small bottles containing up to 32 ounces; gallon containers are available through some retailers. Specialty products are also sold for cleaning fuel injectors or use in 2-stroke engines (pre-blended with oil).

Other countries have reported that 2,4,6-TTBP is, or has been, used as an additive in oils and lubricants (EPA–HQ–OPPT–2016–0734–0002). SI Group states that it does not actively market products containing 2,4,6-TTBP for lubricant applications, but that it is aware that some customers may use these products in lubricant applications (Ref. 27).

(ii) What are the beneficial properties of 2,4,6-TTBP for various uses? Regarding the benefit of manufacture, beyond its use as an antioxidant, 2,4,6-TTBP has value as a chemical intermediate in the production of dialkylphenol chemicals. Moreover, SI Group reports it is not possible to significantly suppress the formation of 2,4,6-TTBP without severely constraining the yield of other desired dialkylphenol products, therefore its manufacture has impacts beyond the commercial use of 2,4,6-TTBP itself. The production of other dialkylphenol products, including alternative antioxidants, is therefore a benefit of ongoing 2,4,6-TTBP manufacture.

With respect to use as an antioxidant in the general fuel supply, EPA has received comment regarding the beneficial properties of 2,4,6-TTBP as an antioxidant component blended in fuel. SI Group identified numerous U.S. military and ASTM standards that its proprietary blended products containing 2,4,6-TTBP satisfy for the antioxidant requirements in fuel (Ref. 27). Although particular specifications do not list 2,4,6-TTBP by CASRN or trade name, 2,4,6-TTBP is the preferred antioxidant component for fuel standards due to its chemical reaction potential and physical property characteristics (Refs. 27 and 28). According to the manufacturers and processors, any substitution of 2,4,6-TTBP with another alkylphenol or antioxidant compound would materially change the performance characteristics of that fuel and compliance with mandatory reference standards could not be assured (Ref. 28). Introducing a new jet fuel component into use involves the fuel component supplier, engine manufacturers, airplane makers and regulators in a complicated process that may take several years and involve significant cost. New fuel additives must be tested and approved to ensure they would have no negative impact on engine safety, durability or performance (Ref. 27).

Regarding the retail sale of fuel additives and fuel injector cleaners, EPA was unable to find any specifications or standards for retail fuel antioxidants or additives that explicitly require the use of 2,4,6-TTBP.

Regarding the use of 2,4,6-TTBP as an antioxidant additive in oil and lubricants, EPA was unable to find any specifications or standards for oil, lubricant, or grease additives that require the use of 2,4,6-TTBP.

(iii) What are the 2014 Updates to the TSCA Work Plan for Chemical Assessments scores for 2,4,6-TTBP? 2,4,6-TTBP scored moderate (2) for hazard (based on toxicity following chronic exposure including liver effects); moderate (2) for exposure (based on its wide use in consumer products, presence in indoor environments, and estimation to have moderate releases to the environment); and high (3) for persistence and bioaccumulation (based on moderate environmental persistence and high bioaccumulation potential). The overall screening score for 2,4,6-TTBP was high (7).

(iv) Regulatory actions pertaining to 2,4,6-TTBP. EPA has no existing regulations expressly identifying 2,4,6-TTBP, and EPA did not identify any existing or developing Federal regulations for 2,4,6-TTBP. However, the OSHA regulations discussed in Unit III.A. apply to commercial and industrial workplaces.

With respect to state regulations, the California Department of Toxic Substances Control (DTSC) lists 2,4,6-TTBP as a Candidate Chemical. A Candidate Chemical must exhibit a hazardous trait and/or an environmental or toxicological endpoint and is found on an authoritative list under California Code of Regulations section 69502.2(a) or is listed by DTSC using criteria specified in section 69502.2(b) (Ref. 3). In Oregon, 2,4,6-TTBP is listed on Oregon Department of Environmental Quality's pollutant profiles (Ref. 3) and 2,4,6-TTBP is listed as a tier 1 persistent pollutant (Ref. 3). With respect to international actions, Japan has prohibited the importation, manufacture, and use of 2,4,6-TTBP as a Class 1 Specified Chemical under the Chemical Substance Control Law (Ref. 3).

Environment Canada's 2008 screening assessment for 2,4,6-TTBP concluded that 2,4,6-TTBP may be entering the environment and meets the criteria set out in section 64 of the Canadian Environmental Protection Act of 1999. Environment Canada has since completed a risk evaluation and in 2016 recommended 2,4,6-TTBP be added to schedule 1 of the environmental emergency regulations, at a threshold quantity of 0.22 tonnes at a concentration of 10%; listing may require persons who own or manage specified toxic and hazardous substances at or above the specified thresholds to provide required information on the substance(s) and their quantities and to prepare and implement environmental emergency plans (Ref. 3).

2,4,6-TTBP is on the European Chemical Agencies (ECHA) Classification and Labeling inventory and the European community inventory. More detailed information on the state and international regulations pertaining to 2,4,6-TTBP can be found in the Economic Analysis (Ref. 3).

4. Hexachlorobutadiene (HCBD). (i) Use background: HCBD is a halogenated aliphatic hydrocarbon that is produced as a byproduct during the manufacture of chlorinated hydrocarbons, particularly perchloroethylene, trichloroethylene, and carbon tetrachloride (Ref. 29). The majority of what is manufactured is destroyed via incineration by the manufacturer. A small percentage of the HCBD is sent off-site for incineration or for burning as a waste fuel by cement manufacturers in cement kilns (EPA–HQ–OPPT–2016–0738–0012). EPA has not identified any uses of HCBD other than burning as a waste fuel. According to TRI data, over 9 million lbs of HCBD were generated by chemical manufacturers in reporting year 2017, with almost 8.9 million lbs treated for destruction on-site via incineration. TRI reports show other waste management activities of HCBD including 58,000 lbs being treated for destruction off-site, 33,000 lbs burned for energy recovery off-site, and 2,400 lbs released to air.

(ii) What are the beneficial properties of HCBD for the various uses? HCBD is manufactured as a waste byproduct by chemical manufacturers. The majority of what is manufactured is destroyed via incineration by the manufacturer. A small percentage of the HCBD is sent off-site for burning as a waste fuel by cement manufacturers.

(iii) What are the 2014 Update to the TSCA Work Plan for Chemical Assessments scores for HCBD? HCBD scored high (3) for hazard (possible human carcinogen); moderate (2) for exposure (based on TRI data); and high (3) for persistence and bioaccumulation (based on high environmental persistence and high bioaccumulation potential). The overall screening score for HCBD was high (8).

(iv) Regulatory actions pertaining to HCBD. Under EPCRA, HCBD has been listed on the TRI list of reportable chemicals since 1988 (Ref. 20). HCBD is a Hazardous Air Pollutant (HAP) under section 112 of the Clean Air Act (CAA) as amended in 1990. The Agency has promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) which require the maximum achievable control technology (MACT) for major sources in Standard Source Categories. Under the Clean Water Act (CWA), HCBD is listed on the Priority Pollutant List and is subject to Effluent Guidelines and the requirements of the National Pollutant Discharge and Elimination System (NPDES). Under the

Resource Conservation and Recovery Act (RCRA), HCBD is a hazardous constituent and can be characterized as a toxicity characteristic waste (Hazardous Waste No. D033) or listed hazardous waste (U128) under RCRA when discarded or intended for discard. Under the Comprehensive Environmental Response, Compensation and Liability Act, HCBD is designated as a hazardous substance with a reportable quantity (RQ) of 1 lb. More information on the impact of these existing regulations is in Unit III.E.

With respect to other Federal regulations, the Pipeline and Hazardous Material Safety Administration in the Department of Transportation lists HCBD as a hazardous substance with a reportable quantity of 1 lb. In addition, the OSHA regulations discussed in Unit III.A. apply to commercial and industrial workplaces.

Many states have promulgated regulations applicable to HCBD. State requirements concerning HCBD include regulations of water quality standards, sources of air pollution and management of waste containing the chemical. The following states implemented water quality standards for HCBD: Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wisconsin. Several states have air pollution requirements for HCBD including Idaho, Illinois, Maryland, New Hampshire and Ohio.

Internationally, Austria banned the use of HCBD in 1992 citing its carcinogenic and mutagenic properties as well as fetotoxicity and negative effects on fertility. In Canada, HCBD is on the Domestic Substance List (DSL) as an Existing Substance not subject to the New Substance Notification Regulations. It was also added to Schedule 1 of the Canadian Environmental Protection Act and to Schedule 1 of the Prohibition of Certain Toxic Substances Regulations. HCBD was also placed on Canada's Virtual Elimination List. In China, HCBD is in the Catalog of Hazardous Chemicals. In the European Union (EU), HCBD is listed on the Annex III inventory based on its bioaccumulative properties and is subject to Annex V Part 1 of Prior Informed Consent (PIC) Regulation. In Germany, HCBD is on the Master List of the German Federal Environment Agency (UBA). Under the Chemical Substances Control Law of Japan, HCBD was designated a Class I Chemical Substance. Swedish Chemicals Agency includes HCBD on a list of phase-out substances. The United Kingdom regulates HCBD through several mechanisms including the Pollution Prevention and Control regulations, the Food and Environmental Protection Act, and the Control of Pesticides Regulations.

Under the Stockholm Convention, HCBD is listed as a persistent organic pollutant (POP) under Annex A which requires parties take measures to eliminate production and use of the chemical, and under Annex C which requires parties to reduce the unintentional releases of chemicals.

For more information about regulatory actions pertaining to HCBD, see the Economic Analysis for this proposed rule (Ref. 3).

5. Pentachlorothiophenol (PCTP). (i) Use background: Historically, PCTP was used in rubber manufacturing as a peptizer, a chemical that makes rubber more amenable to processing. There are few data, however, on end-use products that contain PCTP. For years, PCTP was produced in the United States but domestic manufacture appears to have ceased (Ref. 17). While it is likely that PCTP is no longer used as a peptizer, it can be found as an impurity in the zinc salt of PCTP (zinc PCTP) (CASRN 117–97–5) after zinc PCTP manufacturing (Ref. 30). As shown by a number of patents, zinc PCTP can be used as a peptizer in rubber manufacturing and as an ingredient in the rubber core of golf balls to enhance certain performance characteristics of the ball, such as spin, rebound, and distance (Refs. 31 and 32). EPA considers the addition of PCTP to rubber during manufacturing, whether as a peptizer or an impurity, to be processing under TSCA.

Zinc PCTP is imported into the United States, with approximately 65,000 lbs imported in 2017 (Ref. 3). EPA believes that some or all of the zinc PCTP could contain PCTP. The importation of PCTP, including as an impurity with zinc PCTP, is considered manufacturing under TSCA. EPA requests comments as to which chemicals would most likely serve as alternatives to ZnPCTP in golf balls, and why golf ball manufacturers may not currently choose to use these alternatives.

(ii) What are the beneficial properties of PCTP for various uses? During the manufacture of rubber, PCTP was used as a peptizer to reduce the viscosity of rubber during processing. PCTP has been used as a mastication agent in the rubber industry and, more specifically, a peptizing agent for natural rubber viscosity reduction in the early stages of rubber manufacturing (Ref. 33). Mastication and peptization are processing stages during which the viscosity of rubber is reduced to a level facilitating further processing (Ref. 34). It is possible to reduce the viscosity of natural and synthetic rubbers through solely mechanical efforts, but peptizers allow this process to be less sensitive to varying time and temperature, which improves the uniformity between batches (Ref. 33).

(iii) What are the 2014 Update to the TSCA Work Plan for Chemical Assessments scores for PCTP? PCTP scored high (3) for hazard (based on toxicity for acute and chronic exposures); low (1) for exposure (based on 2012 CDR data); and high (3) for persistence and bioaccumulation (based on high environmental persistence and high bioaccumulation potential). The overall screening score for PCTP was high (7).

(iv) Regulatory actions pertaining to PCTP. PCTP was added to the TSCA Preliminary Assessment Information Rule (PAIR) Priority Testing List in August 2001 (Ref. 35). The PAIR requires manufacturers (including importers) of the substances identified to report certain production, importation, use, and exposure-related information to EPA. PCTP was removed from the Priority Testing List in 2003 because of low exposure potential (Ref. 36). In addition, the OSHA regulations discussed in Unit III.A. apply to commercial and industrial workplaces.

With respect to state regulations, California's Department of Toxic Substances Control includes PCTP on its Candidate Chemical list based on its bioaccumulation, environmental persistence, and toxicity. Maine includes PCTP on its list of Chemicals of High Concern. Maryland lists PCTP as a Toxic Air Pollutant. The Minnesota Department of Health lists PCTP as a Chemical of High Concern for its PBT properties (Ref. 3).

With respect to international actions, in Canada, PCTP is on the Domestic Substance List (DSL) as an ''Existing Substance'' as it met the criteria under subsection 73(1) of the Canadian Environmental Protection Act, 1999 (CEPA), because it was already in commerce in Canada from 1984 to 1986 and thus not subject to the New Substance Notification Regulations. In 2008, PCTP was moved to Part 2 of the DSL to indicate that it is subject to a Significant New Use Activity under subsection 81(3) of CEPA. In the European Union, PCTP is listed on the

Annex III inventory based on its bioaccumulative properties and, in Japan, PCTP is listed as an Existing Chemical under the Chemical Substances Control Law (CSCL). More information on the Federal, state and international regulations pertaining to PCTP can be found in the Economic Analysis (Ref. 3).

E. Exposure and Use Assessment and Hazard Summary

1. Summary of the Exposure and Use Assessment. An exposure and use assessment was conducted for the five PBT chemicals using the following information: (a) Chemical and physical-chemical properties, (b) use descriptions, (c) expected environmental partitioning, (d) lifecycle and potential sources, (e) environmental monitoring, (f) biomonitoring, (g) modeled intake and doses from existing studies, (h) trends in the data, (i) summary information from completed exposure assessments and review of peer-review articles published at the time of preparation of the exposure and use assessment, (j) representative exposure scenarios, and (k) information provided by public comment and peer review. This information helps to identify potential exposure scenarios that are the combination of sources/uses, environmental pathways, and receptors.

Lifecycle diagrams were developed and qualitative evaluations describing relative potential for occupational exposure of the five PBT chemicals were performed to assess release to different media from various industrial operations. Though environmental partitioning of chemicals in various media were considered, uses and processes for each of these five PBT chemicals have variations of releases in different media. A comprehensive literature search was performed to collect environmental and bio-monitoring information to assess the likely exposure of the general population, consumers, occupational populations, potentially exposed or susceptible subpopulations, and the environment from the conditions of use of the PBT chemicals.

Only a few monitoring studies were reported for PIP (3:1) and 2,4,6-TTBP. Thus, a supplemental search was conducted to identify closely related chemicals. Based on EPA scientific review and evaluations, triphenyl phosphate (TPP) and 2,4-di-tert-butylphenol (2,4-DTBP) were considered as surrogate chemicals for PIP (3:1) and 2,4,6-TTBP, respectively. These surrogates were selected based on availability of data, structural similarity, similar use, and reasonably close physical-chemical properties. PCTP was also found to have limited data; however, no surrogate chemicals were identified for PCTP using these criteria.

Multiple approaches were considered to construct non-specific exposure scenarios. Comparison of exposure scenarios revealed source attribution. The relative complexity of source attribution varied depending on the continuum of available uses/sources and the media considered. For example, total dust concentrations in a residence represent contributions from multiple sources. Similarly, internal dose measured in biota represents total exposure from multiple media and sources. This source attribution can be qualitative or quantitative. Qualitative descriptors (*e.g.,* higher, lower potential for exposure) were used to characterize exposures, and uncertainties were acknowledged across the exposure scenarios.

2. Proposed TSCA section 6(h)(1)(B) exposure finding. In this unit EPA provides an overview of the potential exposures for each PBT chemical. The possible exposures are described within the context of the lifecycle of the chemical, *e.g.,* exposures during manufacturing, processing, distribution, use and disposal. However, EPA notes that these exposures are possible, not necessarily probable nor known. This is especially so in instances where regulatory controls mandated by other statutes are applicable. As discussed in Unit III.A., EPA generally expects there is compliance with Federal and state laws, such as worker protection standards or disposal restrictions, unless case-specific facts indicate otherwise.

EPA is proposing to determine in accordance with TSCA section 6(h)(1)(B) that, based on the Exposure and Use Assessment and other reasonably-available information, exposure to the five PBT chemicals under the conditions of use is likely to the general population, to a potentially exposed or susceptible subpopulation, or the environment, which is the threshold for expedited action under TSCA section 6(h). EPA's proposed determination is based on the opportunities for exposure throughout the lifecycle of each of the five PBT chemicals including, for some, consumer exposures.

(i) DecaBDE. Exposure information for DecaBDE is summarized here and is detailed in EPA's Exposure and Use Assessment (Ref. 4).

The most likely sources of releases and occupational exposures during the manufacturing condition of use of DecaBDE are associated with fugitive dust. These include air releases from transfer and packaging operations (fugitive dust to ambient air, as well as dust that is collected and channeled through a dedicated point as a stack release) and solid waste from floor sweepings, disposal of used transfer containers containing residual DecaBDE, and liquid waste from equipment cleaning. Fugitive vapor air releases are not expected due to the chemical's low vapor pressure. Releases to land are possible when floor sweepings and other solid waste are collected and disposed in landfills. Similarly, the collection and disposal of liquid equipment cleaning solutions has the potential of generating liquid waste containing DecaBDE (aqueous waste to surface waters and sent to publicly owned treatment works, and organic waste collected and sent for other disposal or waste treatment such as incineration). Historical and recent TRI data confirm primary releases are to air, followed by landfill and water (Ref. 4). As noted previously, under TRI, a release of a chemical means that it is emitted to the air or water, or placed in some type of land disposal. These releases may be regulated under other environmental statutes, such as the CAA, CWA, or RCRA. Occupational exposures from inhalation and dermal exposure to dust are possible during transfer and packaging operations and from fugitive dust emissions from process operations if workers are unprotected. The OSHA regulations discussed in Unit III.A. apply to industrial and commercial workplaces. More specifically, the OSHA regulations at 29 CFR 1910.132 require employers to assess a workplace to determine if hazards are present or likely to be present which necessitate the use of personal protective equipment (PPE). If the employer determines hazards are present or likely to be present, the employer must select the types of PPE that will protect against the identified hazards, require employees to use that PPE, communicate the selection decisions to each affected employee, and select PPE that properly fits each affected employee. Thus, EPA would not expect workers in industrial and commercial workplaces to be unprotected.

During processing conditions of use, DecaBDE is combined with other ingredients (*e.g.,* monomers) and then molded, extruded, formed into final products, or applied to a finished article, where curing may occur (Ref. 4). Releases to air, land, and water may occur from DecaBDE and DecaBDE

flame-retardant formulations (solids and liquids), as well as from off-specification products containing the additive flame retardant. Air releases (fugitive dust and dust collected and channeled to a stack) may occur from transfer operations. Releases to land may occur during disposal of transfer containers containing residual material, collection and disposal of floor sweepings, and disposal of off-spec product. Equipment and general area cleaning with aqueous cleaning materials may result in releases to water. Current and historical TRI data indicate the primary releases are to air, followed by landfill and water (Ref. 4). Occupational exposures from inhalation and dermal exposure to dust may occur during transfer and packaging operations and from fugitive dust emissions from process operations if workers are unprotected. Dermal exposure to liquids is possible from incidental contact of liquid flame-retardant formulations containing DecaBDE during transfer, loading, and mixing operations. Occupational exposures may occur when the bags of flame retardant are emptied into a hopper prior to mixing if workers are unprotected. Once formulated, DecaBDE is encased in the polymer matrix and the potential for worker exposure is reduced significantly (Ref. 4).

DecaBDE is present in plastic that may be recycled and subsequently reused. Releases from recycling facilities may occur from discarded material that cannot be recycled and reclaimed and is disposed in landfills. Releases to air and water are expected to be minimal during most recycling processes because DecaBDE is entrained in the articles and is not expected to volatize or migrate readily from the facility during recycling operations. However, there is potential for volatilization and releases to air if recycling involves heating and melting the DecaBDE-containing plastic article, and, thus, inhalation exposures if workers are unprotected. Limited occupational exposure to workers at recycling facilities is possible from dermal contact during handling of plastic material that is received and introduced into recycling operations, and from inhalation exposure to dust from grinding and shredding operations, if workers are unprotected.

DecaBDE is combined with other ingredients and incorporated into the back coating of various textiles, such as curtains, via roll or dip coating processes. Releases may occur from disposal of transfer containers associated with DecaBDE formulations, disposal of waste from equipment and area cleaning, disposal of off-spec product, and disposal of bath dumps. Historical TRI data indicate most releases during this processing activity are associated with disposal to landfills, with smaller quantities released to air, and with minimal releases to water. If workers are unprotected, inhalation exposures may occur due to: Fugitive dust generated from unloading and transfer of the solid flame retardant into mixing vessels; mist generated from the squeezing of the immersed fabric with rollers; from the roll coating application during back coating; and, after the coating operations are complete, during fabric cutting. If workers are unprotected, dermal exposures to solid and liquid DecaBDE mixtures in fabric finishing may occur from unloading operations, mixing finishing baths, equipment cleaning, and spilling (Ref. 4).

DecaBDE is combined with other ingredients and then molded, extruded, formed into final products, or applied to wire or cable (Ref. 4). Releases may occur from transfer operations, volatilization from extrusions, disposal of transfer containers, waste from equipment and area cleaning, and disposal of off-spec product. Historical TRI data indicate most releases during this processing activity are associated with disposal to landfills, with smaller quantities released to air, and with minimal or no releases to water (Ref. 4). If workers are unprotected, inhalation exposure from fugitive dust that is generated from unloading and transfer of the flame retardant into mixing vessels and from vapors generated during extrusion may occur. If workers are unprotected, dermal exposure is most likely during formulation when the bags of flame retardant are emptied into a hopper prior to mixing. Once formulated, DecaBDE is encased in the cured coating and the potential for worker exposure is minimal.

Article components containing DecaBDE, such as fabrics and plastic parts, are incorporated into finished products, such as automobiles and aircraft. Releases to land may occur from disposal of off-spec products that contain DecaBDE. Releases to air and water are expected to be minimal because DecaBDE is entrained in the articles and is not expected to volatize or migrate readily under normal use. Occupational exposure from dermal contact with article components during installation is possible if workers are unprotected. Inhalation exposure is not expected due to the low potential for volatilization.

Articles treated with DecaBDE are used in the home, in business settings, and in the transportation sector. DecaBDE has also been found in children's products such as plastic play structures and toys, though DecaBDE is present only in low (below 0.1%) concentrations in many cases. DecaBDE is also found in plastics used as components in electrical appliances and equipment such as stereos, computers, televisions, circuit boards, casings, and cable insulation. Other uses in the transportation and construction sector are in the fabrics of automobiles, aircrafts, and in building materials (Ref. 4). DecaBDE's primary use is in high impact polystyrene-based products that are used in plastics, specifically in plastic enclosures for televisions, computers, and audio and video equipment. It is also used in textiles and upholstered articles (including carpets, upholstery fabric, curtains, and cushions), and wire and cables for communications and electronics (Refs. 4 and 6). The quantity of DecaBDE in these articles is unknown. Releases from these articles may occur when DecaBDE migrates from the articles during use (*e.g.,* in homes and business settings), disposal, and waste management. Occupational dermal exposures are expected to be minimal from handling and repackaging articles. Inhalation and dermal exposures are possible during recycling operations if workers are unprotected (*e.g.,* recycling of plastics) (Ref. 4). The end-of-life disposal and waste handling options for products containing DecaBDE include disposal in landfills, recycling and incineration (Ref. 4).

Exposure assessments on DecaBDE have been conducted by the EPA (including industry-supplied information as part of the Voluntary Children's Chemical Evaluation Program), the National Academy of Sciences, and international governments. These assessments describe exposure potential for PBDEs, including DecaBDE, through a variety of pathways. Adult and child exposures occur via dust ingestion, dermal contact with dust, and dietary exposures (such as dairy consumption). Household consumer products have been identified as the main source of PBDEs (including DecaBDE) in house dust. The next highest exposure pathways included dairy ingestion, and inhalation of indoor air (via dust). Infant and child exposures occur via breastmilk ingestion and mouthing of hard plastic toys and fabrics. Occupational exposures for breastfeeding women were highest in women engaged in activities resulting in direct contact with DecaBDE (Ref. 4).

Experimental product testing studies suggest that DecaBDE can be emitted from articles during use through

abrasion and direct transfer to dust on surfaces. Based on DecaBDE's physical-chemical properties, ingestion of settled dust through routine hand-to-mouth and object-to-mouth contact is likely the primary exposure route for articles. The inhalation pathway also contributes to exposure when suspended particles deposited in the upper airway are subsequently swallowed. The dermal pathway likely contributes a smaller proportion of total exposure.

Numerous monitoring studies have shown that DecaBDE has been detected in a wide variety of media such as indoor dust, air, water, soil, human blood, and fish. Dietary exposure through the food-chain and trophic transfer may contribute to presence in biological matrices (human blood, fish, etc.).

Exposure to ecological receptors has been well documented, with several biomonitoring studies reporting levels in tissues of invertebrates, fish, and birds (Ref. 4). Environmental and biological levels are typically higher near point sources. However, DecaBDE has also been detected in remote areas indicating potential for long-range transport.

DecaBDE was produced and released at higher levels in the past but continues to be released. Releases from manufacturing and processing are declining over time, as are releases associated with use, disposal, and recycling (Ref. 4).

(ii) PIP (3:1). As discussed briefly in Unit II.D.2, PIP (3:1), CASRN 68937–41–7 is a mixture of isomers. The proportion of various isomers within a mixture is often proprietary, and can affect the performance of the product, as well as its hazard and ecological persistence and bioaccumulation. Most of the existing studies of PIP (3:1) represent exposures to whole commercial products; however, the amount of PIP (3:1) within the studied formula varies greatly in content and propylation configurations. In these studies, exposure to other chemicals within the product, such as triphenyl phosphate, which is often present in mixtures of PIP (3:1) in concentrations from 5–10%, may influence the magnitude of exposure to PIP (3:1) from commercial products, and the effects observed.

Exposure information for PIP (3:1) is briefly summarized here and is detailed in EPA's Exposure and Use Assessment (Ref. 4).

PIP (3:1) is manufactured, processed, distributed, and used domestically. There is potential for exposure to PIP (3:1) under the conditions of use at all stages of the lifecycle (*i.e.,* manufacturing, processing, use (industrial, commercial, and consumer), distribution, and disposal) of the chemical (Ref. 4).

During the manufacturing condition of use, fugitive air releases from various process steps, water releases from separation and drying steps as well as equipment and area cleaning, and land releases from disposal of spent filters are possible.

During the processing into formulas conditions of use, releases to air, water, and land are possible from the associated unit operations. The primary sources of release include container residue, process equipment cleaning, and disposal of off-spec products.

PIP (3:1) is an additive flame retardant that is used in a variety of articles including plastic resins, foam, and synthetic rubber. Flame retardants in general are incorporated into products in one of two manners. They are either chemically bound to the product matrix as ''reactive'' mixtures, or they are dissolved in the polymer materials as ''additives.'' Additive flame retardants are not chemically bound and are relatively unattached to the polymer matrix. Therefore, they have the increased potential of migrating from products to the surrounding environment during normal use.

Fugitive air releases of PIP (3:1) are expected to be minimal due to its low vapor pressure. Water and land releases are not expected from waste hydraulic fluids and greases because used fluids and grease are typically collected for reuse or incineration (Ref. 4).

If workers are unprotected, dermal exposure to PIP (3:1) (full or partial hand immersion, splashing, or spraying) is possible from handling hydraulic fluids and lubricants and greases. Inhalation exposure to fugitive vapors is expected to be minimal, but inhalation exposure to mist is possible if the fluid is spray-applied and if workers are not wearing appropriate personal protective equipment. Transportation workers, aside from those who regularly handle these fluids, can also be exposed to hydraulic fluid vapor; for example, airline crews can be exposed to hydraulic or engine oil smoke or fumes (Ref. 4).

PIP (3:1) is also added to coatings, adhesives, and sealants for a variety of industrial uses. Potential application methods of these coatings to industrial substrates may include roll, dip, and spray processes. The quantity of releases and level of occupational exposures varies with each process; however, each presents possible releases to all media (air, water, land) and exposures (inhalation of vapors or mists and dermal exposure to liquids).

While release of PIP (3:1) is possible, the data on PIP (3:1) pathways and endpoints are limited, even when looking at an analogue like triphenyl phosphate. The reasonably available data are generally consistent with the fate summary and reported physical-chemical properties in that PIP (3:1) was detected in indoor dust, soil, ambient air, and sediment in higher concentrations and was not reported in other media.

Triphenyl phosphate, or TPP, is used as an analogue for PIP (3:1) in EPA's Exposure and Use Assessment. TPP is present in formulated products with PIP (3:1), sometimes in concentrations of 5–10%. The larger body of TPP data provides insight into the expected patterns of environmental partitioning and uptake of PIP (3:1), but not as being indicative of the levels of PIP (3:1) that should be expected or the toxicity of PIP (3:1). In the literature search, information was identified showing that TPP or its metabolites were detected or estimated in human blood, dermal wipes, fish, terrestrial invertebrates, birds, and terrestrial mammals.

(iii) 2,4,6-TTBP. Exposure information for 2,4,6-TTBP is briefly summarized here and is detailed in EPA's Exposure and Use Assessment (Ref. 4)

Fuel additive formulations containing 2,4,6-TTBP in solution may be shipped to end users in a variety of container types. Fugitive air releases of 2,4,6-TTBP are expected to be minimal (due to the low vapor pressure) from unloading and transfer operations. It is expected that the majority of 2,4,6-TTBP is destroyed (burned) as the fuel it is added to is consumed. Releases may occur from disposal of empty transport containers and waste absorbents used to clean spills and leaks from loading operations. Waste from equipment cleaning with organic cleaning solutions is anticipated to be collected for incineration. Water releases are possible from equipment and general area cleaning with aqueous cleaning solutions. Dermal exposure to 2,4,6-TTBP to workers may occur from transfer and fuel loading operations. Dermal exposure resulting from manufacturing and processing conditions of use at manufacturing facilities and fuel production facilities is expected to be minimal due to the use of appropriate engineering controls and personal protective equipment (PPE). At the manufacturer facilities, worker PPE consists of nitrile gloves, chemical-resistant slicker suits, chemical resistant boots, respirators with face shield and hard hats; workers are trained and

monitored in the correct use of their PPE. Sampling during production is accomplished using controlled sampling spigots, which prevent aerosol formation, splashing and spillage, minimizing potential worker exposure. Controlled sampling spigots are also used for transfer activities (loading and unloading) (EPA–HQ–OPPT–2018–0314–0018). Refineries, fuel distribution and fuel storage facilities also operate with appropriate engineering controls, PPE, working worker training, leak detection and spill control measures; vapor recovery systems are used during distribution and storage (EPA–HQ–OPPT–2016–0734–0006). Once blended into fuel, the resultant concentration of 2,4,6-TTBP in fuel is low, in the 5 to 50 ppm range, limiting the exposure resulting from handling and spills or leaks.

Use of retail fuel additive products which are sold in small containers by mechanics and consumers to service cars, boats, small engines, etc., present opportunities for release and dermal exposure during transfer activities if workers are unprotected. Spillage may occur when the product is being pouring into fuel tanks and storage cans. Product containers may also leak during transportation, handling, storage and disposal. Used containers are disposed of in the municipal solid waste stream without special handling.

If released to the indoor environment, 2,4,6-TTBP could partition to particulates and dust based on its chemical relationship with organic carbon compared to that of air. If released into a sanitary sewer system or storm water system, 2,4,6-TTBP would likely transport to nearby wastewater treatment plants due to relative mobility in water due to high water solubility and low KOC (soil organic carbon/water partitioning coefficient).

EPA did not identify any studies with extractable 2,4,6-TTBP data in drinking water or any studies with detectable levels of 2,4,6-TTBP in soil, sludge/biosolids, or vegetation/diet. Additionally, EPA did not identify any studies with detectable levels of 2,4,6-TTBP in human blood (serum), other human organs, aquatic invertebrates, aquatic vertebrates, terrestrial invertebrates, birds, or terrestrial mammals.

(iv) HCBD. Exposure information for HCBD is briefly summarized here and is detailed in EPA's Exposure and Use Assessment (Ref. 4).

HCBD is manufactured as a byproduct by chemical manufacturing facilities. Most of the chemical is destroyed by incineration with a small percentage released to air via stack and fugitive emissions. Waste containing HCBD is blended with conventional fuels and burned in cement kilns for energy recovery. EPA has not identified any uses of HCBD other than burning as a waste fuel. The destruction and removal efficiency from incineration of HCBD is expected to be significant but not complete, resulting in air releases from incinerator flue gas and land releases from disposal of ash and slag. Minor water releases from equipment cleaning are possible (Ref. 4).

Multiple studies show that HCBD has been detected in a wide variety of media. Higher concentrations were reported in ambient air, surface water, soil, and sediment. Lower concentrations were reported in drinking water, indoor air, and sludge/biosolids. TRI data show that HCBD is released to air annually from chemical manufacturers, with approximately 2,400 lbs released in 2017. TRI data indicate that the number of reporting facilities and the total domestic release quantities to all media have remained relatively constant since 2000 (Ref. 7).

(v) PCTP. Exposure information for PCTP is briefly summarized here and is detailed in EPA's Exposure and Use Assessment (Ref. 4).

Since PCTP is a dry powder, the most likely sources of releases and occupational exposures from the manufacturing condition of use are associated with fugitive dust, if workers are unprotected. These include air releases from transfer and packaging operations (fugitive dust to ambient air as well as dust that is collected and channeled through a dedicated point as a stack release) and solid waste from floor sweepings, disposal of used transfer containers containing residual PCTP, and liquid waste from equipment cleaning. Fugitive vapor air releases are not expected due to the low vapor pressure. Releases to land are possible when floor sweepings and other solid waste are collected and disposed in landfills. Similarly, the collection for disposal of liquid equipment cleaning solutions has the potential of generating liquid waste containing PCTP (aqueous waste to surface waters and sent to publicly owned treatment works, and organic waste collected and sent for other disposal or waste treatment such as incineration). Occupational exposures from inhalation of fugitive dust and dermal exposure to dust from transfer and packaging operations and from fugitive dust emissions from processing conditions of use are possible if workers are unprotected. However, dermal exposure to liquids is not anticipated. Similarly, inhalation exposure to fugitive vapors is not expected due to PCTP's low vapor pressure (Ref. 4).

Although releases of PCTP after the zinc PCTP is incorporated into rubber are expected to be minimal, releases of additives from rubber manufacturing are possible to water, air, and land (predominantly prior to reaction process completion). Water releases are expected to be most prevalent. Sources include process wastewater from cooling or heating medium and vulcanization, where water has direct contact with the rubber mixture. Releases to water can also occur from equipment and general area cleaning. Releases are possible from the disposal of off-spec product and empty transfer containers. Air releases are expected to be minimal due to the low vapor pressure of PCTP. Occupational inhalation and dermal exposure to dust is possible from unloading and transfer operations when the PCTP mixture is added to process equipment if workers are unprotected. Once incorporated into the rubber formulation, the potential for worker exposure is not expected (Ref. 4).

3. Hazard summary. The purpose of the Hazard Summary is to describe the hazards of the five PBT chemicals. EPA did not perform a systematic review of the literature to characterize the hazards of the five PBT chemicals, and instead performed a limited survey of the reasonably available scientific information. The information in this document does not represent an exhaustive literature review nor is it an analysis of relative importance or comparative dose-response among hazards. Due to Congress' direction in TSCA to expeditiously regulate PBTs on the 2014 Work Plan and because risk evaluations were not required by Congress, EPA prepared a fit-for-purpose summary of the hazards presented by the five PBT chemicals. EPA leveraged previous data compilations and existing information, wherever possible, as the initial data-gathering approach and to survey the environmental and human health hazard data and information. EPA did not evaluate the strengths and weaknesses of individual studies, nor did EPA select studies to inform a point of departure. The hazard data are reported from the literature with no additional analysis or assessment. Reasonably available hazard information is tabulated and briefly summarized within this document; hazard values, unless noted otherwise (*e.g.,* normalized to percent active ingredient or purity), are as reported by authors, and were not selected for use in conjunction with any particular

exposure pathway(s), risk assessment scenarios, or dose-response analysis conducted by EPA. The Hazard Summary does take into consideration public and peer review comments. Hazard information that became available after the beginning of the peer review and public comment process in June 2018 is not captured in the Hazard Summary. EPA requests comments making the Agency aware of any more recent hazard information available.

Environmental and human health hazard data were compiled from various primary and secondary sources of publicly available information. The hazard summaries relevant to environmental hazard data include toxicological information following acute and chronic exposures for both aquatic and terrestrial wildlife. Due to a general lack of data found for 2,4,6-TTBP and PCTP in the primary and secondary sources initially searched, additional literature searches were conducted for environmental hazard data for these chemicals. Generally, more aquatic toxicity data following acute exposures are available for all five PBT chemicals than are available for aquatic toxicity data following chronic exposures. For four of the five PBT chemicals, excluding PCTP, data were available for organisms spanning three trophic levels.

The hazard summaries relevant to human health focus on repeated-dose studies in laboratory mammals because these chemicals are expected to persist and bioaccumulate in the environment and result in repeated exposures to exposed human populations. In addition, *in vitro* studies in cells and acute studies in mammals were included to characterize the health concerns that were not examined in repeated-dose studies in mammals. Available published and unpublished repeated-dose toxicity data were tabulated according to health endpoints and the identified studies are briefly summarized. Human health hazard data are presented in the context of any available existing toxicological assessments. In some cases, the identified studies did not observe any toxicological effects. EPA did not conduct an analysis of relative importance of the endpoints reported or do a comparative dose-response among hazards.

The environmental and human health hazards of the five PBT chemicals are summarized here. These hazard statements are not based on a systematic review of the available literature and information may exist that could refine the hazard characterization.

DecaBDE: DecaBDE is toxic to aquatic invertebrates, fish, and terrestrial invertebrates. Data indicate the potential for developmental, neurological, and immunological effects, general developmental toxicity and liver effects in mammals. There was some evidence of genotoxicity. There was some evidence of carcinogenicity. The studies presented in this document demonstrate these hazardous endpoints.

PIP (3:1): PIP (3:1) is toxic to aquatic plants, aquatic invertebrates, sediment invertebrates and fish. Data indicate the potential for reproductive and developmental effects, neurological effects and effects on systemic organs, specifically adrenals, liver, ovary, and heart in mammals. The studies presented in this document demonstrate these hazardous endpoints.

2,4,6-TTBP: 2,4,6-TTBP is toxic to aquatic plants, aquatic invertebrates, and fish. Data indicate the potential for liver and developmental effects. The studies presented in this document demonstrate these hazardous endpoints.

HCBD: HCBD is toxic to aquatic invertebrates, fish, and birds. Data indicate the potential for renal, liver, and developmental effects in mammals. HCBD has been identified as a possible human carcinogen. The studies presented in this document demonstrate these hazardous endpoints.

PCTP: PCTP is toxic to protozoa, fish, terrestrial plants, and birds. Data for analogous chemicals (pentachloronitrobenzene and hexachlorobenzene) indicate the potential for liver effects in mammals and systemic (body weight) effects for PCTP in mammals (no repeated-dose animal or human epidemiological data were identified for PCTP). The studies presented in this document demonstrate these hazardous endpoints.

III. Regulatory Assessment of the PBT Chemicals

A. Regulatory Approach

1. Developing options: Stakeholder engagement and consultations. In addition to the consultations described in Unit VI, EPA sought comment from experts on and users of the five PBT chemicals. The purpose of these discussions was to create awareness and educate stakeholders on the provisions under TSCA section 6(h); obtain input from manufacturers, processors, distributors, users, academics, advisory councils, and members of the public health community about past and present uses of the PBT chemicals; identify practices related to the use of the PBT chemicals; determine the importance of the PBT chemicals in their various industries; compile knowledge about critical uses, substitute chemicals or processes in various sectors; identify various industry standards and performance specifications; identify health effects; and craft potential risk reduction strategies. To this end, EPA held a public meeting via webinar in September 2017, and attended a ''Fire Retardants in Plastics'' conference hosted by Applied Marketing Information in April 2018. Where appropriate, EPA followed up on pertinent details or issues raised in comments. EPA has met with, or otherwise communicated with, more than 50 companies, including manufacturers, processors, distributors, and chemical users as well as trade associations and other non-government organizations to discuss the topics outlined in this paragraph, and these discussions are cited throughout this notice where they informed analysis.

2. *Potential exposures that EPA is not proposing to regulate.* In general, there are some activities or exposures that EPA is not proposing to regulate, even though the Exposure and Use Assessment (Ref. 4) identified exposures or potential exposures. One of these is disposal. Under RCRA, there are comprehensive regulations governing the disposal of hazardous and non-hazardous wastes. These range from requirements for RCRA Subtitle C hazardous waste incinerators, which must generally meet a destruction and removal efficiency of 99.99% or more, to hazardous waste landfills, which include a double liner, double leachate collection and removal systems, leak detection system, run on, runoff, and wind dispersal controls, and a construction quality assurance program, to municipal solid waste landfills, which must implement certain requirements that are similar to some of the Subtitle C requirements, to industrial nonhazardous and construction/demolition waste landfills. Industrial nonhazardous and construction/demolition waste landfills are primarily regulated under state regulatory programs, but they must meet the criteria set forth in Federal regulations for siting, groundwater monitoring and corrective action and a prohibition on open dumping. Disposal by underground injection is regulated under both RCRA and the Safe Drinking Water Act. In view of this comprehensive, stringent program for addressing disposal, EPA is proposing to determine that it is not practicable to impose additional requirements under

TSCA on the disposal of these PBT chemicals.

EPA is also not generally proposing to use its TSCA section 6(a) authorities to regulate commercial use of products containing the PBT chemicals. For example, EPA is not proposing to prohibit the continued commercial use of articles or products that contain DecaBDE or PIP (3:1), such as commercial aircraft. Such a prohibition would not be practicable; to the contrary, it would be extremely burdensome, necessitating the identification of products containing DecaBDE or PIP (3:1), and the disposal of countless products, such as televisions and computers, that would have to be replaced with new products. If the continued commercial use of vehicles containing DecaBDE or PIP (3:1) were prohibited, it would result in widespread economic impacts and disruption in the channels of trade while the prohibited parts or fluids were identified and replaced. EPA believes that, for most products containing the PBT chemicals, it would be either extremely burdensome, for vehicles, or unreasonable, because of the low concentrations of PCTP in golf balls, for example, and, thus, impracticable to prohibit or otherwise restrict the continued commercial use of the products.

Finally, EPA is not proposing to directly regulate occupational exposure through mandated controls such as engineering controls or use of personal protective equipment (PPE), such as gloves or respirators. EPA expects there is compliance with federal and state laws, such as worker protection standards, unless case-specific facts indicate otherwise, and therefore existing OSHA regulations for worker protection and hazard communication will prevent occupational exposures that are capable of causing injury from occurring. OSHA has not established permissible exposure limits (PELs) for any of the five PBT chemicals. However, under section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 654, each employer has a legal obligation to furnish to each of its employees a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

Moreover, the OSHA hazard communication regulations at 29 CFR 1910.1200 require chemical manufacturers and importers to classify the hazards of chemicals they produce/import; and all employers to provide information to employees about hazardous chemicals to which they may be exposed under normal conditions of use or in foreseeable emergencies. Specifically, manufacturers/importers are required to:

- Evaluate and classify chemicals produced in their workplace in accordance with specified hazard categories;
- Ensure that hazardous chemicals are labeled, tagged, marked or have another form of warning (unless the distributor fulfills this requirement);
- Obtain or develop a safety data sheet (SDS) for each hazardous chemical they produce or import; and
- Ensure that employers and distributors are provided an appropriate SDS with their initial shipment, and with the first shipment after any SDS update.

Employers must:

- Develop, implement and maintain a written hazard communication program at each workplace;
- Have an SDS in the workplace for each hazardous chemical which they use;
- Maintain copies of the SDS for each hazardous chemical and ensure that they are readily accessible to employees; and
- Provide employees with effective information and training on hazardous chemicals in their work area.

The OSHA regulations at 29 CFR 1910.132 through 1910.140 prescribe certain requirements for employers regarding eye, face, respiratory, head, foot and hand protections; electrical protective equipment; and personal fall protection systems. In general, employers must assess a workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If the employer determines such hazards are present, or likely to be present, the employer must:

- Select the types of PPE that will protect against the identified hazards;
- Require affected employees to use that PPE;
- Communicate selection decisions to each affected employee; and
- Select PPE that properly fits each affected employee.

EPA expects that employers will require, and workers will use, appropriate PPE consistent with 29 CFR 1910.132, taking into account employer-based assessments, in a manner sufficient to prevent occupational exposures that are capable of causing injury. Based upon information from and discussions with industry, EPA understands that engineering controls or PPE is routinely used in workplaces where the PBT chemicals are being manufactured, processed, or used. For example, one commenter, an aviation hydraulic fluid formulator, described the precautions taken to minimize employee exposure at its facility. Mandatory PPE includes approved latex/nitrile safety gloves, long-sleeved, flame retardant shirts, flame retardant pants, and eye protection. In addition, employees are instructed to handle aviation hydraulic fluids in a closed system or where adequate exhaust ventilation is provided (EPA–HQ–OPPT–2016–0730–0006, EPA–HQ–OPPT–2016–0730–0007). Another commenter stated that their employees are required to use PPE consisting of nitrile gloves, chemical-resistant slicker suits, chemical resistant boots, respirator with face shield, and a hardhat. This commenter stated that employees were expected to be trained and monitored in the correct use of the PPE (EPA–HQ–OPPT–2018–0314–0018). Because EPA is proposing to, over time, prohibit the manufacture, processing, and distribution in commerce of the PBT chemicals for most uses, thus eliminating potential worker exposures associated with those activities, EPA believes exposures will be reduced to the extent practicable. EPA is not aware of any exposures to unprotected workers for the PBT chemicals, based on information gathered by EPA specific to these chemicals. Therefore, any additional workplace regulations that EPA could impose are unlikely to result in meaningful exposure reductions. Elimination of the hazardous chemical from the workplace, however, is the most preferred and most effective control measure identified in the recommended hierarchy of controls (Ref. 37) to protect workers from workplace hazards.

3. Request for comment on proposed and alternative regulatory actions. EPA requests comment on all aspects of the proposed and alternative regulatory actions discussed in this unit, including comment on whether the proposed regulatory actions reduce exposures to the extent practicable and whether there are other actions that EPA should consider taking under TSCA section 6.

In addition, for all of the PBT chemicals other than HCBD, recordkeeping generally consisting of ordinary business records would be required. EPA is proposing to require that the required records be kept for a period of three years. EPA requests comment on whether the recordkeeping time period is appropriate and adequate, considering the supply chains for the PBT chemicals and regulated products and articles made with the PBT chemicals, and the length of time that such chemicals and products may

remain in commerce. EPA specifically requests comment on whether the recordkeeping time period should be five years instead of three years. The statute of limitations for violations of TSCA is five years; thus, a five-year record retention period would require the preservation of records for the time period that a matter could be investigated and an enforcement action commenced.

The proposed regulatory action for each PBT chemical is based on the information that EPA has on the chemical. While, as previously noted, EPA generally expects that there is compliance with Federal and state laws, such as worker protection standards or disposal requirements, unless case-specific facts indicate otherwise, EPA has varying amounts of information on how compliance with these legal obligations is accomplished. For example, for 2,4,6-TTBP, EPA received two very informative comments on the PPE in use and the engineering and process controls that reduce occupational and environmental exposures (EPA–HQ–OPPT–2016–0734–0006; EPA–HQ–OPPT–2018–0314–0018). While EPA expects that these or similar measures are being taken to control exposures for the other 4 PBT chemicals, EPA does not have the same detailed information for them, and therefore requests comment on the extent to which such measures are being taken for the other four PBT chemicals.

B. DecaBDE

1. Description of the proposed regulatory action. EPA is proposing to prohibit, as of 60 days after the publication date of the final rule, the manufacture, processing and distribution in commerce of DecaBDE, and articles and products containing DecaBDE except those described further in this unit.

EPA is not proposing to prohibit the processing for recycling of plastic from articles containing DecaBDE, so long as no new DecaBDE is added during the recycling process. EPA is also not proposing to prohibit the distribution in commerce of such plastic, either before or after recycling. Finally, EPA is not proposing to prohibit the processing and distribution in commerce of DecaBDE in articles and products that are made of plastic that was recycled from articles containing DecaBDE, so long as no DecaBDE was added during the production of the articles and products made of recycled plastic. EPA is aware that many different types of articles that contain plastic are recycled at the end of their useful life, and some of these articles, such as electronic equipment, were originally made with a flame retardant like DecaBDE. As EPA noted on the occasion of ''America Recycles Day'' on November 15, 2018, EPA recognizes the importance and impact of recycling, which contributes to American prosperity and the protection of our environment. In addition to helping to protect the environment by keeping valuable materials out of landfills, the U.S. recycling industry is an important economic driver and provides more than 757,000 jobs and $6.7 billion annually in tax revenues. EPA does not want to create disincentives for recycling by increasing the burden on the recycling of plastic. EPA believes that it would be overly burdensome and not practicable to impose restrictions on the recycling of plastics that may contain DecaBDE, or on the use of recycled plastic in plastic articles, because the DecaBDE is typically present in such articles at low levels (Ref. 38).

EPA is not proposing to regulate the manufacture, processing, or distribution in commerce of DecaBDE-containing replacement parts for the aerospace and automotive industries. TSCA section 6(c)(2)(D) states that replacement parts for complex durable goods and complex consumer goods that are designed before the rule promulgation date must be exempt from a rule issued under TSCA section 6(a), unless EPA finds that the replacement parts contribute significantly to the risk identified in a risk evaluation under TSCA section 6(b). TSCA section 6(h)(2) specifically provides that EPA is not required to conduct section 6(b) risk evaluations when conducting a TSCA section 6(a) rulemaking on PBTs. EPA notes that most of the PBT provisions in TSCA section 6(c) apply to any rulemaking under TSCA section 6(a), but some TSCA section 6(c) provisions cross-reference TSCA section 6(b) and assume the existence of a risk evaluation conducted thereunder. EPA's interpretation is that, where it has not conducted a TSCA section 6(b) risk evaluation, those provisions of TSCA section 6(c) that assume the existence of a TSCA section 6(b) rulemaking do not apply. Specifically, EPA's interpretation is that the following provisions of TSCA section 6(c) do not apply to a TSCA section 6(a) rulemaking conducted to address PBTs under TSCA section 6(h) if EPA has not conducted a TSCA section 6(b) risk evaluation: TSCA section 6(c)(1) (setting deadlines for TSCA section 6(a) rulemakings by reference to the date of issuance of a TSCA section 6(b) risk evaluation), and TSCA section 6(c)(2)(D) and (E) (addressing the regulation of replacement parts for complex durable goods and articles by reference to the findings contained in a risk evaluation under TSCA section 6(b)). EPA invites public comment on this interpretation and seeks input on other possible interpretations.

According to comments received from the Aerospace Industries Association (AIA) (on the PBDE SNUR), interior non-metallic parts of an airplane must meet the flammability standards in 14 CFR part 25 and in many cases, a flame retardant such as DecaBDE has been used to meet these standards. The aerospace industry expects to have phased out of DecaBDE in new aircraft within three years (Ref. 39). However, because there are many aircraft currently in use with components made with DecaBDE, replacement parts will still be needed for decades.

Aircraft and their replacement parts must be certified by the FAA under 14 CFR part 21. The AIA states that a typical active service life span of aerospace industry products such as aircraft often is 30–40 years or longer. In order to safely maintain and operate these aircraft, certified replacement parts must be available. EPA understands that it can take years to develop, qualify, and certify replacement parts, although, due to the aerospace industry's ongoing phase-out of DecaBDE, suitable alternatives to DecaBDE have likely been identified for many replacement parts. Nevertheless, the replacement parts must meet specified standards and go through the process of being certified by the FAA. Due to the time and expense involved in certifying replacement parts, the AIA asserts that it is not feasible to change the part design and recertify the large number of replacement parts that may contain DecaBDE for aircraft currently in use. In light of this information, EPA believes that requiring the aerospace industry to recertify replacement parts is not practicable, and therefore is not proposing to regulate DecaBDE-containing replacement parts for aerospace industry products for aircraft manufactured prior to the effective/publication date of the rule.

Replacement parts for the automotive industry must also meet specified standards, though there is no similar certification process. The Federal Motor Vehicle Safety Standards, codified at 49 CFR part 571, includes a standard for the flammability of interior materials at 49 CFR 571.302. This standard establishes a test for flammability, including a specific test method for making the determination. EPA understands that DecaBDE has often

been used to meet this flammability standard. While EPA expects that the automotive industry will have phased out of DecaBDE for new automobiles by the time a final rule would be issued and take effect (Ref. 13), they will still have to maintain the availability of replacement parts for vehicles manufactured prior to that date. According to the automotive industry, there are customer and legal requirements which generally require the automotive sector to maintain supplies of replacement parts for 15 years, such as the requirement in 42 U.S.C. 30120(g) to provide defect remedies at no charge for a period of 15 years after the affected vehicle was sold to its first purchaser (Ref. 13). The automotive industry asserts that a phase out of DecaBDE for these parts could mean that suppliers and manufacturers must redesign, source, and validate parts for many vehicles no longer in production, ultimately producing new sets of compliant parts (which could require retooling production lines) while scrapping currently retained parts (EPA–HQ–OPPT–2016–0735–0094). Further, economic disruption could occur if the automobile industry were required to rapidly reformulate replacement parts for countless makes, models, and years, especially if this resulted in a period of unavailability of key replacement parts (EPA–HQ–OPPT–2016–0735–0094). In light of this information, EPA believes that requiring the automotive industry to reformulate replacement parts for vehicles no longer being manufactured is not practicable, and therefore is not proposing to regulate DecaBDE-containing replacement parts for motor vehicles manufactured prior to the effective date of the rule.

Most importantly, any restriction on replacement parts for the aerospace and automobile industries could increase costs and safety concerns without meaningful exposure reductions. This is because, as previously noted, article components containing DecaBDE for finished products in automobiles and aircraft have limited releases. More specifically, releases to air and water are expected to be minimal because DecaBDE is entrained in the articles and is not expected to volatilize or migrate readily under normal use. Additionally, releases to land may occur from disposal of products that contain DecaBDE. Finally, occupational exposure from dermal contact with article components during installation is possible only if workers are unprotected and inhalation exposure is not expected due to the low potential for volatilization.

EPA's proposed practicability determination is not time-limited, in that EPA is not proposing to prohibit the manufacture, processing, and distribution in commerce of DecaBDE for use in replacement parts, and the replacement parts themselves after a certain period of time. As noted, replacement parts for aerospace vehicles will be needed for decades. The automotive industry has commented that replacement parts are generally needed for 15 years, and EPA believes that, in most cases, replacement parts containing DecaBDE will not be manufactured, processed, or distributed in commerce after 15 years. EPA does not believe it is reasonable or practicable to regulate DecaBDE-containing replacement parts for the automotive industry after 15 years, in the unlikely event that such parts are available or needed.

EPA requests comment on the proposed determination that it is not practicable to regulate DecaBDE-containing replacement parts for the aerospace and automotive industries. EPA also requests comment on whether, instead of a determination that it is not practicable to regulate these parts, EPA should consider an exemption under TSCA section 6(g) for them. EPA believes that, for both the aerospace and automotive industries, regulation of replacement parts would result in the disruption of critical infrastructure.

However, EPA is proposing to prohibit the addition of DecaBDE to products and articles, other than replacement parts for the aerospace and automotive industries. An exploratory analysis indicated that DecaBDE migration from articles like toys does not represent a risk concern due to the mouthing behaviors (*e.g.,* teething), based on the available information (Ref. 40). EPA believes that it is practicable to reduce exposures by prohibiting the addition of DecaBDE to these products and articles during the production process.

EPA is proposing a compliance date of three years for new aerospace parts to align with the Aerospace Industries Association's voluntary phase-out of DecaBDE, and a compliance date of 18 months for ongoing manufacture of curtains used in the hospitality industry to allow for the orderly transition to a replacement coating chemical. These compliance dates are intended to allow the products to clear the channels of trade prior to the compliance date.

EPA has no information indicating that a compliance date of 60 days after publication of the final rule is not practicable for the activities that would be prohibited, other than those for which later compliance dates are being proposed, or that additional time is needed for products to clear the channels of trade.

In addition, EPA is proposing to require, as of 60 days after the date that the final rule is published, all persons who manufacture, process, or distribute in commerce DecaBDE for non-prohibited uses, and non-prohibited articles and products to which DecaBDE has been added, to maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions and restrictions. These records would have to be maintained for a period of three years from the date the record is generated. This recordkeeping requirement does not apply to the processing and distribution in commerce of plastic for recycling, recycled plastic, and articles and products made with recycled plastic, so long as no DecaBDE is added to the recycled plastic and the articles and products made with recycled plastic.

TSCA authorizes EPA to investigate, through inspections and the use of administrative subpoenas, and to collect information on the imported products and manufactured materials used to produce those products. EPA uses these tools to help ensure compliance with regulatory requirements for manufactured (including imported), processed, or distributed products, including those containing DecaBDE, among other chemicals. EPA's National Program Guidance for the Office of Enforcement and Compliance Assurance identifies the agency's focus on monitoring the compliance of chemical substances and articles imported into the United Stated in coordination with U.S. Customs and Border Patrol (CBP).

EPA requests comment on ways that importers and others, who do not produce articles, can ensure that they are in compliance with this prohibition. One option would be for these entities to contract with their suppliers to supply only goods that comply with this prohibition. EPA could establish a requirement that persons who import, process, or distribute articles, or certain categories of articles such as consumer electronics, rubber wire casings and plastic children's products, obtain and retain ordinary business records, such as invoices, and that such records must include a written statement from the supplier that the articles were not made with DecaBDE. Compliance with such a recordkeeping requirement would constitute compliance with the prohibition on the addition of DecaBDE

to products and articles. EPA requests comment on the merits of this approach and other approaches to achieving compliance.

2. Description of the primary alternative regulatory action considered. EPA considered an alternative regulatory action of prohibiting the manufacture, processing and distribution in commerce of articles containing DecaBDE at levels above 0.1% by weight. The 0.1% level was determined from consultations with academics and experts as a means to differentiate between DecaBDE that was added to the article versus DecaBDE that may have been present in the plastic from which the article was made, and from existing state regulations on DecaBDE. This option would be in addition to the prohibitions outlined in Unit III.B.2 and would exclude replacement parts for the automotive and aerospace industries. The delayed compliance dates for curtain manufacturing and new aerospace parts would also remain for this option. Requiring industry to meet a level of 0.1% in recycled plastic articles would also result in a significant burden by effectively requiring companies manufacturing (including importing) articles out of recycled plastics to test their products for levels of DecaBDE or risk being out of compliance (Ref. 3). In general, EPA understands that most testing methods cannot distinguish between brominated flame retardants, or between polybrominated diphenyl ether (PBDE) congeners, and that more expensive and time-consuming test methods are necessary to determine whether DecaBDE is present (Ref. 41). Therefore, EPA does not believe this option is practicable.

3. Evaluation of whether the regulatory actions address the TSCA section 6(h)(4) standard. This proposal would, over time, eliminate the introduction of new DecaBDE into the supply chain. Cost-effective and technically feasible substitutes are readily available for all uses of DecaBDE (Ref. 3). However, as previously noted, EPA has determined that it would be impracticable to use the TSCA section 6(a) regulatory tools to address DecaBDE that is already in products in commercial use or the disposal of products. For similar reasons, EPA is not proposing to prohibit the recycling of plastic which may contain DecaBDE, such as high-impact polystyrene. An element of practicability is reasonableness. EPA does not believe it is reasonable, and thereby practicable, to impose a large burden on society through the further reduction or elimination of low concentrations of DecaBDE in articles made from recycled materials. The already low content of DecaBDE in recycled plastic would be expected to continue declining, as fewer and fewer products are made with DecaBDE. In order to ensure that plastics made with DecaBDE are not recycled into any new articles and products, the incoming waste plastic would have to be sorted and tested for articles most likely to contain DecaBDE, such as television cabinets, electronics cases, and most types of high impact polystyrene, which would be rejected for recycling and instead be disposed of in a landfill, or the incoming waste could be tested for DecaBDE content. EPA considered, as a primary alternative regulatory action to the proposed option, a percentage limit on DecaBDE in products. While this option may also reduce exposures in comparison to the proposed option, EPA believes that the testing burden, including the ability to test specifically for DecaBDE that would need to be assumed as a compliance method by processors and distributors, could be considerable and would make that option impracticable (Ref. 3). More information on these testing burdens and the economic impacts of the primary alternative regulatory action in general can be found in Unit IV.B. and in the Economic Analysis (Ref. 3).

With respect to the recycling of plastics that contain DecaBDE, EPA requests comment on whether one particular situation warrants a different approach. While it is EPA's understanding that plastic pallets are no longer being made with DecaBDE as a flame retardant, they are being recycled back into plastic pallets when they become damaged and are no longer usable. The pallets were made with DecaBDE to begin with, and the pallet producers are aware of the DecaBDE content, which is likely to be higher than that present in general plastics recycling streams. EPA is still proposing to determine that it is not practicable to prohibit the recycling of plastic pallets because, as previously noted, releases from article components are expected to be minimal because DecaBDE is entrained in the articles and is not expected to volatize or migrate readily under normal use. However, EPA requests comment on this proposed determination and whether there are actions that EPA should consider taking under TSCA section 6 with respect to the recycling of plastic pallets.

EPA also considered issues with compliance dates, taking into account input from stakeholders. The aerospace industry has been working towards the elimination of DecaBDE in new aircraft and aerospace vehicles. However, the design and certification of new aircraft, for instance, is a complicated and lengthy process and, as a consequence, some additional time is necessary to ensure a reasonable transition for this industry (EPA–HQ–OPPT–2016–0724–0006). The Aerospace Industries Association has volunteered to remove DecaBDE from all new aerospace parts by 2023 (Ref. 39). Thus, EPA believes a compliance date to begin three years from the publication date of the final rule, rather than an a more immediate compliance date, is the soonest practicable timeframe for the aerospace industry to comply with a prohibition on DecaBDE in new aerospace vehicles and new parts for such vehicles, and for products containing DecaBDE to clear the channels of trade.

With respect to curtains used in the hospitality industry, EPA understands that most of the industry has moved away from using DecaBDE as a flame retardant. However, EPA is aware of one small business that is still using DecaBDE while it searches for a replacement flame retardant. EPA believes that 18 months from the date of publication of the final rule, rather than an immediate compliance date, is the soonest practicable date for the small business to redesign or find a substitute for the curtain production process, and for treated curtains to clear the channels of trade.

4. Consideration of chemical alternatives (substitutes) in deciding whether to propose to prohibit or restrict DecaBDE. EPA believes that there are viable substitutes for all uses of DecaBDE. In January 2014, EPA's Design for the Environment (DfE) published an alternatives assessment for DecaBDE (Ref. 42). EPA identified 29 potential functional, viable alternatives to DecaBDE for use in select polyolefins, styrenics, engineering thermoplastics, thermosets, elastomers, or waterborne emulsions and coatings (Ref. 42).

(i) Health and environmental effects of the chemical alternatives or substitute methods. The human health endpoints evaluated in EPA's DfE alternatives assessment include acute toxicity, carcinogenicity, genotoxicity, reproductive toxicity, developmental toxicity, neurotoxicity, repeated-dose toxicity, skin sensitization, respiratory sensitization, eye irritation, and dermal irritation (Ref. 42). Acute and chronic aquatic toxicity endpoints and persistence and bioaccumulation potential were also evaluated as part of this assessment. DecaBDE and the identified alternatives were ranked on these endpoints according to the methodology outlined in EPA's DfE

alternatives assessment and given a hazard ranking between very low and very high. While some of the available alternatives were found to have hazard profiles similar to DecaBDE, there are other available alternatives that ranked lower than DecaBDE for each hazard endpoint (Ref. 42).

(ii) Technical feasibility, economic feasibility, and reasonable availability of the chemical alternatives or substitute methods. Several potential substitutes for DecaBDE exist, specific to each use. In total, 27 unique chemical substitutes were identified for DecaBDE through EPA's DfE Alternatives Assessment, published in 2014. Two were removed from the original list of 29 for the purposes of this rulemaking since they are synergists without flame-retardant properties and not considered alternatives. An additional six were identified through internet research for a total of 33 substitutes (Ref. 3). Specific substitutes may be favored by industry based on the ability to easily replace DecaBDE, efficacy, price and availability, relative human health or environmental concerns, or other qualities of the substitute that may or may not impact the final product. Appropriate substitutes for DecaBDE vary depending on the material and application method being used to apply them. However, cost-effective and technically feasible substitutes are generally available for all uses of DecaBDE (Ref. 3).

C. PIP (3:1)

1. Description of the proposed regulatory action. EPA is proposing to prohibit the processing and distribution in commerce of PIP (3:1), and products containing the chemical substance except for the following:

- Processing and distribution in commerce for use in aviation hydraulic fluid; and
- Processing and distribution in commerce for use in lubricants and greases; and
- Processing and distribution in commerce for use in new and replacement parts for the automotive industry, and the distribution in commerce of the parts to which PIP (3:1) has been added.

EPA is not proposing to regulate the processing or distribution in commerce of PIP (3:1) or PIP (3:1)-containing products for use in new or replacement parts for the automotive industry, or distribution in commerce of such parts that contain PIP (3:1). EPA understands that PIP (3:1) may be used to meet anti-flammability standards and for other uses (EPA–HQ–OPPT–2018–0314–0026). Economic disruption could occur if the automotive industry were required to rapidly reformulate replacement parts for countless makes, models, and years, especially if this resulted in a period of unavailability of key replacement parts (EPA–HQ–OPPT–2016–0735–0094). Restrictions on distribution in commerce of replacement parts that contain PIP (3:1) would have a similar effect. As with DecaBDE, EPA believes that requiring the automotive industry to reformulate replacement parts for vehicles no longer being manufactured is not practicable, and therefore is not proposing to regulate PIP (3:1)-containing replacement parts for motor vehicles manufactured prior to the effective date of the rule. Most importantly, any restriction on replacement parts for the automotive industries could increase costs and safety concerns without meaningful exposure reductions for those same pathways described in Unit III.B.1. For these same reasons, EPA is not proposing to regulate the processing and distribution in commerce of PIP (3:1) or PIP (3:1)-containing products for use in new parts containing PIP (3:1) for the automotive industry, or distribution in commerce of such parts that contain PIP (3:1). EPA has received information from the automotive industry indicating that there are a number of new parts made with PIP (3:1) and that substitutes for PIP (3:1) in these parts have not been identified and tested (Refs. 43 and 44). EPA acknowledges the importance of PIP (3:1) components to the automotive industry and the difficulties of reformulation. As with replacement parts, any restriction on the processing and distribution in commerce of new parts for the automotive industry could increase costs and safety concerns without meaningful exposure reductions. For this proposal, EPA considers new parts to be newly-manufactured parts that are designed for use in automobiles and other vehicles that will be produced for the model year beginning after the effective date of the final rule. Replacement parts are also newly-manufactured parts that are designed for use in automobiles and other vehicles that will have been produced for the model year beginning before the effective date of the final rule and earlier model years.

In addition, EPA is not proposing to restrict the manufacture of PIP (3:1) so that the allowable processing and distribution may continue, but is proposing to impose recordkeeping and downstream notification requirements on manufacturers. Manufacturing occurs in a closed system and generally there is no waste produced in the manufacturing, so existing best practices are expected to mitigate potential releases to the environment (Ref. 4).

EPA is proposing to prohibit releases to water from the processing, distribution in commerce, and commercial use activities that are permitted to occur, *i.e.,* use in aviation hydraulic fluid, use in lubricants and greases, and use in new and replacement parts for the automotive industry. Persons manufacturing, processing, and distributing PIP (3:1), and products containing PIP (3:1), in commerce would be required to notify their customers of these prohibitions on processing and distribution, and the prohibition on releases. Additionally, EPA requests comment on additional details of how a prohibition on releases to water could best be achieved in the aircraft maintenance space.

In addition, EPA is proposing to require, as of 60 days after the date that the final rule is published, all persons who manufacture, process, or distribute in commerce PIP (3:1) and articles and products containing PIP (3:1) to maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions and restrictions. These records would have to be maintained for a period of three years from the date the record is generated.

TSCA authorizes EPA to investigate, through inspections and the use of administrative subpoenas, and to collect information on the imported products and manufactured materials used to produce those products. EPA use these tools to help ensure compliance with regulatory requirements for manufactured (including imported), processed, or distributed products, including those containing PIP (3:1), among other chemicals. EPA's National Program Guidance for the Office of Enforcement and Compliance Assurance identifies the agency's focus on monitoring the compliance of chemical substances and articles imported into the United States in coordination with U.S. Customs and Border Patrol (CBP).

EPA has no information indicating that a compliance date of 60 days after publication of the final rule is not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade. However, EPA requests comment on whether additional time is needed for products to clear the channels of trade.

EPA acknowledges that PIP (3:1) is an important anti-wear additive in aviation hydraulic fluid for commercial aircraft and commercial derivative military aircraft, including for emerging

technologies such as 5,000 PSI hydraulic systems. It is the Agency's understanding that PIP (3:1)-containing hydraulic fluids are currently the only fluids recommended for these high-pressure hydraulic systems. EPA is requesting comment on the degree to which alternative hydraulic fluids without PIP (3:1) are available for aircraft operating at 3,000 PSI, and documented performance differences between phosphate ester based hydraulic fluids with and without PIP (3:1) in the aviation sector.

EPA also acknowledges the degree to which PIP (3:1) is a crucial anti-wear component for aviation lubricants and greases, which need to perform at a wide range of temperatures and pressures. EPA has excluded lubricants and greases for aviation and non-aviation uses from the proposed prohibition on processing and distribution. EPA understands there are some non-aviation uses of these lubricants and greases where PIP (3:1) is a crucial anti-wear component, such as turbines used in power generation or in marine settings (Ref. 23). Therefore, EPA is proposing to determine that it is not practicable to regulate the presence of PIP (3:1) in lubricants and greases in general. However, EPA acknowledges that uses in non-aircraft machinery may not be subject to these same environmental stresses or safety and performance requirements from industry and government as uses in the aviation sector. Therefore, EPA is requesting comment on the degree to which PIP (3:1) is crucial to the safe and effective performance of lubricants and greases in non-aviation industries. This includes information about alternatives with equivalent performance (or lack thereof), safety standards, information about standard use practices and exposure, and any other relevant information, for lubricants and greases used in turbines or other machinery derived from aviation but applied to a stationary technology such as power generation, and other military or commercial uses.

In addition, EPA is requesting comment on the concentration by weight of PIP (3:1) currently present in products for the excluded uses, as well as the concentration required for critical application in aviation and other industries, and trends in these concentrations which may accompany changes in technology over time. EPA believes the upper bounds of the levels present in commerce for use in aviation hydraulic fluids to be 20% concentration by weight and aviation lubricants and greases to be 5% concentration by weight. While EPA does not have reason to believe that uses in excess of these levels are occurring, EPA acknowledges that these products are of significant importance in commercial and military aviation, including for emerging technologies such as 5,000 PSI hydraulic systems. EPA does not want to unnecessarily inhibit the development of more efficient aircraft, but large increases in the concentrations of PIP (3:1) in the non-prohibited hydraulic fluids and lubricants and greases could result in greater exposures. EPA requests comment on whether a concentration limit should be imposed on these non-prohibited uses. The uses of PIP (3:1) containing products in these sectors is discussed further in Unit III.C.3.

In addition, EPA is specifically requesting comment on the extent to which plastic articles that contain PIP (3:1) are recycled and whether the recycling of such plastic, and the manufacture, processing, and distribution in commerce of plastic items made from such recycled plastic, should be specifically excluded from this rule. The exclusion would be similar to the exclusion discussed in Unit III.B.1. for recycled plastics that contain DecaBDE. While EPA is aware that many of the plastics in the recycling stream contain DecaBDE, EPA does not have information on the content of PIP (3:1) in articles being recycled. As noted in Unit II.D.2.i., PIP (3:1) has been identified as a possible component in plastic products and articles, including children's products and automotive and aerospace products. In addition, PIP (3:1) has also been used as a component of flame retardants used in polyurethane foam. EPA also requests comment on the extent to which polyurethane foam that contains PIP (3:1) is recycled, the amount of PIP (3:1) that remains in the recycled material, and whether an exclusion should be considered for recycling of polyurethane foam.

2. Description of the primary alternative regulatory action considered. EPA considered an alternative regulatory action for PIP (3:1) of prohibiting the processing and distribution in commerce of PIP (3:1), and products containing the chemical substance except for the following:

- Processing and distribution in commerce for use in aviation hydraulic fluid for aircraft hydraulic systems designed to operate at pressure equal to or greater than 3,000 pounds per square inch (PSI) for a period of 20 years;
- Processing and distribution in commerce for use in aviation lubricants and greases for a period of 20 years; and
- Processing and distribution in commerce for use in new and replacement parts for the automotive industry, and the distribution in commerce of the parts to which PIP (3:1) has been added.

A 20-year time-limited exemption would be proposed under TSCA section 6(g)(1)(B) for use in aviation hydraulic fluids for aircraft hydraulic systems operating at equal to or greater than 3,000 PSI at the currently present in commerce, and aviation lubricants and greases at concentration currently present in commerce. Under the primary alternative action, like with the proposed action, EPA would prohibit releases to water from the processing, distribution in commerce, and commercial use activities that are not prohibited. In addition, like with the proposed action, persons manufacturing, processing, and distributing in commerce PIP (3:1), and products containing PIP (3:1), would be required to notify their customers of each of these restrictions.

The primary alternative regulatory action differs from the proposed action in that specified allowed uses in aviation would be subject to an exemption under TSCA section 6(g) rather than excluded from the prohibition of uses under TSCA section 6(a). The proposed time-frame for this exemption would be 20 years, after which time the exemption would expire or be extended via rulemaking.

3. *Evaluation of whether the regulatory actions address the TSCA section 6(h)(4) standard.* As discussed here, there are readily available alternatives for all uses except the specific uses described in Unit II.D.2.i and Unit II.D.2.ii, namely in aviation hydraulic fluids lubricants and greases. Additionally, as previously mentioned, EPA is not proposing regulatory controls on the manufacturing of PIP (3:1) beyond recordkeeping and downstream notification requirements. As stated in Unit III.C.1., manufacturing occurs in a closed system and generally there is no waste produced in the manufacturing, so existing best practices are likely to mitigate potential releases to the environment (Ref. 4).

Lubricants, greases, and aviation hydraulic fluids are excluded from the proposed regulation because they are necessary to maintain the airworthiness of aircraft, no other substitutes are currently available, and the burden of creating and testing new formulations which can meet the equivalent safety and performance standards is high (Ref. 3). Aviation fluids are approved by major aircraft manufacturers who work closely with the FAA, and any change

in formula composition results in a full requalification process. This process is a joint effort between the fluid manufacturer and aircraft manufacturer, and resulting fluids are subject to extensive laboratory and field testing. At the end of this iterative evaluation process, there is no guarantee that a technically equivalent alternative will be developed (Refs. 3, 23 and 24). These aviation lubricants and greases are sometimes used for other machinery such as turbines used in power generation. For lubricants and greases in other industries, EPA has included a request for comment outlining additional information that would be useful in Unit III.C.1. Thus, EPA is not proposing to prohibit manufacture, processing, or distribution for the aviation uses described in Unit II.D.2 because doing so is not practicable. By prohibiting the majority of processing and distribution of the chemical, and placing certain restrictions on processing, distribution, and use for hydraulic fluid and lubricants and greases in aviation, including a prohibition on release to water, the regulatory approach reduces exposures to the extent practicable.

Manufacturers have described alternative chemicals that are available for the functional applications of PIP (3:1) as a plasticizer, flame retardant, and anti-wear additive (Ref. 4). In many sectors, this claim by manufacturers is supported by stakeholder engagement. While possible chemical alternatives or alternative products exist in many sectors, these alternatives lack field testing in formulation for key uses in aviation, including emerging technologies of high-pressure aviation hydraulic systems. (Refs. 23 and 24, and 25). Therefore, EPA believes that prohibitions on processing, distribution, and use, including the alternative approach which could take effect upon the expiration of an exemption, are not practicable for certain uses of PIP (3:1) important to airworthiness in commercial aviation and aerospace.

4. Consideration of chemical alternatives (substitutes) in deciding whether to prohibit or restrict PIP (3:1). Based on an analysis of likely alternatives, EPA believes that there are viable substitutes for all uses of PIP (3:1), except for uses in aviation hydraulic fluids and aviation lubricants and greases.

(i) *Health and environmental effects of the chemical alternatives or substitute methods.* EPA conducted an analysis of three identified likely substitutes for PIP (3:1) based on the process described in the TSCA Work Plan Chemicals: Methods Document (Ref. 2). Those substitutes all scored lower than PIP (3:1) in at least one criterion. For example, 2-ethylhexyl diphenyl phosphate ester (CAS 1241–94–7) and isodecyl, diphenyl phosphate (CAS 29761–21–5) both scored lower than PIP (3:1) in persistence, bioaccumulation, and human hazard. In addition, phenol, isobutylenated, phosphate (3:1) (CAS 68937–40–6) scored lower than PIP (3:1) in human and environmental hazard (Ref. 45).

(ii) Technical feasibility, economic feasibility, and reasonable availability of the chemical alternatives or substitute methods. As discussed in Unit II.D.4, viable substitutes are available for many of the uses of PIP (3:1). In their comment, the Israel Chemical Limited (ICL) company stated that there are readily available alternatives for many of the functional uses of PIP (3:1), including as a plasticizer, flame retardant, and anti-wear additive. These alternative chemicals could act as replacements for PIP (3:1) within formulas in various industries. In sectors such as paints and coatings, adhesives and sealants, and plastics, PIP (3:1) containing products represent a small market share, and the elimination of said products would not have a significant effect on small businesses (Ref. 3). For industrial hydraulic fluids (excluding aviation), various alternative products to those containing PIP (3:1) are already in commerce.

PIP (3:1) is used in the aviation industry in hydraulic fluid to achieve the necessary anti-wear and anti-compressibility performance for formulas maintaining the airworthiness of commercial and military aircraft. While alternative formulas have been identified for use in several models of aircrafts, there are no feasible alternative formulas for hydraulic fluid that meet the requisite performance specification and safety standards for hydraulic systems designed to operate at pressures equal to or greater than 5,000 PSI (Refs. 23 and 24, and 25). Therefore, there are currently no technically feasible alternative formulas available for some PIP (3:1)-containing hydraulic fluids in the aviation sector for hydraulic systems designed to operate at pressures equal to or greater than 5,000 PSI.

Furthermore, PIP (3:1) is a component of a lubricant additive which is used primarily for its anti-wear properties. There are also currently no technically feasible alternative formulas available for some PIP (3:1)-containing and lubricants and greases in the aviation sector, which are formulated to industry and military specifications (Refs. 22, 23, 24, 26, and 46).

The economic feasibility of alternatives for all uses other than these specialized aviation uses is discussed in the economic analysis for this proposed action (Ref. 3).

D. 2,4,6-TTBP

1. Description of the proposed regulatory action. EPA is proposing to restrict the distribution in commerce of TTBP and products containing 2,4,6-TTBP in containers with a volume of less than 55 gallons. This will effectively prevent use of 2,4,6-TTBP as a retail fuel additive or fuel injector cleaner by consumers.

Exposure to humans and the environment would be reduced by eliminating retail uses of 2,4,6-TTBP that have a high potential for releases. This proposal intentionally would not impact use of this chemical in the nation's fuel supply system (*i.e.,* at refineries and bulk petroleum storage facilities), where the distribution, transfer, blending, and general end use of 2,4,6-TTBP-containing blends/mixtures is managed through highly regulated engineered controls designed to mitigate environmental and human health exposures. EPA believes that much, if not all use of 2,4,6-TTBP containing blends/mixtures at refineries and petroleum storage facilities are sourced in quantities larger than 55 gallons at a time; and are typically sourced by the tanker or batch load in quantities over 500 gallons at a time.

As such, EPA is also taking comment on the optimal container size limit to impose: For instance, whether a 35-gallon container size would impact industrial use less while also preventing the commercial and retail sale of products with 2,4,6-TTBP. EPA would welcome information submitted to the docket for this action that provides data or information related to the proposed restriction on container size.

For this regulation, EPA is proposing to define *2,4,6-TTBP* to mean the chemical substance 2,4,6-tris(tert-butyl)phenol (CASRN 732–26–3) at any concentration above 0.01% by weight. EPA believes this concentration limit would distinguish between products which contain 2,4,6-TTBP as a functional additive and those in which it may be present in low concentrations as a byproduct or impurity. 2,4,6-TTBP is a co-product and byproduct present in other alkylphenols, including other antioxidants that are potential substitutes for it. Significantly, this lower limit would also ensure that this prohibition does not unintentionally apply to fuels which have been treated with antioxidant additives containing 2,4,6-TTBP, an outcome EPA does not

intend. One commenter stated that the chemical is added to fuels at concentrations of 5 to 50 ppm, approximately 0.0005% to 0.005%, or less than half the concentration limit proposed by EPA (EPA–HQ–OPPT–2016–0734–0006). Thus, EPA is not proposing to regulate fuel after it has been treated with antioxidants containing 2,4,6-TTBP; EPA is only proposing to regulate the retail additives containing 2,4,6-TTBP that are used to treat the fuel. A regulation prohibiting the presence of 2,4,6-TTBP in gasoline and other fuels would effectively prohibit the use of this antioxidant at refineries to treat bulk fuels, because it would prohibit the commercial use of the treated fuel in smaller vehicles including automobiles. As discussed in Unit II.D.3.(i) of this notice, EPA believes this is a critical use in the nation's fuel supply.

EPA is also proposing to prohibit processing and distribution in commerce of 2,4,6-TTBP for use as an additive in oils and lubricants. There are numerous available substitutes for this use of 2,4,6-TTBP. For clarity, EPA is proposing a definition of *oil and lubricant additive* for this rule to mean any intentional additive to a product of any viscosity intended to reduce friction between moving parts, whether mineral oil or synthetic base, including engine crankcase oils and bearing greases.

EPA has no information indicating that a compliance date of 60 days after publication of the final rule is not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade.

EPA is proposing for recordkeeping that after 60 days following the date of publication of the final rule, distributors of 2,4,6 TTBP and products containing 2,4,6-TTBP must maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate that 2,4,6-TTBP is not distributed in containers with a volume less than 55 gallons or for use as an oil and lubricant additive. These records must be maintained for a period of three years from the date the record is generated.

2. Description of the primary alternative regulatory action considered. EPA considered an alternative regulatory action of prohibiting the distribution in commerce of 2,4,6-TTBP in fuel additives and fuel injector cleaners intended for consumer/retail use. Like the proposed action, this approach would define 2,4,6-TTBP with a concentration of 2,4,6-TTBP; a level of 0.01% by weight. This alternative would include defining the end uses for which distribution of 2,4,6-TTBP is prohibited: retail sale of fuel additives and fuel injector cleaners. Distributors of chemical mixtures containing 2,4,6-TTBP above the specified level would be required to notify purchasers of the presence of 2,4,6-TTBP in the product and the prohibition on its sale for retail use. Records of sales and notification to customers would be maintained by distributors. Should the Agency not finalize provisions related to the container size threshold, downstream notification would need to be a regulatory requirement. While this approach would achieve the same or similar exposure reduction as the limit on container sizes proposed in this rule, EPA believes this alternative approach would potentially impact more retail sellers and users, be more difficult to enforce, and impose a greater compliance burden on the regulated community for notification and recordkeeping requirements. This approach would potentially also affect distribution of large volumes of 2,4,6-TTBP to industrial users, such as refineries, who are not engaged in processing and distribution of fuel additive products for commercial and consumer sales.

3. Evaluation of whether the regulatory actions address the TSCA section 6(h)(4) standard. The proposed approach allows for the processing and distribution for use in the industrial/commercial fuel sector where prohibitions or restrictions on 2,4,6-TTBP mixtures would not be practicable due to its essential use in the nation's fuel supply system. As discussed in Unit II.D.3.(i) of this notice, this chemical is a component of antioxidant mixtures that are widely used in this country and essential for the storage and transport of fuel, and these mixtures cannot be substituted without affecting numerous commercial and military fuel specifications for stability and quality. Although not quantified for this proposed rule, the expense of certifying a new alternative fuel additive would be significant and take years, particularly for aviation applications. In addition, as discussed in Unit II.E.2.(iii) of this notice, the potential for exposure from the manufacturing, processing, and distribution for commercial use and the commercial use is significantly mitigated by use of industrial engineering controls and safeguards. Releases of 2,4,6- TTBP from retail additive use and disposal are more likely than in industrial settings where engineered controls are highly likely to be in place. In contrast, EPA believes the proposed restriction on the processing and distribution for use of 2,4,6-TTBP in the retail products is practicable because alternative antioxidants are readily available for those products and can be substituted in those products without undue burden. Thus, EPA does not believe a complete prohibition on 2,4,6-TTBP is practicable given its essential use in the nation's fuel supply. Furthermore, its co-production with other alkylphenols is significant, in that prohibiting the manufacture of 2,4,6-TTBP would restrict, if not prevent, the production of other dialkylphenol products, including alternative antioxidants.

4. Consideration of chemical alternatives (substitutes) in deciding whether to propose to prohibit or restrict 2,4,6-TTBP. Based on a screening level analysis of likely alternatives, as noted previously, EPA believes that there are readily available substitutes for the retail fuel additives, as well as oil and lubricant additives containing 2,4,6-TTBP. EPA believes that the overwhelming predominance in the marketplace of oil and lubricant products that do not contain 2,4,6-TTBP is itself sufficient evidence of the availability of those substitute chemicals or products.

(i) Health and environmental effects of the chemical alternatives or substitute methods. EPA conducted a screening level analysis of two possible substitutes for 2,4,6-TTBP based on the TSCA Work Plan Chemicals: Methods Document (Ref. 2). One alternative antioxidant suitable as a fuel additive is 2,4-dimethyl-6-tert-butylphenol, CASRN 1879–09–0, and the other is 2,6-di-tert-butyl-p-cresol, also known as butylated hydroxytoluene or BHT, CASRN 128–37–0. Both chemicals have a lower bioaccumulation potential than 2,4,6-TTBP, but equivalent or higher scores for persistence, environmental hazard and human health hazard (Ref. 45). However, BHT is used as a food additive: It is approved by FDA for use as a food additive (21 CFR 172.115) and in the European Union, its use is permitted in foods by the European Food Safety Authority under E321 (Ref. 47). BHT is also used in personal care products and cosmetics. EPA seeks public comment on whether the proposed action is practicable given it could result in increased use of alternatives to 2,4,6-TTBP with comparable persistence and hazard scores. EPA did not assess the hazard of the chemical mixtures in commercial products containing 2,4,6-TTBP, nor did it assess the hazard of substitute products that do not contain 2,4,6-TTBP, so no conclusions as to the relative hazard of product substitutes can be drawn.

(ii) Technical feasibility, economic feasibility, and reasonable availability of the chemical alternatives or substitute methods. Alternatives to fuel additives and fuel injector cleaner products containing 2,4,6-TTBP exist. The alternative chemical 2,4-dimethyl-6-tert-butylphenol is currently used as an antioxidant fuel additive in jet fuels, gasolines and aviation gas, among other uses. BHT is used as a fuel additive for its antioxidant properties, and in addition to its uses in fuels, including jet fuels, it is also used in hydraulic fluids, turbine and gear oils, making it a suitable substitute for such uses of 2,4,6-TTBP in oils and lubricants that may be occurring (Ref. 48). While EPA did not identify the specific alternative chemicals used in each product, for the Economic Analysis (Ref. 3), EPA was able to determine 35 product substitutes for commercial fuel stabilizer products and 15 product substitutes for commercial fuel injector cleaner products (for purposes of the analysis, product substitutes are considered those that serve the same purpose but do not contain 2,4,6-TTBP). The appropriate product substitute will vary depending on type of engine for which the use is intended.

E. HCBD

1. Description of the proposed regulatory action. EPA is not proposing to regulate HCBD under TSCA section 6(h) because the potential for exposure from uses of this chemical is already addressed by actions taken under other statutes and further measures are not practicable. As stated elsewhere in this preamble, HCBD is regulated under various statutes implemented by the Federal Government, such as the CAA and RCRA, and most states. According to TRI data, most of the HCBD manufactured in the United States is subsequently destroyed via incineration. Of the over 9 million lbs of HCBD in waste reported to TRI, only 2,400 lbs is released to the environment due in large part to the high waste treatment efficiencies achieved by the chemical manufacturers. Most of these releases to the environment are via fugitive and stack air emissions, with little or no quantities released to other media (Ref. 19).

The CAA requires EPA to regulate hazardous air pollutants (HAP) such as HCBD. CAA section 112 requires that the Agency establish National Emission Standards for Hazardous Air Pollutants (NESHAP) for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as maximum achievable control technology (MACT). The CAA also establishes a minimum control level for MACT standards known as the MACT ''floor.'' The MACT floor is the minimum control level allowed for NESHAP and is defined under the CAA section 112(d)(3) (Ref. 49).

The chemical manufacturers that produce HCBD are in NAICS group 325 and therefore fall under the NESHAP regulations for miscellaneous organic chemical manufacturing found at 40 CFR part 63 subpart FFFF. These regulations require facilities to treat chemicals in their waste streams at high efficiencies. For example, emissions from process vents must be reduced by greater than or equal to 99% by weight depending on the chemical in the waste stream. According to TRI data, chemical manufacturers that submit reports for HCBD are treating the chemical via incineration at greater than 99.99% treatment efficiency with some reporting an efficiency greater than 99.9999%.

Under the CAA, facilities in certain industries are required to implement a Leak Detection and Repair (LDAR) program to reduce fugitive air emissions. Included in those industries are synthetic organic chemical manufacturers that produce HCBD. The LDAR program requires these facilities to monitor components such as pumps, valves, connectors and compressors for leaks. When leaks are detected, the facility is required to repair or replace the leaking component.

HCBD is also regulated under RCRA. The statute's implementing regulations, among other things, list HCBD as a hazardous constituent under 40 CFR part 261 (Identification and Listing of Hazardous Waste; specifically, under sections 261.24 and 261.33), which identifies solid wastes which are subject to regulation as hazardous wastes under 40 CFR parts 262 through 265, 268, and parts 270 and 271. HCBD is a hazardous constituent under 40 CFR part 258, Appendix II (Criteria for Municipal Solid Waste Landfills), which establishes criteria for the design and operation of municipal solid waste landfills.

Taking into account the many existing controls on activities that might affect exposures to HCBD, the only meaningful further reductions that might be achieved would be by prohibiting manufacture of HCBD. However, prohibiting the manufacture of HCBD would effectively preclude the manufacture of trichloroethylene, carbon tetrachloride and perchloroethylene. EPA does not believe this would be practicable as explained further in this Unit.

2. Description of the primary alternative regulatory action considered. EPA considered an alternative regulatory action of prohibiting the manufacture of HCBD, but EPA does not believe this would be a practicable regulatory option. HCBD is a byproduct of the manufacture of the solvents perchloroethylene, trichloroethylene, and carbon tetrachloride (Ref. 29). A prohibition on the manufacture of HCBD would effectively prohibit the manufacture of the three solvents. Because of the extensive use of perchloroethylene, trichloroethylene, and carbon tetrachloride (Ref. 3), EPA believes that it is not practicable to completely prohibit the production of these chemicals by prohibiting the manufacture of HCBD. Additionally, these chemicals are the subject of the risk evaluation process pursuant to TSCA section 6(b). Where unreasonable risks are identified as part of those risk evaluations, EPA is required to take action under TSCA section 6(a) to address unreasonable risk.

3. Evaluation of whether the regulatory actions address the TSCA section 6(h)(4) standard. EPA is not proposing to regulate HCBD under TSCA section 6(h) because releases resulting in exposures have been nearly eliminated through actions under other statues such as the CAA and RCRA. The Agency does not believe it is practicable to reduce exposures of HCBD further than what has already been done under other statutes. The Agency requests comment on the practicability of further reducing exposures of HCBD.

4. Consideration of chemical alternatives (substitutes) in deciding whether to prohibit or restrict HCBD. EPA has not identified any uses of HCBD other than burning as a waste fuel. Therefore, chemical alternatives were not considered.

F. PCTP

1. Description of the proposed regulatory action. EPA is proposing to prohibit the manufacturing and processing of PCTP for any use in concentrations of above 1% by weight. PCTP can be found in zinc PCTP at concentrations above 1% depending on the yield of the reaction used to create the zinc PCTP (Ref. 30). As a result, this proposal would result in lower amounts of PCTP being manufactured and processed, used or disposed, thus

reducing exposures to human health and the environment.

Zinc PCTP, which may contain PCTP as an impurity, is used in the manufacture of golf balls. Zinc PCTP is sold at varying concentrations, including at a purity of 99% (Ref. 50). According to several patents, golf balls can be made using zinc PCTP at this purity (Ref. 32). Manufacturing or processing zinc PCTP at 99% purity would comply with the proposed concentration limit, as would zinc PCTP at lower purities that contains PCTP at or below 1% concentration. Because of the availability of zinc PCTP at a 99% purity, and the fact that it can be used to manufacture rubber, in particular the rubber in golf balls, EPA believes that the concentration limit for PCTP is a practicable way to reduce exposures to the chemical. The Agency further believes that completely prohibiting the presence of PCTP in zinc PCTP would be overly burdensome and therefore impracticable. EPA requests comment on the proposed concentration limit, including whether the option is practicable, and whether further exposure reductions would be practicable. EPA specifically requests comment on the practicability of a lower limit on the PCTP content in zinc PCTP, and whether it is possible to completely eliminate unreacted PCTP in the manufacture of zinc PCTP.

EPA has no information indicating that a compliance date of 60 days after publication of the final rule is not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade.

In addition, EPA is proposing to require, as of 60 days after the date that the final rule is published, all persons who manufacture, process, or distribute in commerce PCTP and articles and products containing PCTP to maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions and restrictions. These records would have to be maintained for a period of three years from the date the record is generated.

2. Description of the primary alternative regulatory action considered. EPA considered an alternative regulatory action of prohibiting manufacturers and processors from releasing the chemical to the environment. To ensure that no releases occur, manufacturers and processors would have to institute such measures as work practices, emergency procedures, engineering controls, or other measures to eliminate environmental releases. PCTP in waste would have to be collected and destroyed. For example, PCTP in ambient air within the facility would have to be collected and either destroyed onsite or sent offsite for treatment. The prohibition would apply to all releases, including accidental releases, to all environmental media. The Agency requests comment on this alternative approach, including the measures or performance standards that could be implemented to further reduce exposure, and the practicability of the option.

3. Evaluation of whether the regulatory actions address the TSCA section 6(h)(4) standard. The proposed reduction in the concentration of PCTP in mixtures would result in lower amounts of the chemical that may be manufactured and processed and subsequently available for release, resulting in a reduction in exposures.

Historically, PCTP was used in rubber manufacturing as a peptizer, a chemical that makes rubber more amenable to processing. While it is likely that PCTP is no longer intentionally used as a peptizer, it can be found as an impurity in the zinc salt of PCTP (zinc PCTP) (CASRN 117–97–5). Zinc PCTP can be manufactured by reacting PCTP with zinc oxide. Depending on the yield of the reaction, some unreacted PCTP can remain in the mixture as an impurity (Ref. 30). As shown by a number of patents, zinc PCTP can be used as a peptizer in rubber manufacturing including as an ingredient in the rubber core of golf balls (Refs. 31 and 32) to enhance certain performance characteristics of the ball such as spin, rebound, and distance (Ref. 31). Zinc PCTP does not appear to be manufactured domestically (Ref. 17) but rather it is imported into the United States (Ref. 3).

4. Consideration of chemical alternatives (substitutes) in deciding whether to prohibit or restrict PCTP. Based on a screening level analysis of likely alternatives based on the TSCA Work Plan Chemicals: Methods Document (Ref. 2), EPA believes that there are viable substitutes for PCTP in rubber manufacturing. While EPA is not proposing to prohibit the use of PCTP at concentrations at or below 1%, it is possible that some manufacturers and processors may choose to use alternatives instead of using PCTP at the proposed concentration limit. At this time, EPA does not know whether golf balls are currently being made with halogenated organosulfur compound substitutes. Based on information from patents, EPA believes that use of these substitutes may be occurring in golf ball manufacturing (Refs. 31, 32, 51). Further, only one golf ball manufacturer has confirmed that it incorporates PCTP into its golf balls. EPA believes this limited use of PCTP is sufficient evidence of the availability of substitutes.

(i) *Health and environmental effects of the chemical alternatives or substitute methods.* EPA conducted a screening level analysis of several possible substitutes for PCTP based on the TSCA Work Plan Chemicals: Methods Document (Ref. 2). The potential alternatives were evaluated and scored on three characteristics: Hazard, exposure and the potential for persistence and/or bioaccumulation. Two chemicals, diphenyldisulfide and 2,2′-dibenzamidodiphenyl disulfide, scored lower for at least one characteristic (Ref. 3). With respect to another chemical, pentafluorothiophenol, there was not enough information available to score each characteristic (Ref. 45).

(ii) Technical feasibility, economic feasibility, and reasonable availability of the chemical alternatives or substitute methods. 2,2′-dibenzamidodiphenyl disulfide (DBD), which is considered to be less toxic and reacts similarly, can be used in place of PCTP (Ref. 33). In golf ball cores, other halogenated organosulfur compounds can be used as a substitute for PCTP (Ref. 51). EPA requests comment on the extent to which these substitutes are used in the manufacture of golf balls.

IV. Reasonably Ascertainable Economic Consequences of the Proposed Rule

A. Overview of Cost Methodology

EPA has evaluated the potential costs of the proposed and primary alternative regulatory actions for the PBT chemicals. Costs of the proposed rule were estimated based on the assumption that under regulatory limitations on the PBT chemicals, processors that use the regulated chemical in their products would switch to available alternative chemicals to manufacture the product, or to products that do not contain the chemical. Approaches for the analysis of each regulated chemical varied according to whether the focus was on chemical substitutes or product substitutes, depending on the uses for each chemical. For DecaBDE and PCTP, the costs were assessed based on chemical substitutes only. For PIP (3:1) and 2,4,6-TTBP, costs were assessed based on product substitutes where product information was more substantial than information on chemical substitutes alone.

Substitution costs were estimated on the industry level using the price

differential between the cost of the chemical (or chemical product) and identified substitutes. Costs for rule familiarization and recordkeeping were estimated based on burdens estimated for other similar rulemakings. Costs were annualized over a 25-year period. Other potential costs include, but are not limited to, those associated with testing, reformulation, release prevention, imported articles, and some portion of potential revenue loss. However, these costs are discussed only qualitatively, due to lack of data availability to estimate quantified costs. More details of this analysis are presented in the Economic Analysis (Ref. 3), which is in the public docket for this action.

B. Estimated Costs of Proposed and Primary Alternative Regulatory Actions

Total quantified annualized industry costs for the proposed rule is $43.1 million (at both 3% and 7% discount rates). Total quantified annualized industry costs for the primary alternative regulatory action are $414 million (at both 3% and 7% discount rates). For DecaBDE, total quantified annualized industry costs for the proposed rule under both the proposed and the primary alternative regulatory actions are zero. For PIP (3:1), total quantified annualized industry costs for the proposed rule are $34.7 million (at both 3% and 7% discount rates), and $38.1 million (3% discount rate) or $37.6 million (7% discount rate) for the primary alternative regulatory action. For 2,4,6-TTBP, total quantified annualized industry costs for the proposed rule under both the proposed and the primary alternative regulatory actions are $8.4 million (at both 3% and 7% discount rates). For HCBD, the proposed action is not to regulate; therefore, there is no industry cost associated. For HCBD, the annualized costs to industry associated with the primary alternative regulatory action are estimated to total $368 million (at both 3% and 7% discount rates). For PCTP, total quantified annualized industry costs for the proposed rule are $0.03 million (at both 3% and 7% discount rates), and negligible for the primary alternative regulatory action. Total annualized Agency costs associated with implementation of the proposed rule were based on EPA's best judgment and experience with other similar rules. For the proposed regulatory action, EPA estimates it will require 3 FTE at $465,000 per year. For the primary alternative regulatory option, EPA estimates 3.5 FTE at $543,000 (Ref. 3).

Total quantified annualized social costs for the proposed rule are $43.5 million (at both 3% and 7% discount rates). Total quantified social costs for the proposed rule under the primary alternative regulatory action are $415 million (at both 3% and 7% discount rates).

As described in Unit IV.A., potential costs such as testing, reformulation, release prevention, and imported articles, could not be quantified due to lack of data availability to estimate quantified costs. These costs are discussed qualitatively in the Economic Analysis (Ref. 3), which is in the public docket for this action. EPA requests comment on all aspects of the costs that may be incurred as a result of this proposed action. EPA has the following specific requests for comment on costs:

EPA requests comment on potential costs of testing, such laboratory testing, that manufacturers or importers may choose to undertake on articles or components of articles to determine whether they contain the regulated chemical substance, and at what concentration.

EPA requests comment on potential costs of reformulation with substitute chemicals in the uses that are proposed to be restricted or prohibited. Such costs may be incurred by affected entities such as processors and may be related to activities such as research and development, laboratory testing, product re-labeling, and other activities necessary to use substitute chemicals in formulated products. EPA is also interested in soliciting comment on the time it may take for reformulation that would meet the current performance standards.

There are specific requirements to prevent releases to the environment for processors and distributors of PIP (3:1) under the proposed option, and for manufacturers, processors and distributors of PCTP under the primary alternative option. EPA requests comment on potential costs of engineering controls, process changes, or other measures that firms may undertake to prevent releases to the environment for the subject PBT chemicals.

EPA requests comment on potential costs related to ensuring compliance for imported articles affected by the proposed rule. While the rule does not prescribe specific steps that an importer must take to identify specific substances in imported articles, EPA is interested in understanding potential costs such as testing, communication with suppliers, or other measures that may be incurred at the discretion of any individual importer to ensure compliance.

EPA requests comment on potential costs and firm-level impacts, including possibility of firm closure, related to loss of revenue due to reduced demand for the subject PBT chemicals in the uses that are proposed to be restricted or prohibited. EPA is also interested in information related to the extent to which affected manufacturers (including importers) are willing and able to supply substitute chemicals and the net financial effects for the affected firms.

Finally, EPA requests comment on the likelihood, nature, and extent of potential changes in the domestic and foreign composition of the supply chain for the five PBT chemicals and continued availability for non-restricted uses due to reduced demand in the uses that are proposed to be restricted or prohibited by the proposed rule.

C. Benefits

As discussed in Unit II.C., while EPA reviewed hazard and exposure information for the PBT chemicals, this information did not provide a basis for EPA to develop scientifically robust and representative risk estimates to evaluate whether or not any of the chemicals present a risk of injury to health or the environment. Benefits were not quantified due to the lack of risk estimates. A qualitative discussion of the potential benefits associated with the proposed and alternative actions for each chemical is provided.

DecaBDE is persistent and bioaccumulative and has been associated with developmental neurological effects, developmental immunological effects, general developmental toxicity, and thyroid and liver effects in mammals, as well as with toxicity in aquatic organisms. Under EPA's proposed regulatory action, persons would be prohibited from manufacturing, processing and distributing DecaBDE in commerce and as an intentional component of any articles, with limited compliance delays and/or exclusions allowed for uses by certain industries (*e.g.,* aerospace). Exposures to humans and the environment would thus decrease as a result of the proposed regulatory action, and thus there would be benefits to health and the environment.

The primary alternative option would further reduce exposure to DecaBDE by including the prohibition of the manufacture, processing, or distribution in commerce of articles containing the chemical above 0.1 percent of mass weight. In effect, this would include a prohibition of recycled materials that contain above 0.1% DecaBDE. While data on the volume of recycled materials that contain DecaBDE above this threshold are not available, in cases

where articles exceed this threshold, there would be an associated reduction of the amount of exposure.

HCBD is persistent, bioaccumulative, and a possible human carcinogen. It is not intentionally manufactured in the United States. Since EPA is not proposing any regulatory action for HCBD, no benefits to health or the environment are expected as a result of the rule. The primary alternative regulatory action considered is a prohibition on the manufacture of HCBD. This would require reducing or eliminating production of the chemicals for which HCBD is produced as a byproduct. While this primary alternative option would further reduce release to the environment, it would require substantial change to the markets for chlorinated solvents that may not be warranted due to the low levels of release of HCBD that have already been realized.

PCTP is persistent, bioaccumulative, and an aquatic toxicant. There are limited data on the potential effects of PCTP in mammals and no data were identified on the potential effects of PCTP in humans. Under the proposed regulatory action, manufacture and processing of PCTP would be limited to concentrations of 1% or lower. With lower concentrations in mixtures, the proposed regulatory action would decrease dermal and inhalation PCTP exposures in workers involved in the manufacture of golf balls, if the workers are unprotected, and decrease releases of PCTP to the environment. With decreased releases to the environment there would also eventually be a decrease of exposures in the general population generally and as a result of consumption of contaminated food. Thus, by reducing PCTP, the proposed regulatory action would have benefits for the environment and potential benefits to health for workers, if they are unprotected.

Under the primary alternative regulatory action, EPA would prohibit manufacturers and processors from releasing the chemical to the environment. This would require manufacturers to implement industrial controls that would prevent releases to air, water, or land. If the costs to install and operate such controls are higher than the cost to switch to substitute chemicals for ZnPCTP, then firms would likely switch to substitute chemicals, as they would under the proposed action, and with a similar reduction in exposure to PCTP.

PIP (3:1) is a neurotoxicant and aquatic toxicant with high persistence and high potential for bioaccumulation. It would be prohibited for processing and distribution in all uses under the proposed regulatory action, with the exception of certain uses in aviation and automobile products. Concentrations of PIP (3:1) would be limited in these aviation products, and releases to water as a result of their use would be prohibited. Therefore, occupational exposures, if workers are unprotected, and exposures to the environment would decrease as a result of the proposed regulatory action, and thus there would be benefits to health and the environment.

Under the primary alternative regulatory action, remaining uses of PIP (3:1) in aviation products would also be prohibited following a 10-year exemption. Under this scenario, exposures to PIP (3:1) would be expected to decrease as outlined previously, with additional decreases in exposures for workers in the aviation sector, if they are unprotected.

2,4,6-TTBP is persistent and bioaccumulative, and has been associated with liver toxicity and reproductive and developmental effects in mammals. Under the proposed regulatory action, it would be prohibited for distribution in containers less than 55 gallons and be prohibited in processing and distribution as an additive to oil/lubricants. Therefore, the rule is expected to reduce consumer exposures to 2,4,6-TTBP and occupational exposure in certain industries, if workers are unprotected, as well as releases to the environment from consumer use, and thus, there would be benefits to health and the environment.

Under the primary alternative regulatory action, the container requirement component would be replaced by a limit of 0.01% on the allowable concentration of 2,4,6-TTBP in consumer/retail fuel additive formulations. Since both actions would require reformulation of fuel additives containing 2,4,6-TTBP, decreases in exposures to 2,4,6-TTBP are expected to be similar in each case.

V. References

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

1. EPA. TSCA Work Plan for Chemical Assessments: 2014 Update. October 2014. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-work-plan-chemical-assessments-2014-update.* Accessed March 1, 2019.
2. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.* Accessed March 1, 2019.
3. EPA. Economic Analysis for Proposed Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA section 6(h). June 2019.
4. EPA. Exposure and Use Assessment of Five Persistent, Bioaccumulative, and Toxic Chemicals June 2019.
5. EPA. Environmental and Human Health Hazards of Five Persistent, Bioaccumulative and Toxic Chemicals. June 2019.
6. EPA. *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Decabromodiphenyl Ether.* August 2017. (EPA–HQ–OPPT–2016–0724–0002).
7. EPA. *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Phenol, isopropylated, phosphate (3:1).* August 2017. (EPA–HQ–OPPT–2016–0730–0003).
8. EPA. *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: 2,4,6-Tris(tert-butyl)phenol.* August 2017. (EPA–HQ–OPPT–2016–0734–0002).
9. EPA. *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Hexachlorobutadiene.* August 2017. (EPA–HQ–OPPT–2016–0738–0004).
10. EPA. *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Pentachlorothiophenol.* August 2017. (EPA–HQ–OPPT–2016–0739–0003).
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14. EPA. Stakeholder Comment from iGPS. January 2018.
15. EPA. Certain Polybrominated Diphenylethers; Significant New Use Rule and Test Rule. Proposed Rule. **Federal Register** (77 FR 19862, April 2, 2012) (FRL–8889–3).
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Environmental Protection Agency, Office of Pollution Prevention and Toxics.
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20. EPA. Toxic Chemical Release Reporting; Community Right-to-know. Final Rule. **Federal Register** (53 FR 4500, February 16, 1988) (FRL–3298–2).
21. EPA. Stakeholder Meeting with ICL. August 30, 2018. EPA Docket EPA–HQ–OPPT–2019–0080.
22. Boeing Submission Re: Information supporting a Critical Use Exemption Request for phenol, isopropylated, phosphate (3:1) in Aerospace Uses (Docket ID Number: EPA–HQ–OPPT–2016–0730). February 12, 2019.
23. EPA. Stakeholder Meeting with Akin Gump. September 27, 2018. EPA Docket EPA–HQ–OPPT–2019–0080.
24. EPA. Stakeholder Meeting with Boeing. May 2, 2018. EPA Docket EPA–HQ–OPPT–2019–0080.
25. EPA. Stakeholder Meeting with Airbus. February 5, 2019. EPA Docket EPA–HQ–OPPT–2019–0080.
26. EPA. Stakeholder Meeting with Lockheed Martin. March 25, 2019. EPA Docket EPA–HQ–OPPT–2019–0080.
27. SI Group. Comments for the economic impact of 2,4,6-tri-tert-butylphenol (2,4,6-TTBP); letter from Kevin M. Kransler to Doug Parsons, EPA. December 21, 2018.
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35. EPA. Preliminary Assessment Information Reporting; Addition of Certain Chemicals. Final Rule. **Federal Register** (66 FR 38955, July 26, 2001) (FRL–6783–6).
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44. Alliance of Automobile Manufacturers and Motor and Equipment Manufacturers Association. Meeting on Phenol, Isopropylated, Phosphate (3:1) (PIP) in Automotive Uses. OIRA E.O. 12866 Meeting. June 13, 2019.
45. EPA. Persistence, Bioaccumulation, Environmental Hazard and Human Health Hazard Ratings for Alternatives to PBT Chemicals Proposed for Regulation. April 2019.
46. EPA. Stakeholder Meeting with Nye Lubricants. November 14, 2018. EPA Docket EPA–HQ–OPPT–2019–0080.
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VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. The Economic Analysis (Ref. 3) is available in the docket and is summarized in Unit IV.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017). Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action (Ref. 3).

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2599.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Respondents/affected entities: The entities expected to respond are companies that manufacture/import, process, or distribute any of the five PBT chemicals included in this proposed rule for the uses covered by this proposed rulemaking. A list of NAICS codes associated with these companies is provided in Unit I.A.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: A total of 81 companies are expected to be impacted by the proposed option. However, these may be underestimates due to companies that EPA is unaware would be affected.

Frequency of response: Costs are calculated on an annual basis.

Total estimated burden: Total estimated annual paperwork burden for the proposed option is 50.2 hours.

Total estimated cost: The fully loaded wage rate used to estimate these costs is $78.63. As such, there are expected to be a total of approximately $3,940 in annual paperwork costs associated with the proposed rule over the three years of the ICR period.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than August 28, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601, *et seq.* The small entities subject to the requirements of this action are small businesses that manufacture/import, process, or distribute the chemicals subject to this proposed rule. The Agency has determined that 24 of the 81 entities potentially subject to the proposed rule are small entities, including fourteen entities for DecaBDE, zero entities for HCBD, one entity for PCTP, five entities for PIP (3:1) and four entities for 2,4,6-TTBP. None (0%) of the small entities for any of the chemicals assessed are expected to incur impacts of 1% or greater. Details of this analysis are presented in the Economic Analysis (Ref. 3), which is in the public docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The requirements of this action would primarily affect manufacturers, processors, and distributors of four PBT chemicals. The total quantified annualized social costs for the proposed rule under the proposed option are approximately $43.5 million (at both 3% and 7% discount rate), which does not exceed the inflation-adjusted unfunded mandate threshold of $160 million.

F. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. EPA consulted with representatives of Tribes via teleconference on August 31, 2018, and September 6, 2018, concerning the prospective regulation of these five PBT chemicals under TSCA section 6(h). Tribal members were encouraged to provide additional comments after the teleconferences. EPA received two comments from the Keweenaw Bay Indian Community and Maine Tribes (Refs. 52 and 53). EPA also met with the National Tribal Toxics Council (NTTC) in Washington, DC. During the NTTC meeting, EPA provided background information on the available regulatory options under 6(a) and a summary of the information gathered on the five PBT chemicals. Officials from NTTC expressed support for EPA regulations to reduce exposures to the general population and susceptible subpopulations.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. As discussed, while EPA believes that the health and environmental risks presented by the PBT chemicals subject to this action may have a disproportionate effect on children and that this action addresses those risks, EPA did not perform a risk assessment or risk evaluation of these PBT chemicals. However, the proposed requirements would reduce exposure to these PBT chemicals for the general population and for susceptible subpopulations such as workers and children. EPA's evaluation of the exposure potential of these PBT chemicals (Ref. 4) and summary of the health and environmental hazards that may be presented by these chemical substances (Ref. 5) are in the public docket for this action.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. While this action proposes to regulate a fuel additive, because the restrictions are limited to fuel additives purchased and used by consumers, it will not significantly affect the nation's fuel supply.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards, and is therefore not subject to considerations under NTTAA section 12(d), 15 U.S.C. 272.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The

documentation for this decision is contained in the Economic Analysis (Ref. 3), which is in the public docket for this action.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Dated: June 21, 2019.

Andrew R. Wheeler,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

■ 2. Add reserved subpart D and add Subpart E, consisting of §§ 751.401 through 751.411, to read as follows:

Subpart D—[Reserved]

Subpart E—Persistent, Bioaccumulative, and Toxic Chemicals

Sec.

751.401 General.
751.403 Definitions.
751.405 DecaBDE.
751.407 PIP (3:1).
751.409 2,4,6-TTBP.
751.411 PCTP.

§ 751.401 General.

This subpart establishes prohibitions and restrictions on the following persistent, bioaccumulative, and toxic chemicals in accordance with TSCA section 6(h), 15 U.S.C. 2605(h): Decabromodiphenyl ether; phenol, isopropylated phosphate (3:1), also known as tris(4-isopropylphenyl) phosphate; 2,4,6-tris(tert-butyl)phenol; and pentachlorothiophenol.

§ 751.403 Definitions.

The definitions in subpart A of this part apply to this subpart unless otherwise specified in this section.

2,4,6-TTBP means the chemical substance 2,4,6-tris(tert-butyl)phenol (CASRN 732–26–3) at any concentration above 0.01 percent by weight.

Chemical substance means any organic or inorganic substance of a particular molecular identity.

(1) Such term includes any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.

(2) Such term does not include:

(i) Any mixture,

(ii) Any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) Tobacco or any tobacco product,

(iv) Any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act),

(v) Any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code) and any component of such an article (limited to shot shells, cartridges, and components of shot shells and cartridges), and

(vi) Any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device. The term ''food'' as used in this definition's paragraph (2)(vi) includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

DecaBDE means the chemical substance decabromodiphenyl ether (CASRN 1163–19–5).

Oil and lubricant additive means any additive to a product of any viscosity intended to reduce friction between moving parts, whether mineral oil or synthetic base, including engine crankcase and gear oils and bearing greases.

PCTP means the chemical substance pentachlorothiophenol (CASRN 133–49–3)

PIP (3:1) means the chemical substance phenol, isopropylated phosphate (3:1), also known as tris(4-isopropylphenyl) phosphate (CASRN 68937–41–7).

§ 751.405 DecaBDE.

(a) *Prohibitions.* After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from manufacturing, processing and distributing in commerce DecaBDE, or DecaBDE-containing products or articles, except for the following:

(1) Processing and distribution in commerce for recycling of plastic from products or articles containing DecaBDE, where no new DecaBDE is added during the recycling process.

(2) Processing and distribution in commerce of DecaBDE in finished products or articles made of plastic recycled from products or articles containing DecaBDE, where no new DecaBDE was added during the production of the products or articles made of recycled plastic.

(3) Manufacture, processing, and distribution in commerce of DecaBDE for use in replacement parts for automobiles and other motor vehicles and aircraft and aerospace vehicles, and the replacement parts, to which DecaBDE has been added, for such vehicles.

(4) After [*date 3 years after the date of publication of the final rule*], manufacture, processing and distribution in commerce of DecaBDE for use in parts installed in and sold as part of new aerospace vehicles, and the parts to which DecaBDE has been added for such vehicles.

(5) After [*date 18 months after the date of publication of the final rule*], manufacture, processing and distribution in commerce of DecaBDE for use in curtains in the hospitality industry, and the curtains to which DecaBDE has been added.

(b) *Recordkeeping.* (1) After [*date 60 calendar days after the date of publication of the final rule*], persons who manufacture, process, or distribute in commerce DecaBDE, or DecaBDE-containing products or articles, must maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.

(2) The recordkeeping requirements in paragraph (b)(1) of this section do not apply to the activities described in paragraph (a)(1) and (2) of this section.

§ 751.407 PIP (3:1).

(a) *Prohibitions.* (1) After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from processing and distributing in commerce PIP (3:1) or PIP (3:1)-containing products or articles, except for the following:

(i) Processing and distribution in commerce of PIP (3:1) and PIP (3:1)-containing products for use in aviation hydraulic fluid.

(ii) Processing and distribution in commerce of PIP (3:1) and PIP (3:1)-containing products for use in lubricants and greases.

(iii) Processing and distribution in commerce of PIP (3:1) and PIP (3:1)-containing products for use in new and replacement parts for automobiles and other motor vehicles, and distribution in commerce of the new and replacement parts to which PIP (3:1) has been added for such vehicles.

(2) After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, distribution in commerce, and commercial use of PIP (3:1).

(b) *Downstream notification.* Each person who manufactures, processes, or distributes in commerce PIP (3:1) or PIP (3:1)-containing products or articles for any use after [*date 60 calendar days after the final rule*] must, prior to or concurrent with the shipment, notify companies to whom PIP (3:1) is shipped, in writing, of the restrictions described in this subpart. Notification must occur by inserting the following text in the Safety Data Sheet (SDS) provided with the PIP (3:1) or with any PIP (3:1)-containing product:

(1) *SDS Section 1.(c):* ''The Environmental Protection Agency prohibits processing and distribution of this chemical/product for any use other than in aviation hydraulic fluid in aircraft systems lubricants and greases, and new or replacement parts for automobiles and other motor vehicles. In addition, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, distribution in commerce, and commercial use of PIP (3:1).''

(2) *SDS Section 15:* ''The Environmental Protection Agency prohibits processing and distribution of this chemical/product for any use other than in aviation hydraulic fluid in aircraft, lubricants and greases, and new or replacement parts for automobiles and other motor vehicles. In addition, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, distribution in commerce, and commercial use of PIP (3:1).''

(c) *Recordkeeping.* Each person who manufactures, processes, or distributes in commerce PIP (3:1) or PIP (3:1)-containing products or articles after [*date 60 calendar days after the date of publication of the final rule*] must maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.

§ 751.409 2,4,6-TTBP.

(a) *Prohibitions.* (1) After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from distributing in commerce 2,4,6-TTBP in containers with a volume less than 55 gallons.

(2) After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from processing and distributing in commerce 2,4,6-TTBP for use as an oil and lubricant additive.

(b) *Recordkeeping.* After [*date 60 calendar days after the date of publication of the final rule*], distributors of 2,4,6 TTBP must maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.

§ 751.411 PCTP.

(a) *Prohibition.* After [*date 60 calendar days after the date of publication of the final rule*], all persons are prohibited from manufacturing, processing and distributing in commerce PCTP or PCTP-containing products or articles unless in concentrations at or below 1% by weight.

(b) *Recordkeeping.* After [*date 60 calendar days after the date of publication of the final rule*], manufacturers, processors and distributors of PCTP or PCTP-containing products or articles must maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.

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Part IV

Environmental Protection Agency

40 CFR Part 80

Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2019–0136; FRL–9996–53–OAR]

RIN 2060–AU42

Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action proposes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel produced or imported in the year 2020. Relying on statutory waiver authority that is available when the projected cellulosic biofuel production volume is less than the applicable volume specified in the statute, EPA is proposing volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets. We are also proposing the applicable volume of biomass-based diesel for 2021. This action also proposes to address the remand of the 2016 standard-setting rulemaking, as well as several regulatory changes to the Renewable Fuel Standard (RFS) program including new pathways, flexibilities for regulated parties, and clarifications of existing regulations.

DATES:

Comments. Comments must be received on or before August 30, 2019.

Public hearing. EPA will announce the public hearing date and location for this proposal in a supplemental **Federal Register** document.

ADDRESSES: You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0136, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (our preferred method) Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' information in Section X.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially affected entities
Industry	324110	2911	Petroleum refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005. The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), leading to the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States (U.S.) toward ''greater energy independence and security [and] increas[ing] the production of clean renewable fuels.'' [2]

The statute includes annual volume targets and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that obligated parties must meet every year. In this action we are proposing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020, and biomass-based diesel (BBD) for 2021.[3] We are also proposing the annual percentage standards (also known as ''percent standards'') for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2020.[4]

In addition, we are also proposing to address the remand of the 2016 annual rule by the D.C. Circuit Court of Appeals, in *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (2017) (hereafter ''*ACE*''). After considering relevant factors, including the inability of the market to produce appreciably higher volumes of renewable fuel in 2020 than we are proposing and our obligation to consider the burdens placed on obligated parties when setting retroactive standards, we are proposing to retain the original 2016 required volumes. Finally, we are proposing several regulatory changes to the RFS program to facilitate the implementation of this program in going forward including new pathways, flexibilities for regulated parties, and clarifications of existing regulations.

Today, nearly all gasoline used for transportation purposes contains 10 percent ethanol (E10), and on average diesel fuel contains nearly 5 percent biodiesel and/or renewable diesel.[5] However, the market has fallen well short of the statutory volumes for cellulosic biofuel, resulting in shortfalls in the advanced biofuel and total renewable fuel volumes. In this action, we are proposing a volume requirement for cellulosic biofuel at the level we project to be available for 2020, along with an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are proposing reductions under the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction. This would effectively maintain the implied statutory volumes for non-cellulosic advanced biofuel and conventional biofuel.[6]

The resulting proposed volume requirements for 2020 are shown in Table I–1. Relative to the levels

[1] 75 FR 14670, March 26, 2010.

[2] Public Law 110–140, 121 Stat. 1492 (2007) (''EISA'').

[3] The 2020 BBD volume requirement was established in the 2019 final rule. 83 FR 63704 (December 11, 2018).

[4] For a list of the statutory provisions related to the determination of applicable volumes, see the 2018 final rule (82 FR 58486, December 12, 2017; Table I.A–2).

[5] Average biodiesel and/or renewable diesel blend percentages based on EIA's April 2019 Short Term Energy Outlook (STEO) and EPA's Moderated Transaction System (EMTS).

[6] The statutory total renewable fuel, advanced biofuel and cellulosic biofuel requirements for 2020 are 30.0, 15.0 and 10.5 billion gallons respectively. This implies a conventional renewable fuel applicable volume (the difference between the total renewable fuel and advanced biofuel volumes, which can be satisfied by with conventional (D6) RINs) of 15.0 billion gallons, and a non-cellulosic advanced biofuel applicable volume (the difference between the advanced biofuel and cellulosic biofuel volumes, which can be satisfied with advanced (D5) RINs) of 4.5 billion gallons. Qualifying cellulosic biofuel can generate D3 RINs, biomass-based diesel can generate D4 RINs, advanced biofuel can generate D5 RINs, conventional renewable fuel can generate D6 RINs, and cellulosic diesel can generate D7 RINs.

finalized for 2019, the proposed 2020 volume requirements for cellulosic biofuel, advanced biofuel and total renewable fuel would be higher by approximately 120 million gallons. This entire increase for each category is attributable to increased projection of cellulosic biofuel production in 2020 (see Section III for a further discussion of our cellulosic biofuel projection). We are also establishing the volume requirement for BBD for 2021 at 2.43 billion gallons. This volume is equal to the BBD volume finalized for 2020.

TABLE I–1—PROPOSED VOLUME REQUIREMENTS [a]

	2019 [b]	2020 statutory volumes	2020 proposed volumes	2021 proposed volumes
Cellulosic biofuel (billion gallons)	0.42	10.50	0.54	n/a
Biomass-based diesel (billion gallons)	2.1	≥1.0	[c] N/A	2.43
Advanced biofuel (billion gallons)	4.92	15.00	5.04	n/a
Renewable fuel (billion gallons)	19.92	30.00	20.04	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.
[b] The 2019 volume requirements for cellulosic biofuel, advanced biofuel, and renewable fuel were established in the 2019 final rule (83 FR 63704, December 11, 2018). The 2019 BBD volume requirement was established in the 2018 final rule (82 FR 58486, December 12, 2017).
[c] The 2020 BBD volume requirement of 2.43 billion gallons was established in the 2019 final rule (83 FR 63704, December 11, 2018).

A. Summary of Major Provisions in This Action

1. Approach To Setting Volume Requirements

For advanced biofuel and total renewable fuel, we are proposing reductions based on the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel applicable volume. Further discussion of our cellulosic waiver authority is found in Section II. This follows the same general approach as in the 2018 and 2019 final rules. The proposed volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel exceed the required volumes for these fuel types in 2019.

2. Cellulosic Biofuel

EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected production volume. In this rule we are proposing a cellulosic biofuel volume requirement of 0.54 billion ethanol-equivalent gallons for 2020 based on our production projection. This volume is 0.12 billion ethanol-equivalent gallons higher than the cellulosic biofuel volume finalized for 2019. Our projection in Section III considers many factors, including RIN generation data for past years and 2019 to date that is available to EPA through the EPA Moderated Transaction System (EMTS); the information we have received regarding individual facilities' capacities, production start dates, and biofuel production plans; a review of cellulosic biofuel production relative to EPA's projections in previous annual rules; and EPA's own engineering judgment. To project cellulosic biofuel production for 2020 we used the same general methodology as in the 2019 final rule. However, we have used updated data to derive percentile values used in our production projection for liquid cellulosic biofuels and to derive the year-over-year change in the rate of production of compressed natural gas and liquified natural gas (CNG/LNG) derived from biogas that is used in the projection for CNG/LNG.

3. Advanced Biofuel

If we reduce the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' The conditions that caused us to reduce the 2019 volume requirement for advanced biofuel below the statutory target remain relevant in 2020. As in the 2019 final rule, we investigated the projected availability of non-cellulosic advanced biofuels in 2020. In Section IV, we considered many factors, including constraints on the ability of the market to make advanced biofuels available, the ability of the standards we set to bring about market changes in the time available, the potential impacts associated with diverting biofuels and/or biofuel feedstocks from current uses to the production of advanced biofuel used in the U.S., the fact that the biodiesel tax credit is currently not available for 2020, the tariffs on imports of biodiesel from Argentina and Indonesia, as well as the cost of advanced biofuels. Based on these considerations we are proposing to reduce the statutory volume target for advanced biofuel by the same amount as the reduction in the statutory volume target for cellulosic biofuel. This results in a proposed advanced biofuel volume requirement for 2020 of 5.04 billion gallons, which is 0.12 billion gallons higher than the advanced biofuel volume requirement for 2019 and is entirely the result of the increase in projected cellulosic biofuel.

4. Total Renewable Fuel

As we have articulated in previous annual standard-setting rulemakings, we believe that the cellulosic waiver authority is best interpreted to require equal reductions in advanced biofuel and total renewable fuel. Consistent with previous years, we are proposing in Section IV to reduce total renewable fuel by the same amount as the reduction in advanced biofuel, such that the resulting implied volume requirement for conventional renewable fuel would be 15 billion gallons, the same as the implied volume requirement in the statute. The result is that the proposed 2020 volume requirement is 20.04 billion gallons.

5. 2021 Biomass-Based Diesel

In EISA, Congress specified increasing applicable volumes of BBD through 2012. Beyond 2012 Congress stipulated that EPA, in coordination with DOE and USDA, was to establish the BBD volume based on a review of the implementation of the program during calendar years specified in the tables in CAA 211(o)(B)(i) and other statutory factors, provided that the required volume for BBD could not be less than 1.0 billion gallons. Starting in 2013,

EPA has set the BBD volume requirement above the statutory minimum, most recently resulting in 2.43 billion gallons for 2020. In this rule we are proposing to maintain the BBD volume for 2021 at 2.43 billion gallons.

We believe that this volume appropriately balances the factors set forth in the statute, which we detail in Section VII. Most notably, in recent years, the advanced biofuel volume requirement has driven the production and use of biodiesel and renewable diesel volumes over and above volumes required through the separate BBD standard, and we expect this to continue. EPA also continues to believe it is appropriate to maintain the opportunity for other advanced biofuels to compete for market share, potentially reducing the costs associated with the advanced biofuel volume in future years by maintaining this flexibility, and thus to establish the BBD volume at a level lower than the advanced biofuel volume. For these reasons, we are proposing an applicable volume of BBD for 2021 of 2.43 billion gallons.[7]

6. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each refiner and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. The percentage standards represent the ratio of the national applicable renewable fuel volume to the national projected non-renewable gasoline and diesel volume less any gasoline and diesel production attributable to small refineries granted an exemption prior to the date that the standards are set. The volume of transportation gasoline and diesel used to calculate the proposed percentage standards was based on Energy Information Administration's (EIA) April 2019 Short Term Energy Outlook (STEO), minus an estimate of fuel consumption in Alaska. The proposed applicable percentage standards for 2020 are shown in Table I.B.6–1. Details, including the projected gasoline and diesel volumes used, can be found in Section VIII.

TABLE I.B.6–1—PROPOSED 2020 PERCENTAGE STANDARDS

	Proposed percentage standards
Cellulosic biofuel	0.29
Biomass-based diesel	1.99
Advanced biofuel	2.75
Renewable fuel	10.92

7. Response to Remand of 2016 Standards Rulemaking

In 2015, EPA finalized the total renewable fuel standard for 2016, relying in part on the general waiver authority under a finding of inadequate domestic supply.[8] Several parties challenged that action, and the D.C. Circuit, in *ACE,* vacated EPA's use of the general waiver authority under a finding of inadequate domestic supply, finding that such use exceeded EPA's authority under the Clean Air Act. Specifically, EPA had impermissibly considered demand-side factors in its assessment of inadequate domestic supply, rather than limiting that assessment to supply-side factors. The court remanded the rule back to EPA for further consideration in light of the court's ruling.

We have reconsidered the 2016 rulemaking as required by the court. The use of the general waiver authority reduced the 2016 volume requirement for total renewable fuel by 500 million gallons. In light of the retroactive nature of an increase in the volume requirement for total renewable fuel of 500 million gallons and the additional burden that such an increase would place on obligated parties, we are proposing to find that the applicable 2016 volume requirement for total renewable fuel and the associated percentage standard should not be changed. See Section V for further discussion.

8. Amendments to the RFS Program Regulations

In implementing the RFS program EPA has identified several areas where regulatory changes would assist EPA in implementing the RFS program in future years. These proposed regulatory changes comprise clarification of diesel RVO calculations, pathway petition conditions, a biodiesel esterification pathway, distillers corn oil and distillers sorghum oil pathways, and renewable fuel exporter provisions. Each of these proposed regulatory changes is discussed in greater detail in Section IX.

Additionally, we proposed a number of changes to the RFS regulations as part of the Renewables Enhancement and Growth Support (REGS) Rule.[9] EPA is considering whether several of those proposed changes, which we believe to be relatively straightforward and would reduce the burden of RFS program implementation, could be finalized along with the regulatory changes proposed in this action as part of the 2020 RVO final rule. In doing so we would address any previous comments received in response to the 2016 REGS proposal on the provisions. Specifically, we are considering finalizing with the 2020 RVO Rule the proposed REGS Rule provisions listed below. The other provisions proposed in the REGS Rule remain under consideration, but we do not intend to finalize them along with the 2020 RVO Rule.[10] Any comments received on REGS provisions other than those listed below will be deemed beyond the scope of this rulemaking.

- Allowing Production of Biomass-Based Diesel From Separated Food Waste (REGS Section VIII.C)
- Flexibilities for Renewable Fuel Blending for Military Use (REGS Section VIII.E)
- Heating Oil Used for Cooling (REGS Section VIII.F)
- Separated Food Waste Plans (REGS Section VIII.G)
- RFS Facility Ownership Changes (REGS Section VIII.H)
- Additional Registration Deactivation Justifications (REGS Section VIII.J)
- New RIN Retirement Section (REGS Section VIII.L)
- New Pathway for Co-Processing Biomass With Petroleum To Produce Cellulosic Diesel, Jet Fuel, and Heating Oil (REGS Section VIII.M)
- Public Access to Information (REGS Section VIII.O)
- Redesignation of Renewable Fuel on a PTD for Non-Qualifying Uses (REGS Section VIII.R)
- Other Revisions to the Fuels Program (REGS Section IX)

[7] The 330 million gallon increase for BBD from 2019 (2.1 billion gallons) to 2020 (2.43 billion gallons) would generate approximately 500 million RINs, due to the higher equivalence value of biodiesel (1.5 RINs/gallon) and renewable diesel (generally 1.7 RINs/gallon).

[8] See 80 FR 77420 (December 14, 2015); CAA section 211(o)(7)(A)(ii).

[9] See 81 FR 80828 (November 16, 2016). While the REGS Rule proposal itself provided sufficient notice and opportunity for comment, this action gives additional notice regarding these provisions to provide greater transparency to stakeholders. EPA's decision to provide this additional notice is not required by law and does not require that we provide additional notice in similar circumstances going forward.

[10] The provisions related to ''RVO Reporting'' (REGS Section VIII.A) have been subsumed by the ''Clarification of Diesel RVO Calculations'' provisions in Section IX.A of this action. The provisions related to ''Oil from Corn Oil Extraction'' (REGS Section VIII.B) were already finalized in a separate action (see 83 FR 37735, August 2, 2018).

B. Obligation To Reset Statutory Volumes

EISA also contained a requirement in CAA section 211(o)(7)(F) for a ''Modification of Applicable Volumes'' if certain conditions are met. This provision states that if EPA waives statutory volume targets beyond specified thresholds, the EPA shall modify or ''reset'' the statutory volume targets for all years following the year that the threshold was exceeded. With the finalization of the 2019 applicable volumes, we have triggered the requirements to reset the volume of total renewable fuel for 2020–2022.[11] EPA intends to fulfill these requirements in a separate rulemaking.

II. Authority and Need for Waiver of Statutory Applicable Volumes

The CAA provides EPA with the authority to promulgate volume requirements below the applicable volume targets specified in the statute under specific circumstances. This section discusses those authorities. As described in the executive summary, we are proposing the volume requirement for cellulosic biofuel at the level we project to be available for 2020, and an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are proposing volume requirements and associated applicable percentage standards, based on use of the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction. This would effectively maintain the implied statutory volumes for non-cellulosic advanced biofuel and conventional renewable fuel.[12]

A. Statutory Authorities for Reducing Volume Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022, and for BBD through 2012. Congress also authorized EPA to set volume requirements for subsequent years in coordination with USDA and DOE, and based upon consideration of specified factors. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements at a lower level than reflected in the statutory volume targets, and thus provided waiver provisions in CAA section 211(o)(7).

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, then EPA must reduce the applicable volume of cellulosic biofuel required to the projected production volume for that calendar year. In making this projection, EPA may not ''adopt a methodology in which the risk of overestimation is set deliberately to outweigh the risk of underestimation'' but must make a projection that ''takes neutral aim at accuracy.'' *API* v. *EPA,* 706 F.3d 474, 479, 476 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volume for each year since 2010. As described in Section III.D, the projected volume of cellulosic biofuel production for 2020 is less than the 10.5 billion gallon volume target in the statute. Therefore, for 2020, we are proposing a cellulosic biofuel volume lower than the statutory applicable volume, in accordance with this provision.

CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when it reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. For 2020, we are reducing the applicable volumes of advanced biofuel and total renewable fuel under this authority.

EPA has used the cellulosic waiver authority to lower the cellulosic biofuel, advanced biofuel and total renewable fuel volumes every year since 2014. Further discussion of the cellulosic waiver authority, and EPA's interpretation of it, can be found in the preamble to the 2017 final rule.[13] See also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA*, 750 F.3d 909 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel); *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691 (D.C. Cir. 2017) (same).

In this action we are proposing to use the cellulosic waiver authority to reduce the statutory volume targets for advanced biofuel and total renewable fuel by equal amounts, consistent with our long-held interpretation of this provision and our approach in setting the 2014–2019 standards. This approach considers the Congressional objectives reflected in the volume tables in the statute, and the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels.[14] See 81 FR 89752–89753 (December 12, 2016). See also 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015). We are proposing, as described in Section IV, to reduce the advanced biofuel volume under the cellulosic waiver authority by the same quantity as the reduction in cellulosic biofuel, and to provide an equal reduction under the cellulosic waiver authority in the applicable volume of total renewable fuel. We are taking this action both because we do not believe that the statutory volumes can be achieved, and because we do not believe that backfilling of the shortfall in cellulosic with advanced biofuel would be appropriate due to high costs, as well as other factors such as feedstock switching and/or diversion of foreign advanced biofuels. The volumes of advanced biofuel and total renewable fuel resulting from this exercise of the cellulosic waiver authority provide for an implied volume allowance for conventional renewable fuel of 15 billion gallons, and an implied volume allowance for non-cellulosic advanced biofuel of 4.5 billion gallons, equal to the implied statutory volumes for 2020. As discussed in Section IV, we also believe that the resulting volume of advanced biofuel is attainable, and that the resulting volume of total renewable fuel can be made available by the market.

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on his own

[11] The requirements to reset the volume of cellulosic biofuel and advanced biofuel were triggered in previous years. We intend to reset the cellulosic biofuel, advanced biofuel, and total renewable fuel volumes in the reset rule.

[12] See supra n.6.

[13] See 81 FR 89752–89753 (December 12, 2016).

[14] Advanced biofuels are required to have lifecycle GHG emissions that are at least 50% less than the baseline defined in EISA. Non-advanced biofuels are required to have lifecycle GHG emissions that are at least 20% less than the baseline defined in EISA unless the fuel producer meets the grandfathering provisions in 40 CFR 80.1403. Beginning in 2015, all growth in the volumes established by Congress come from advanced biofuels.

motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that: (1) Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply.

At this time, we do not believe that the circumstances exist that would justify further reductions in the volumes using the general waiver authority.

B. Severability

The various portions of this rule are severable. Specifically, the following portions are severable from each other: the percentage standards for 2020 (described in Section VIII); the 2021 BBD volume requirement (Section VII); the supplemental total renewable fuel standard in response to the 2016 remand (Section V); and the regulatory amendments (Section IX). In addition, each of the regulatory amendments is severable from the other regulatory amendments. If any of the above portions is set aside by a reviewing court, we intend the remainder of this action to remain effective. For instance, if a reviewing court sets aside the supplemental total renewable fuel standard, we intend for the 2020 percentage standards, including the 2020 total renewable fuel standard, to go into effect.

C. Treatment of Carryover RINs

Consistent with our approach in the rules establishing the RFS standards for 2013 through 2019, we have also considered the availability and role of carryover RINs in setting the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. Neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising our statutory authorities.[15] As noted in the context of the rules establishing the RFS standards for 2014 through 2019, we believe that a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends.[16] Carryover RINs provide flexibility in the face of a variety of unforeseeable circumstances that could limit the availability of RINs and reduce spikes in compliance costs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel.[17] On the other hand, carryover RINs can be used for compliance purposes, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[18] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE*.[19]

An adequate carryover RIN bank serves to make the RIN market liquid wherein RINs are freely traded in an open market making them readily available and accessible to those who need them for compliance at prices established by that open market. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be too few RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards and higher compliance costs, undermining the market certainty so critical to the RFS program. Moreover, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner (*i.e.,* one in which there are a sufficient number of reasonably available RINs for obligated parties seeking to purchase them), even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a necessary programmatic buffer that both facilitates individual compliance and provides for smooth overall functioning of the program.[20]

1. Carryover RIN Bank Size

We estimate that there are currently approximately 2.19 billion total carryover RINs available, a decrease of 400 million RINs from the previous estimate of 2.59 billion total carryover RINs in the 2019 final rule.[21] At the time of the 2019 final rule, we determined that carryover RINs should not be counted on to avoid or minimize the need to reduce the 2019 statutory volume targets under the cellulosic waiver authority.[22] We also stated that we may or may not take a similar approach in future years, and that we would evaluate the issue on a case-by-case basis considering the facts in future years.

The 400 million RIN decrease in the total carryover RIN bank compared to that projected in the 2019 final rule results from various factors, including market factors and regulatory and enforcement actions. This estimate is also lower despite the fact that it includes the millions of RINs that were not required to be retired by small refineries that were granted hardship exemptions in recent years.[23] This total

[15] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid to show compliance for 12 months as of the date of generation. EPA implemented this requirement though the use of RINs, which can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although use of these carryover RINs is limited to 20 percent of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, if the volume of the collective carryover RIN bank is to remain unchanged from 2018 to 2019, then all of the vintage 2018 carryover RINs must be used for compliance in 2019, or they will expire. However, the same volume of 2019 RINs can then be ''banked'' for use in 2020.

[16] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017), and 83 FR 63708–10 (December 11, 2018).

[17] See 72 FR 23900 (May 1, 2007), 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017) and 83 FR 63708–10 (December 11, 2018).

[18] See 79 FR 49793–95 (August 15, 2013).

[19] *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *ACE,* 864 F.3d at 713.

[20] Here we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.

[21] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020 NPRM,'' available in the docket.

[22] See ''Carryover RIN Bank Calculations for 2019 Final Rule,'' available in docket EPA–HQ–OAR–2018–0167.

[23] Information about the number of small refinery exemptions granted and the volume of RINs not required to be retired as a result of those exemptions can be found at *https://www.epa.gov/*

Continued

volume of carryover RINs is approximately 11 percent of the total renewable fuel volume requirement that we are proposing for 2020, which is less than the 20 percent maximum limit permitted by the RFS regulations to be carried over for use in complying with the 2020 standards.[24]

The above discussion applies to total carryover RINs; we have also considered the available volume of advanced biofuel carryover RINs, which are a subset of the 2.19 billion total carryover RINs. At the time of the 2019 final rule, we estimated that there were approximately 600 million advanced carryover RINs available. We now estimate that there are currently approximately 390 million advanced carryover RINs available, a decrease of 210 million RINs from the previous estimate in the 2019 final rule. This volume of advanced carryover RINs is approximately 8 percent of the advanced renewable fuel volume requirement that we are proposing for 2020, which is less than the 20 percent maximum limit permitted by the regulations to be carried over for use in complying with the 2020 standards.

However, there remains considerable uncertainty surrounding the ultimate size of the carryover RIN bank for several reasons, including the possibility of additional small refinery exemptions, and the impact of both 2018 and 2019 RFS compliance on the bank of carryover RINs. In addition, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. Future enforcement actions could have similar results and require that obligated parties and/or renewable fuel exporters settle past enforcement-related obligations in addition to complying with the annual standards, thereby potentially creating demand for RINs greater than can be accommodated through actual renewable fuel blending in 2020. In light of these uncertainties, the net result could be a bank of total carryover RINs larger or smaller than 11 percent of the proposed 2020 total renewable fuel volume requirement, and a bank of advanced carryover RINs larger or smaller than 8 percent of the proposed 2020 advanced biofuel volume requirement.

2. EPA's Proposed Decision Regarding the Treatment of Carryover RINs

We have evaluated the volume of carryover RINs currently available and considered whether it would justify an intentional drawdown of the carryover RIN bank in setting the 2020 volume requirements. For the reasons described above, we do not believe this to be the case. The current bank of carryover RINs provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volume objectives for cellulosic biofuel, advanced biofuel, and total renewable fuel, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under its statutory authorities, and that the statute does not specify the extent to which EPA should require a drawdown in the bank of carryover RINs when it exercises its authorities. Therefore, for the reasons noted above and consistent with the approach we took in the rules establishing the RFS standards for 2014 through 2019, we are not proposing to set the 2020 volume requirements at levels that would envision an intentional drawdown in the bank of carryover RINs.

III. Cellulosic Biofuel Volume for 2020

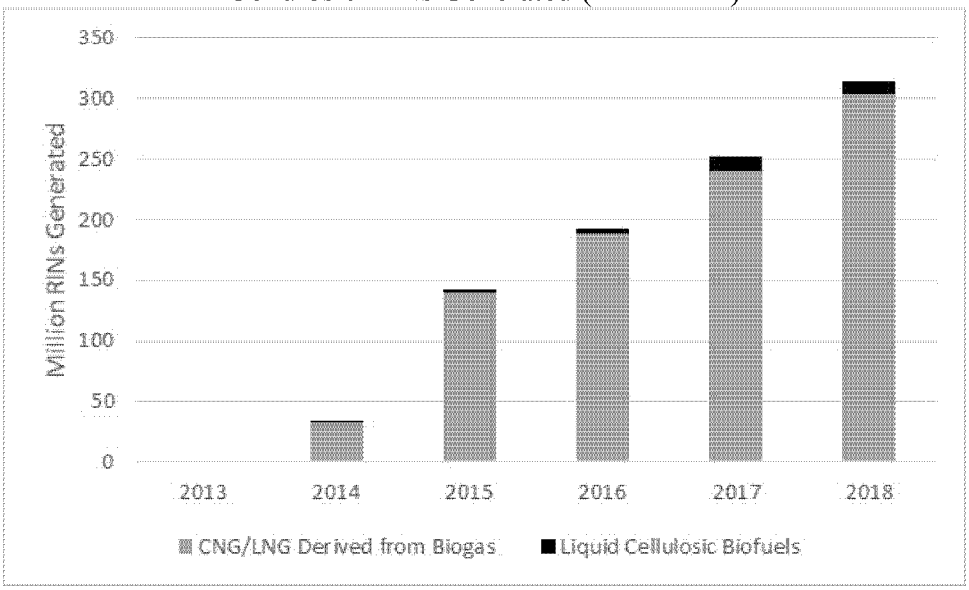
In the past several years, production of cellulosic biofuel has continued to increase. Cellulosic biofuel production reached record levels in 2018, driven largely by CNG and LNG derived from biogas.[25] Production of liquid cellulosic biofuel has also increased in recent years, even as the total production of liquid cellulosic biofuels remains much smaller than the production volumes of CNG and LNG derived from biogas (see Figure III–1). This section describes our assessment of the volume of cellulosic biofuel that we project will be produced or imported into the U.S. in 2020, and some of the uncertainties associated with those volumes.

fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.

[24] See 40 CFR 80.1427(a)(5).

[25] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills; however, the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated municipal solid waste (MSW) digesters, and the cellulosic components of biomass processed in other waste digesters.

Figure III-1
Cellulosic RINs Generated (2013-2018)



In order to project the volume of cellulosic biofuel production in 2020, we considered the accuracy of the methodologies used to project cellulosic biofuel production in previous years, data reported to EPA through EMTS, and information we collected through meetings with representatives of facilities that have produced or have the potential to produce qualifying volumes of cellulosic biofuel in 2020. EIA's projection of cellulosic biofuel production in 2020, which is not yet available at the time of this proposed rule, will also inform our projection of cellulosic biofuel production in the final rule.

There are two main elements to the cellulosic biofuel production projection: liquid cellulosic biofuel and CNG/LNG derived from biogas. To project the range of potential production volumes of liquid cellulosic biofuel we used the same general methodology as the methodology used in the 2018 and 2019 final rules. We have adjusted the percentile values used to select a point estimate within a projected production range for each group of companies based on updated information (through the end of 2018) with the objective of improving the accuracy of the projections. To project the production of cellulosic biofuel RINs for CNG/LNG derived from biogas, we used the same general year-over-year growth rate methodology as in the 2018 and 2019 final rules, with updated RIN generation data through March 2019. This methodology reflects the mature status of this industry, the large number of facilities registered to generate cellulosic biofuel RINs from these fuels, and EPA's continued attempts to refine its methodology to yield estimates that are as accurate as possible. This methodology is an improvement on the methodology that EPA used to project cellulosic biofuel production for CNG/LNG derived from biogas in the 2017 and previous years (see Section III.B for a further discussion of the accuracy of EPA's methodology in previous years). The methodologies used to project the production of liquid cellulosic biofuels and cellulosic CNG/LNG derived from biogas are described in more detail in Sections III.C–1 and III.C–2.

The balance of this section is organized as follows. Section III.A provides a brief description of the statutory requirements. Section III.B reviews the accuracy of EPA's projections in prior years, and also discusses the companies EPA assessed in the process of projecting qualifying cellulosic biofuel production in the U.S. Section III.C discusses the methodologies used by EPA to project cellulosic biofuel production in 2020 and the resulting projection of 0.54 billion ethanol-equivalent gallons.

A. Statutory Requirements

CAA section 211(o)(2)(B)(i)(III) states the statutory volume targets for cellulosic biofuel. The volume of cellulosic biofuel specified in the statute for 2020 is 10.5 billion gallons. The statute provides that if EPA determines, based on a letter provided to the EPA by EIA, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA shall reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[26]

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume,[27] and we are also required to make cellulosic waiver credits available.[28] Our consideration of the 2020 volume requirements for advanced

[26] CAA section 211(o)(7)(D)(i). The U.S. Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA,* 706 F.3d 474, 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an ''outcome-neutral methodology'' aimed at providing a prediction of ''what will *actually* happen.'' *Id.* at 480, 479. The Court also determined that Congress did not require ''slavish adherence by EPA to the EIA estimate'' and that EPA could ''read the phrase 'based on' as requiring great respect but allowing deviation consistent with that respect.'' EPA has consistently interpreted the term ''projected volume of cellulosic biofuel production'' in CAA section 211(o)(7)(D)(i) to include volumes of cellulosic biofuel likely to be made available in the U.S., including from both domestic production and imports (*see, e.g.,* 80 FR 77420 (December 14, 2015) and 81 FR 89746 (December 12, 2016)). We do not believe it would be reasonable to include in the projection all cellulosic biofuel produced throughout the world, regardless of likelihood of import to the U.S., since volumes that are not imported would not be available to obligated parties for compliance and including them in the projection would render the resulting volume requirement and percentage standards unachievable through the use of cellulosic biofuel RINs.

[27] CAA section 211(o)(7)(D)(i).

[28] See CAA section 211(o)(7)(D)(ii); 40 CFR 80.1456.

biofuel and total renewable fuel is presented in Section IV.

B. Cellulosic Biofuel Industry Assessment

In this section, we first explain our general approach to assessing facilities or groups of facilities (which we collectively refer to as ''facilities'') that have the potential to produce cellulosic biofuel in 2020. We then review the accuracy of EPA's projections in prior years. Next, we discuss the criteria used to determine whether to include potential domestic and foreign sources of cellulosic biofuel in our projection for 2020. Finally, we provide a summary table of all facilities that we expect to produce cellulosic biofuel in 2020.

In order to project cellulosic biofuel production for 2020 we have tracked the progress of a number of potential cellulosic biofuel production facilities, located both in the U.S. and in foreign countries. We considered a number of factors, including information from EMTS, the registration status of potential biofuel production facilities as cellulosic biofuel producers in the RFS program, publicly available information (including press releases and news reports), and information provided by representatives of potential cellulosic biofuel producers. As discussed in greater detail in Section III.C.1, our projection of liquid cellulosic biofuel is based on a facility-by-facility assessment of each of the likely sources of cellulosic biofuel in 2020, while our projection of CNG/LNG derived from biogas is based on an industry-wide assessment. To make a determination of which facilities are most likely to produce liquid cellulosic biofuel and generate cellulosic biofuel RINs in 2019, each potential producer of liquid cellulosic biofuel was investigated further to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2020. Both in our discussions with representatives of individual companies and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

1. Review of EPA's Projection of Cellulosic Biofuel in Previous Years

As an initial matter, it is useful to review the accuracy of EPA's past cellulosic biofuel projections. The record of actual cellulosic biofuel production and EPA's projected production volumes from 2015–2018 are shown in Table III.B–1. These data indicate that EPA's projection was lower than the actual number of cellulosic RINs made available in 2015,[29] higher than the actual number of RINs made available in 2016 and 2017, and lower than the actual number of RINs made available in 2018. The fact that the projections made using this methodology have been somewhat inaccurate, under-estimating the actual number of RINs made available in 2015 and 2018, and over-estimating in 2016 and 2017, reflects the inherent difficulty with projecting cellulosic biofuel production. It also emphasizes the importance of continuing to make refinements to our projection methodology in order to make our projections more accurate.

TABLE III.B.1–1—PROJECTED AND ACTUAL CELLULOSIC BIOFUEL PRODUCTION (2015–2018); MILLION GALLONS [a]

	Projected volume [b]			Actual production volume [c]		
	Liquid cellulosic biofuel	CNG/LNG derived from biogas	Total cellulosic biofuel [d]	Liquid cellulosic biofuel	CNG/LNG derived from biogas	Total cellulosic biofuel [d]
2015 [e]	2	33	35	0.5	52.8	53.3
2016	23	207	230	4.1	186.2	190.3
2017	13	298	311	11.8	239.5	251.3
2018	14	274	288	10.6	303.9	314.4

[a] As noted in Section III.A. above, EPA has consistently interpreted the term ''projected volume of cellulosic biofuel production'' to include volumes of cellulosic biofuel likely to be made available in the U.S., including from both domestic production and imports. The volumes in this table therefore include both domestic production of cellulosic biofuel and imported cellulosic biofuel.

[b] Projected volumes for 2015 and 2016 can be found in the 2014–2016 Final Rule (80 FR 77506, 77508, December 14, 2015); projected volumes for 2017 can be found in the 2017 Final Rule (81 FR 89760, December 12, 2016); projected volumes for 2018 can be found in the 2018 Final Rule (82 FR 58503, December 12, 2017).

[c] Actual production volumes are the total number of RINs generated minus the number of RINs retired for reasons other than compliance with the annual standards, based on EMTS data.

[d] Total cellulosic biofuel may not be precisely equal to the sum of liquid cellulosic biofuel and CNG/LNG derived from biogas due to rounding.

[e] Projected and actual volumes for 2015 represent only the final 3 months of 2015 (October–December) as EPA used actual RIN generation data for the first 9 months of the year.

EPA's projections of liquid cellulosic biofuel were higher than the actual volume of liquid cellulosic biofuel produced each year from 2015 to 2018.[30] As a result of the over-projections in 2015–2016 (and the anticipated over-projection in 2017), and in an effort to take into account the most recent data available and make the liquid cellulosic biofuel projections more accurate, EPA adjusted our methodology in the 2018 final rule.[31] The adjustments to our methodology adopted in the 2018 final rule appear to have resulted in a projection that is close to the volume of liquid cellulosic biofuel produced in 2018. In this proposed rule we are again applying the approach we first used in the 2018 final rule: Using percentile values based on actual production in previous years, relative to the projected volume of liquid cellulosic biofuel in these years. We have adjusted the percentile values to project liquid cellulosic biofuel production based on actual liquid cellulosic biofuel production in 2016 to

[29] EPA only projected cellulosic biofuel production for the final three months of 2015, since data on the availability of cellulosic biofuel RINs (D3+D7) for the first nine months of the year were available at the time the analyses were completed for the final rule.

[30] We note, however, that because the projected volume of liquid cellulosic biofuel in each year was very small relative to the total volume of cellulosic biofuel, these over-projections had a minimal impact on the accuracy of our projections of cellulosic biofuel for each of these years.

[31] 82 FR 58486 (December 12, 2017).

2018. We believe that the use of the methodology (described in more detail in Section III.D.1), with the adjusted percentile values, results in a projection that reflects a neutral aim at accuracy since it accounts for expected growth in the near future by using historical data that is free of any subjective bias.

We next turn to the projection of CNG/LNG derived from biogas. For 2018 and 2019, EPA used an industry-wide approach, rather than an approach that projects volumes for individual companies or facilities, to project the production of CNG/LNG derived from biogas. EPA used a facility-by-facility approach to project the production of CNG/LNG derived from biogas from 2015–2017. Notably the facility-by-facility methodology resulted in significant over-estimates of CNG/LNG production in 2016 and 2017, leading EPA to develop the alternative industry wide projection methodology first used in 2018. This updated approach reflects the fact that this industry is far more mature than the liquid cellulosic biofuel industry, with a far greater number of potential producers of CNG/LNG derived from biogas. In such cases, industry-wide projection methods can be more accurate than a facility-by-facility approach, especially as macro market and economic factors become more influential on total production than the success or challenges at any single facility. The industry-wide projection methodology slightly under-projected the production of CNG/LNG derived from biogas in 2018. However, the difference between the projected and actual production volume of these fuels was smaller than in 2017.

As further described in Section III.C.2, EPA is again projecting production of CNG/LNG derived from biogas using the industry-wide approach. We calculate a year-over-year rate of growth in the renewable CNG/LNG industry by comparing RIN generation for CNG/LNG derived from biogas from April 2017–March 2018 to the RIN generation for these same fuels from April 2018–March 2019 (the most recent month for which data are available). We then apply this year-over-year growth rate to the total number of cellulosic RINs generated and available to be used for compliance with the annual standards in 2018 to estimate the production of CNG/LNG derived from biogas in 2020.[32] We have applied the growth rate to the number of available 2018 RINs generated for CNG/LNG derived from biogas as data from this year allows us to adequately account for not only RIN generation, but also for RINs retired for reasons other than compliance with the annual standards. While more recent RIN generation data is available, the retirement of RINs for reasons other than compliance with the annual standards generally lags RIN generation, sometimes by up to a year or more.[33] Should this methodology continue to under predict in the future as it did in 2018, then we may need to revisit the methodology, but with only 2018 data to compare to it is premature to make any adjustments. We request comment on potential adjustments to this methodology for the final rule, especially if RIN generation data suggests that this methodology is likely to significantly under or over project the production of CNG/LNG derived from biogas in 2019.

The production volumes of cellulosic biofuel in previous years also highlight that the production of CNG/LNG derived from biogas has been significantly higher than the production of liquid cellulosic biofuel in previous years. This is likely the result of a combination of several factors, including the mature state of the technology used to produce CNG/LNG derived from biogas relative to the technologies used to produce liquid cellulosic biofuel, the relatively low production cost of CNG/LNG derived from biogas (discussed in further detail in Section VI), and the high RIN value of cellulosic RINs relative to the fuel value of CNG/LNG derived from biogas. Unlike liquid cellulosic fuels which are generally dependent on a high RIN value to produce fuel economically, in some cases CNG/LNG derived from biogas can be produced at a cost that is competitive with fossil natural gas without account for any RIN value. Further, while the cellulosic RIN value, which averaged $2.25 per RIN in 2018, is high relative to the fuel value for all types of cellulosic biofuels it is extremely high in the case of CNG/LNG derived from biogas (approximately 9 times the value of the fuel in 2018).[34] These factors are unlikely to change in 2020. While we project production volumes of liquid cellulosic biofuel and CNG/LNG derived from biogas separately, the actual volume of each fuel type produced may be higher or lower than projected.

2. Potential Domestic Producers

There are several companies and facilities[35] located in the U.S. that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale,[36] or are anticipated to be in a position to do so at some time during 2020. The financial incentive provided by cellulosic biofuel RINs,[37] combined with the fact that to date nearly all cellulosic biofuel produced in the U.S. has been used domestically[38] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption and plan to use approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for all cellulosic biofuel produced by domestic commercial scale facilities. To generate RINs, each of these facilities must be registered with EPA under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the domestic companies and facilities considered in our assessment of potential cellulosic biofuel producers in 2019 have already successfully completed facility registration, and have successfully generated RINs.[39] A brief

[32] To project the volume of CNG/LNG derived from biogas in 2020, we multiply the number of 2018 RINs generated for these fuels and available to be used for compliance with the annual standards by the calculated growth rate to project production of these fuels in 2019 and then multiply the resulting number by the growth rate again to project the production of these fuels in 2020.

[33] Although we do not apply the calculated growth rate to the most recent monthly data on the number of RINs generated for CNG/LNG derived from biogas that are available for compliance, we do use it to calculate the year-over-year growth rate used to project the production of CNG/LNG derived from biogas in 2020.

[34] Average D3 RIN price in 2018 using EMTS data. To calculate the RIN value relative to the fuel value of CNG/LNG derived from biogas we converted the price of fossil natural gas in 2018 ($3.15 per MMBTU) from EIA's April 2019 STEO to the price per ethanol-equivalent gallon ($0.24 per 77,000 BTU) and compared this value to the average D3 RIN value in 2018 ($2.25).

[35] The volume projection from CNG/LNG producers and facilities using Edeniq's production technology do not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

[36] For a further discussion of EPA's decision to focus on commercial scale facilities, rather than R&D and pilot scale facilities, see the 2019 proposed rule (83 FR 32031, July 10, 2018).

[37] According to data from EMTS, the average price for a 2018 cellulosic biofuel RINs sold in 2018 was $2.25. Alternatively, obligated parties can satisfy their cellulosic biofuel obligations by purchasing an advanced (or biomass-based diesel) RIN and a cellulosic waiver credit. The average price for a 2018 advanced biofuel RINs sold in 2018 was $0.48 while the price for a 2018 cellulosic waiver credit is $1.96 (EPA–420–B–17–036).

[38] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

[39] Most of the facilities listed in Table III.B.3–1 are registered to produce cellulosic (D3 or D7) RINs with the exception of several of the producers of

Continued

description of each of the domestic companies (or group of companies for cellulosic CNG/LNG producers and the facilities using Edeniq's technology) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2020 can be found in a memorandum to the docket for this final rule.[40] General information on each of these companies or group of companies considered in our projection of the potentially available volume of cellulosic biofuel in 2020 is summarized in Table III.B.4–1.

3. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the U.S., there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2019. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used and other regulatory requirements are satisfied. These companies would therefore be eligible to register their facilities under the RFS program and generate RINs for any qualifying fuel imported into the U.S. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the U.S., demand for the cellulosic biofuels they produce is expected to be high in their own local markets.

EPA's projection of cellulosic biofuel production in 2020 includes cellulosic biofuel that is projected to be imported into the U.S. in 2020, including potential imports from all the registered foreign facilities under the RFS program. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the U.S., cellulosic biofuel imports from foreign facilities not currently registered to generate cellulosic biofuel RINs are generally highly unlikely in 2020. For purposes of our 2020 cellulosic biofuel projection we have excluded potential volumes from foreign cellulosic biofuel production facilities that are not currently registered under the RFS program.

Cellulosic biofuel produced at three foreign facilities (Ensyn's Renfrew facility, GranBio's Brazilian facility, and Raizen's Brazilian facility) generated cellulosic biofuel RINs for fuel exported to the U.S. in 2017 and/or 2018; projected volumes from each of these facilities are included in our projection of available volumes for 2020. EPA has also included projected volume from two additional foreign facilities. These two facilities (Enerkem's Canadian facility and Ensyn's Port-Cartier, Quebec facility) have both completed the registration process as cellulosic biofuel producers. We believe that it is appropriate to include volume from these facilities in light of their proximity to the U.S., the proven technology used by these facilities, the volumes of cellulosic biofuel exported to the U.S. by the company in previous years (in the case of Ensyn), and the company's stated intentions to market fuel produced at these facilities to qualifying markets in the U.S. All of the facilities included in EPA's cellulosic biofuel projection for 2020 are listed in Table III.B.4–1.

4. Summary of Volume Projections for Individual Companies

General information on each of the cellulosic biofuel producers (or group of producers, for producers of CNG/LNG derived from biogas and producers of liquid cellulosic biofuel using Edeniq's technology) that factored into our projection of cellulosic biofuel production for 2020 is shown in Table III.B.3–1. This table includes both facilities that have already generated cellulosic RINs, as well as those that have not yet generated cellulosic RINs, but are projected to do so by the end of 2020. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities. Each of these facilities (or group of facilities) is discussed further in a memorandum to the docket.[41]

TABLE III.B.4–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL IN 2020

Company name	Location	Feedstock	Fuel	Facility capacity (million gallons per year)[42]	Construction start date	First production[43]
CNG/LNG Producers[44]	Various	Biogas	CNG/LNG	Various	Various	August 2014.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	October 2016.
Enerkem	Edmonton, AL, Canada.	Separated MSW	Ethanol	10[45]	2012	September 2017.[46]
Ensyn	Renfrew, ON, Canada	Wood Waste	Heating Oil	3	2005	2014.
Ensyn	Port-Cartier, QC, Canada.	Wood Waste	Heating Oil	10.5	June 2016	January 2018.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse	Ethanol	21	Mid 2012	September 2014.
Poet-DSM	Emmetsburg, IA	Corn Stover	Ethanol	20	March 2012	4Q 2015.

CNG/LNG derived from biogas and Red Rock Biofuels.

[40] ''Cellulosic Biofuel Producer Company Descriptions (May 2019),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[41] ''Cellulosic Biofuel Producer Company Descriptions (May 2019),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[42] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. Capacities are listed in physical gallons (rather than ethanol-equivalent gallons). If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity, then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility at the time of facility registration or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[43] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[44] For more information on these facilities see ''May 2019 Assessment of Cellulosic Biofuel Production from Biogas (2020),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[45] The nameplate capacity of Enerkem's facility is 10 million gallons per year. However, we anticipate that a portion of their feedstock will be non-biogenic municipal solid waste (MSW). RINs cannot be generated for the portion of the fuel produced from non-biogenic feedstocks. We have taken this into account in our production projection for this facility (See ''May 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'').

[46] This date reflects the first production of ethanol from this facility. The facility began production of methanol in 2015.

TABLE III.B.4–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL IN 2020—Continued

Company name	Location	Feedstock	Fuel	Facility capacity (million gallons per year) [42]	Construction start date	First production [43]
QCCP/Syngenta	Galva, IA	Corn Kernel Fiber	Ethanol	4	Late 2013	October 2014.
Red Rock Biofuels	Lakeview, OR	Wood Waste	Diesel, Jet Fuel, Naphtha.	15	July 2018	2Q 2020.
Raizen	Piracicaba City, Brazil	Sugarcane bagasse	Ethanol	11	January 2014	July 2015.

C. Cellulosic Biofuel Volume for 2020

1. Liquid Cellulosic Biofuel

For our 2020 liquid cellulosic biofuel projection, we use the same general approach as we have in projecting these volumes in previous years. We begin by first categorizing potential liquid cellulosic biofuel producers in 2020 according to whether or not they have achieved consistent commercial scale production of cellulosic biofuel to date. We refer to these facilities as consistent producers and new producers, respectively. Next, we define a range of likely production volumes for 2020 for each group of companies. Finally, we use a percentile value to project from the established range a single projected production volume for each group of companies in 2020. As in the 2018 and 2019 final rules, we calculated percentile values for each group of companies based on the past performance of each group relative to our projected production ranges. This methodology is briefly described here and is described in detail in memoranda to the docket.[47]

We first separate the list of potential producers of cellulosic biofuel (listed in Table III.B.3–1) into two groups according to whether the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation. We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data were available at the time our technical assessment was completed (April 2018–March 2019).[48] For potential producers that have not yet generated any cellulosic RINs, the low end of the range is zero. For the high end of the range, we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and the number of RINs the producer expects to generate in 2020.[49] The projected range for each group of companies is shown in Tables III.C.1–1 and III.C.1–2.[50]

TABLE III.C.1–1—2020 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million ethanol-equivalent gallons]

Companies included	Low end of the range	High end of the range [a]
Enerkem, Ensyn (Port Cartier facility), BioEnergy, Red Rock Biofuels	0	24

[a] Rounded to the nearest million gallons.

TABLE III.C.1–2—2020 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million ethanol-equivalent gallons]

Companies included	Low end of the range [a]	High end of the range [b]
Facilities using Edeniq's technology (registered facilities), Ensyn (Renfrew facility), Poet-DSM, GranBio, QCCP/Syngenta, Raizen	13	50

[a] Rounded to the nearest million gallons.

After defining likely production ranges for each group of companies, we next determined the percentile values to use in projecting a production volume for each group of companies. In this proposed rule we have calculated the

[47] ''May 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'' and ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for the 2020 NPRM,'' memorandums from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[48] Consistent with previous years, we have considered whether there is reason to believe any of the facilities considered as potential cellulosic biofuel producers for 2020 is likely to produce a smaller volume of cellulosic biofuel in 2020 than in the previous 12 months for which data are available. At this time, EPA is not aware of any information that would indicate lower production in 2020 from any facility considered than in the previous 12 months for which data are available.

[49] As in our 2015–2019 projections, EPA calculated a high end of the range for each facility (or group of facilities) based on the expected start-up date and a six-month straight-line ramp-up period. The high end of the range for each facility (or group of facilities) is equal to the value calculated by EPA using this methodology, or the number of RINs the producer expects to generate in 2020, whichever is lower.

[50] More information on the data and methods EPA used to calculate each of the ranges in these tables in contained in ''May 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136. We have not shown the projected ranges for each individual company. This is because the high end of the range for some of these companies are based on the company's production projections, which they consider confidential business information (CBI). Additionally, the low end of the range for facilities that have achieved consistent commercial scale production is based on actual RIN generation data in the most recent 12 months, which is also claimed as CBI.

percentile values using actual production data from 2016 through 2018. The first full year in which EPA used the current methodology for developing the range potential production volumes for each company was 2016, while 2018 is the most recent year for which we have complete data.

For each group of companies and for each year from 2016–2018, Table III.C.1–3 shows the projected ranges for liquid cellulosic biofuel production (from the 2014–16, 2017, and 2018 final rules), actual production, and the percentile values that would have resulted in a projection equal to the actual production volume.

TABLE III.C.1–3—PROJECTED AND ACTUAL LIQUID CELLULOSIC BIOFUEL PRODUCTION IN 2016–2018

[Million gallons]

	Low end of the range	High end of the range	Actual production [51]	Actual percentile
New Producers [52]				
2016	0	76	1.06	1st.
2017	0	33	8.79	27th.
2018	0	47	2.87	6th.
Average [a]	N/A	N/A	N/A	11th.
Consistent Producers [53]				
2016	2	5	3.28	43rd.
2017	3.5	7	3.02	−14th.
2018	7	24	7.74	4th.
Average [a]	N/A	N/A	N/A	11th.

[a] We have not averaged the low and high ends of the ranges, or actual production, as we believe it is more appropriate to average the actual percentiles from 2016–2018 rather than calculating a percentile value for 2016–2018 in aggregate. This approach gives equal weight to the accuracy of our projections from 2016–2018, rather than allowing the average percentiles calculated to be dominated by years with greater projected volumes.

Based upon this analysis, EPA has projected cellulosic biofuel production from new producers at the 11th percentile of the calculated range and from consistent producers at the 11th percentile.[54] These percentiles are calculated by averaging the percentiles that would have produced cellulosic biofuel projections equal to the volumes produced by each group of companies in 2016–2018. Prior to 2016, EPA used different methodologies to project available volumes of cellulosic biofuel and thus believes it inappropriate to calculate percentile values based on projections from those years.[55]

We then used these percentile values, together with the ranges determined for each group of companies discussed above, to project a volume for each group of companies in 2020. These calculations are summarized in Table III.C.1–4.

TABLE III.C.1–4—PROJECTED VOLUME OF LIQUID CELLULOSIC BIOFUEL IN 2020

[Million ethanol-equivalent gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production.	0	24	11th	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production.	13	50	11th	17
Total	N/A	N/A	N/A	20

[a] Volumes rounded to the nearest million gallons.

2. CNG/LNG Derived From Biogas

For 2020, EPA is proposing to use the same industry wide projection approach as used for 2018 and 2019 based on a year-over-year growth rate to project production of CNG/LNG derived from biogas used as transportation fuel.[56] For this proposed rule, EPA calculated the year-over-year growth rate in CNG/LNG

[51] Actual production is calculated by subtracting RINs retired for any reason other than compliance with the RFS standards from the total number of cellulosic RINs generated.

[52] Companies characterized as new producers in the 2014–2016, 2017, and 2018 final rules were as follows: Abengoa (2016), CoolPlanet (2016), DuPont (2016, 2017), Edeniq (2016, 2017), Enerkem (2018), Ensyn Port Cartier (2018), GranBio (2016, 2017), IneosBio (2016), and Poet (2016, 2017).

[53] Companies characterized as consistent producers in the 2014–2016, 2017, and 2018 final rules were as follows: Edeniq Active Facilities (2018), Ensyn Renfrew (2016–2018), GranBio (2018), Poet (2018), and Quad County Corn Processors/Syngenta (2016–2018).

[54] For more detail on the calculation of the percentile values used in this final rule see ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for 2020,'' available in EPA docket EPA–HQ–OAR–2019–0136.

[55] EPA used a similar projection methodology for 2015 as in 2016–2018, however we only projected cellulosic biofuel production volume for the final 3 months of the year, as actual production data were available for the first 9 months. We do not believe it is appropriate to consider data from a year for which 9 months of the data were known at the time the projection was made in determining the percentile values used to project volume over a full year.

[56] Historically RIN generation for CNG/LNG derived from biogas has increased each year. It is possible, however, that RIN generation for these fuels in the most recent 12 months for which data are available could be lower than the preceding 12 months. We believe our methodology accounts for this possibility. In such a case, the calculated rate of growth would be negative.

derived from biogas by comparing RIN generation from April 2018 to March 2019 (the most recent 12 months for which data are available) to RIN generation in the 12 months that immediately precede this time period (April 2017 to March 2018). The growth rate calculated using this data is 31.4 percent.[57] These RIN generation volumes are shown in Table III.C.2–1.

TABLE III.C.2–1—GENERATION OF CELLULOSIC BIOFUEL RINS FOR CNG/LNG DERIVED FROM BIOGAS

[Million gallons] [58]

RIN generation (April 2017–March 2018)	RIN generation (April 2018–March 2019)	Year-over-year increase (%)
247	325	31.4

EPA then applied this 31.4 percent year-over-year growth rate to the total number of 2018 cellulosic RINs generated and available for compliance for CNG/LNG. This methodology results in a projection of 525 million gallons of CNG/LNG derived from biogas in 2020. In previous proposed rules (2017 through 2019) we applied this rate of growth to the volume of CNG/LNG derived from biogas projected to be produced in the preceding annual rule (*e.g.,* in the 2019 proposed rule we applied the calculated year-over-year rate of growth to the volume of CNG/LNG derived from biogas projected to be produced in the 2018 final rule). In this proposed rule we are instead applying the calculated year-over-year rate of growth to the volume of CNG/LNG actually supplied in 2018 (taking into account actual RIN generation as well as RINs retired for reasons other than compliance with the annual volume obligations) to provide an updated projection of the production of these fuels in 2019, and then applying the rate of growth to this updated 2019 projection to project the production of these fuels in 2020.[59] We note that this methodology (applying the calculated rate of growth to the last full year for which we have complete data) was also used in the 2018 and 2019 final rules. We are proposing to use this approach, with an updated rate of growth based on the most recent data available, in the 2020 final rule. By applying the rate of growth to the same baseline (use of qualifying CNG/LNG derived from biogas as transportation fuel) for the proposed and final rules we hope to avoid the potential for confusion that changing the baseline between the proposed rule and final rule may cause and to better enable stakeholders to comment on our proposed rule.

We believe that projecting the production of CNG/LNG derived from biogas in this manner appropriately takes into consideration the actual recent rate of growth of this industry, and that this growth rate accounts for both the potential for future growth and the challenges associated with increasing RIN generation from these fuels in future years. This methodology may not be appropriate to use as the projected volume of CNG/LNG derived from biogas approaches the total volume of CNG/LNG that is used as transportation fuel, as RINs can be generated only for CNG/LNG used as transportation fuel. We do not believe that this is yet a constraint as our projection for 2020 is below the total volume of CNG/LNG that is currently used as transportation fuel.[60]

3. Total Cellulosic Biofuel in 2020

After projecting production of cellulosic biofuel from liquid cellulosic biofuel production facilities and producers of CNG/LNG derived from biogas, EPA combined these projections to project total cellulosic biofuel production for 2020. These projections are shown in Table III.C.3–1. Using the methodologies described in this section, we project that 0.54 billion ethanol-equivalent gallons of cellulosic biofuel will be produced in 2020. We believe that projecting overall production in 2020 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high nor too low) of likely cellulosic biofuel production in 2019.

TABLE III.C.3–1—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2020

	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production (million gallons)	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production (million gallons)	17
CNG/LNG Derived from Biogas (million gallons)	525
Total (billion gallons)	0.54

[57] This growth rate is higher than the growth rates used to project CNG/LNG volumes in the 2019 final rule (29.0%, see 83 FR 63717, December 11, 2018) and the 2018 final rule (21.6%, see 82 FR 58502, December 12, 2017).

[58] Further detail on the data used to calculate each of these numbers in this table, as well as the projected volume of CNG/LNG derived from biogas used as transportation fuel in 2020 can be found in ''May 2019 Assessment of Cellulosic Biofuel Production from Biogas (2020)'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[59] To calculate this value, EPA multiplied the number of 2018 RINs generated and available for compliance for CNG/LNG derived from biogas (303.9 million), by 1.314 (representing a 31.4 percent year-over-year increase) to project production of CNG/LNG in 2019, and multiplied this number (399.3 million RINs) by 1.314 again to project production of CNG/LNG in 2020.

[60] EPA is aware of several estimates for the quantity of CNG/LNG that will be used as transportation fuel in 2020. As discussed in a paper prepared by Bates White for the Coalition for Renewable Gas (''Renewable Natural Gas Supply and Demand for Transportation.'' Bates White Economic Consulting, April 5, 2019) these estimates range from nearly 600 million ethanol-equivalent gallons in 2020 (February 2019 STEO) to over 1.5 billion gallons (Fuels Institute—US Share). While there is considerable uncertainty about the quantity of CNG/LNG that will be used in transportation fuel in 2020, all of these projections are greater than the volume of qualifying CNG/LNG derived from biogas projected to be used in 2020. Thus, the volume of CNG/LNG used as transportation fuel would not appear to constrain the number of RINs generated for this fuel in 2020.

Unlike in previous years, we have rounded the projected volume of cellulosic biofuel to the nearest 10 million gallons. This is consistent with the volumes in the tables containing the statutory volume targets for cellulosic biofuel through 2022. While in previous years we have rounded the required cellulosic biofuel volume to the nearest million gallons, the projected volume of cellulosic biofuel has grown such that this level of precision is unnecessary, and likely unfounded. By rounding to the nearest 10 million gallons the total projected volume of cellulosic biofuel is affected in the most extreme case by only 5 million gallons, or approximately 1% of the total projected volume. The uncertainty in the projected volume of cellulosic biofuel is significantly higher than any error introduced by rounding the projected volume to the nearest 10 million gallons.

For the final rule we intend to update our projections with the most recent data available. We intend to use this additional information to update various elements of our projections including: Which potential liquid cellulosic biofuel producers are included in our projections, how to categorize each potential producer (whether they have achieved consistent commercial scale production), the aggregate projected production range for each group of facilities, the percentile values used to project a production volume within the range, and the year-over-year growth rate used to project production of CNG/LNG derived from biogas. We request comment on our projected volume of cellulosic biofuel production for 2020 (0.54 billion gallons), as well as the various aspects of the methodology used to project production of both liquid cellulosic biofuels and CNG/LNG derived from biogas.

IV. Advanced Biofuel and Total Renewable Fuel Volumes for 2020

The national volume targets for advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(I) and (II). Congress set annual renewable fuel volume targets that envisioned growth at a pace that far exceeded historical growth and, for years after 2011, prioritized that growth as occurring principally in advanced biofuels (contrary to previous growth patterns where most growth was in conventional renewable fuel). Congressional intent is evident in the fact that the implied statutory volume requirement for conventional renewable fuel is 15 billion gallons for all years after 2014, while the advanced biofuel volume requirements, driven largely by growth in cellulosic biofuel, continue to grow each year through 2022 to a total of 21 billion gallons.

Due to a projected shortfall in the availability of cellulosic biofuel, and consistent with our long-held interpretation of the cellulosic waiver authority as best interpreted to provide equal reductions to advanced biofuel and total renewable fuel volumes, we are proposing to reduce the statutory volume targets for both advanced biofuel and total renewable fuel for 2020 using the full extent of the cellulosic waiver authority. The remainder of this introduction summarizes our rationale for reducing advanced biofuel using the full extent of the cellulosic waiver authority, including the shortfall in reasonably attainable volumes of advanced biofuels and the high costs of advanced biofuel.[61] Section IV.A explains the volumetric limitation on our use of the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel volumes. Section IV.B presents our technical analysis of the reasonably attainable and attainable volumes of advanced biofuel. Sections IV.C and IV.D further explain our decision to exercise the maximum discretion available under the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel, respectively.

To begin, we have evaluated the capabilities of the market and are making a proposed finding that the 15.0 billion gallons specified in the statute for advanced biofuel cannot be reached in 2020. This is primarily due to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 95 percent or more, and as described in Section III, we project that it will fall far short of the statutory target of 10.5 billion gallons in 2020. For this and other reasons described in this section we are proposing to reduce the advanced biofuel statutory target by the full amount of the shortfall in cellulosic biofuel for 2020.

In previous years when we have used the cellulosic waiver authority, we have determined the extent to which we should reduce advanced biofuel volumes by considering a number of different factors under the broad discretion which that authority provides, including:

- The availability of advanced biofuels (*e.g.,* historic data on domestic supply, expiration of the biodiesel blenders' tax credit, potential imports of biodiesel in light of the Commerce Department's determination on tariffs on biodiesel imports from Argentina and Indonesia, potential imports of sugarcane ethanol, and anticipated decreasing growth in production of feedstocks for advanced biodiesel and renewable diesel).
- The energy security and greenhouse gas (GHG) impacts of advanced biofuels.
- The availability of carryover RINs.
- The apparent intent of Congress as reflected in the statutory volumes tables to substantially increase the use of advanced biofuels over time.
- Increased costs associated with the use of advanced biofuels, and
- The increasing likelihood of adverse unintended impacts associated with use of advanced biofuel volumes achieved through diversion of foreign fuels or substitution of advanced feedstocks from other uses to biofuel production.

Before the 2018 standards were set, the consideration of these factors led us to conclude that it was appropriate to set the advanced biofuel standard in a manner that would allow the partial backfilling of missing cellulosic volumes with non-cellulosic advanced biofuels.[62] For the 2018 standards, we placed a greater emphasis on cost considerations in the context of balancing the various considerations, ultimately concluding that partial backfilling with non-cellulosic advanced biofuels was not warranted and the applicable volume requirement for advanced biofuel should be based on the maximum reduction permitted under the cellulosic waiver authority.[63] In the 2019 standards final rule, we again concluded that partial backfilling was not warranted, primarily due to a shortfall in reasonably attainable volumes of advanced biofuels, high costs, and an interest in preserving the existing carryover RIN bank.[64]

These considerations in the 2019 standards final rule continue to apply to 2020. Again, we project that there will be insufficient reasonably attainable volumes of non-cellulosic advanced biofuels in 2020 to allow any backfilling for missing volumes of cellulosic biofuel.[65] As a result of this projection,

[61] In the 2019 Final Rule we projected that additional volumes of soybean biodiesel would increase costs by $0.74-$1.23 per ethanol equivalent gallon and additional volumes of and sugarcane ethanol would increase costs by $0.39-$1.04 per ethanol equivalent gallon (83 FR 63734 December 11, 2018).

[62] For instance, see 81 FR 89750 (December 12, 2016).

[63] See 82 FR 58504 (December 12, 2017).

[64] See 83 FR 63719 (December 11, 2018).

[65] As described further below, ''reasonably attainable'' volumes are not merely those that can

the high cost of advanced biofuels, and our consideration of carryover RINs, we are proposing to reduce the statutory volume target for advanced biofuel by the same amount as the reduction in cellulosic biofuel. This would result in the non-cellulosic component of the advanced biofuel volume requirement being equal to the implied statutory volume target of 4.5 billion gallons in 2020. This also equals the 2019 implied statutory volume target and final implied volume requirement for non-cellulosic advanced biofuel.

The predominant non-cellulosic advanced biofuels available in the near term are advanced biodiesel and renewable diesel.[66] We expect limited growth in the availability of feedstocks used to produce these fuel types, absent the diversion of these feedstocks from other uses. In addition, we expect diminishing incremental GHG benefits and higher per gallon costs as the required volumes of advanced biodiesel and renewable diesel increase. These outcomes are a result of the fact that the lowest cost and most easily available feedstocks are typically used first, and each additional increment of advanced biodiesel and renewable diesel requires the use of feedstocks that are generally incrementally more costly and/or more difficult to obtain. Moreover, to the extent that higher advanced biofuel requirements cannot be satisfied through growth in the production of advanced biofuel feedstocks, they would instead be satisfied through a re-direction of such feedstocks from competing uses. Products that were formerly produced using these feedstocks are likely to be replaced by products produced using the lowest cost alternatives, likely derived from palm oil (for food and animal feed) or petroleum sources (for non-edible consumer products). This in turn could increase the lifecycle GHG emissions associated with these incremental volumes of non-cellulosic advanced biofuel, since fuels produced from both palm oil and petroleum have higher estimated lifecycle GHG emissions than qualifying advanced biodiesel and renewable diesel.[67] There would also likely be market disruptions and increased burden associated with shifting feedstocks among the wide range of companies that are relying on them today and which have optimized their processes to use them. Higher advanced biofuel standards could also be satisfied by diversion of foreign advanced biofuel from foreign markets, and there would also be an increased likelihood of adverse unintended impacts associated with such diversions. Taking these and other considerations into account, we believe that it would be appropriate to exercise our discretion under the cellulosic waiver authority to set the advanced biofuel volume requirement at a level that would minimize such diversions.

We also considered whether this resulting volume of advanced biofuel is attainable, notwithstanding the likelihood of fuel and feedstock diversions and higher costs. Our assessment of advanced biofuel suggests that achieving the implied statutory volume target for non-cellulosic advanced biofuel in 2020 (4.5 billion gallons) is attainable. While it may also be possible that a volume of non-cellulosic advanced biofuel greater than 4.5 billion gallons may be attainable, a volume equal to or higher than 4.5 billion gallons would likely result in the diversion of advanced feedstocks from other uses or diversion of advanced biofuels from foreign sources, and thus is not reasonably attainable. In that case, our assessment of other factors, such as cost and GHG emissions, indicate that while such higher volumes may be attainable, it would not be appropriate to set the advanced biofuel volume requirement so as to require use of such volumes to partially backfill for missing cellulosic volumes.

Furthermore, several other factors have added uncertainty regarding the volume of advanced biofuels that we project are attainable in 2020, including tax credits and tariffs in both the U.S. and abroad which change unpredictably. As several of these factors primarily affect imports and exports of advanced biofuels they primarily impact the attainable volume of advanced biofuels rather than the reasonably attainable volume, which does not include increased volumes of imported biofuels relative to previous years. Each of these factors is discussed in more detail in Section IV.B.3.

The impact of our exercise of the cellulosic waiver authority is that after waiving the cellulosic biofuel volume down to the projected available level, and applying the same volume reduction to the statutory volume target for advanced biofuel, the resulting volume requirement for advanced biofuel for 2020 would be 120 million gallons more than the applicable volume used to derive the 2019 percentage standard. Furthermore, after applying the same reduction to the statutory volume target for total renewable fuel, the volume requirement for total renewable fuel would also be 120 million gallons more than the applicable volume used to derive the 2019 percentage standard. These increases are entirely attributable to a 120 million gallon increase in the cellulosic biofuel volume; the implied non-cellulosic advanced biofuel and conventional renewable fuel volumes would remain the same as in 2019 (4.5 and 15 billion gallons, respectively).

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

As described in Section II.A, when making reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority, the statute limits those reductions to no more than the reduction in cellulosic biofuel. As described in Section III.C, we are proposing to establish a 2020 applicable volume for cellulosic biofuel of 540 million gallons, representing a reduction of 9,960 million gallons from the statutory target of 10,500 million gallons. As a result, 9,960 million gallons is the maximum volume reduction for advanced biofuel and total renewable fuel that is permissible using the cellulosic waiver authority. Use of the cellulosic waiver authority to this maximum extent would result in volumes of 5.04 and 20.04 billion gallons for advanced biofuel and total renewable fuel, respectively.

be attained given available biofuel production capacity and feedstocks, but also take into consideration factors such as costs and feedstock and/or fuel diversions that could create disruptions in other markets.

[66] While sugarcane ethanol, as well as a number of other fuel types, can also contribute to the supply of advanced biofuel, in recent years use of these other advanced biofuels has been considerably lower than use of advanced biodiesel or renewable diesel. See Table IV.B.3–1.

[67] For instance, see the draft GHG assessment of palm oil biodiesel and renewable diesel at 77 FR 4300 (January 27, 2012). Our consideration of lifecycle GHG emissions in today's action is limited to the discretionary exercise of our cellulosic waiver authority. We are not reopening or soliciting comment on the draft GHG assessment of palm oil biodiesel and renewable diesel, and any comments on that assessment will be deemed beyond the scope.

TABLE IV.A–1—LOWEST PERMISSIBLE VOLUMES USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[Million gallons]

	Advanced biofuel	Total renewable fuel
Statutory target	15,000	30,000
Maximum reduction permitted under the cellulosic waiver authority	9,960	9,960
Lowest 2020 volume requirement permitted using only the cellulosic waiver authority	5,040	20,040

We are authorized under the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel volumes ''by the same or a lesser'' amount as the reduction in the cellulosic biofuel volume.[68] As discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority in instances where its use is authorized under the statute, since Congress did not specify factors that EPA must consider in determining whether to use the authority to reduce advanced biofuel or total renewable fuel, nor what the appropriate volume reductions (within the range permitted by statute) should be. This broad discretion was affirmed in both *Monroe* and *ACE*.[69] Thus, we have the authority set the 2020 advanced biofuel volume requirement at a level that is designed to partially backfill for the shortfall in cellulosic biofuel. However, based on our consideration of a number of relevant factors, we are proposing to use the full extent of the cellulosic waiver authority in deriving volume requirements for 2020.

B. Attainable Volumes of Advanced Biofuel

We have considered both attainable and reasonably attainable volumes of advanced biofuel to inform our exercise of the cellulosic waiver authority. As used in this rulemaking, both ''reasonably attainable'' and ''attainable'' are terms of art defined by EPA.[70] Volumes described as ''reasonably attainable'' are those that can be reached with minimal market disruptions, increased costs, reduced GHG benefits, and diversion of advanced biofuels or advanced biofuel feedstocks from existing uses. Volumes described as ''attainable,'' in contrast, are those we believe can be reached but would likely result in market disruption, higher costs, and/or reduced GHG benefits. Neither ''reasonably attainable'' nor ''attainable'' are meant to convey the ''maximum achievable'' level, which, as we explained in the 2017 final rule, we do not consider to be an appropriate target under the cellulosic waiver authority.[71] Finally, we note that our assessments of the ''reasonably attainable'' and ''attainable'' volumes of non-cellulosic advanced biofuels are not intended to be as exacting as our projection of cellulosic biofuel production, described in Section III of this rule.[72]

As in prior rulemakings, we begin by considering what volumes of advanced biofuels are reasonably attainable. In *ACE,* the Court noted that in assessing what volumes are ''reasonably attainable,'' EPA had considered the availability of feedstocks, domestic production capacity, imports, and market capacity to produce, distribute, and consume renewable fuel.[73] These considerations include both demand-side and supply-side factors.[74] We are proposing to take a similar approach for 2020, with the added consideration of the possibility that higher volume requirements would lead to ''feedstock switching'' or diversion of advanced biofuels from use in other countries. We also took these factors into account in setting the 2017, 2018, and 2019 volume requirements, and we continue to believe that they are appropriate considerations under the broad discretion provided by the cellulosic waiver authority. We are proposing to establish the advanced biofuel volume requirement at a level that would seek to minimize such feedstock/fuel diversions within the discretion available under the cellulosic waiver authority.

Our individual assessments of reasonably attainable volumes of each type of advanced biofuel reflect this approach. As discussed in further detail in this section, we find that 60 million gallons of imported advanced ethanol, 60 million gallons of other advanced biofuels, and 2.78 billion gallons of advanced biodiesel and renewable diesel are reasonably attainable. Together with our projected volume of 540 million gallons of cellulosic biofuel, the sum of these volumes is 4.94 billion gallons, slightly less than the 5.04 billion gallons which is the lowest advanced biofuel requirement that EPA can require under the cellulosic waiver authority.

Therefore, we also have considered whether the market can nonetheless make available 5.04 billion gallons of advanced biofuel, notwithstanding likely feedstock/fuel diversions. That is, we assess whether 5.04 billion gallons is merely ''attainable,'' as opposed to ''reasonably attainable.'' In particular, we assess whether additional volumes of advanced biodiesel and renewable diesel are attainable. We conclude that 2.83 billion gallons of advanced biodiesel and renewable diesel are attainable, notwithstanding potential feedstock/fuel diversions. This quantity of advanced biodiesel and renewable diesel, together with the cellulosic biofuel, sugarcane ethanol, and other advanced biofuels described above, would enable the market to make

[68] CAA section 211(o)(7)(D)(i).

[69] See *ACE,* 864 F.3d at 730–35 (citing *Monroe,* 750 F.3d 909, 915–16).

[70] Our consideration of ''reasonably attainable'' volumes is not intended to imply that ''attainable'' volumes are unreasonable or otherwise inappropriate. As we explain in this section, we believe that an advanced biofuel volume of 5.04 billion gallons, although not reasonably attainable, is attainable, and that establishing such volume would be an appropriate exercise of our cellulosic waiver authority.

[71] 81 FR 89762 (December 12, 2016). The maximum achievable volume may be relevant to our consideration of whether to exercise the general waiver authority on the basis of inadequate domestic supply. However, for 2020, we have determined that after exercising our cellulosic waiver authority to the full extent permitted, the resulting advanced biofuel volume is attainable. Therefore, further reductions using the general waiver authority on the basis of inadequate domestic supply would not be necessary.

[72] The statute directs EPA to lower the cellulosic biofuel volume to the projected production level where that level falls short of the statutory volume. Under *API* v. *EPA,* 706 F.3d 474, 479–80 (D.C. Cir. 2013), we must project this production level with neutral aim at accuracy, that is, make a technical determination about the market's ability to produce cellulosic biofuels. By contrast, the discretionary portion of the cellulosic waiver authority does not explicitly require EPA to project the availability of advanced biofuels, but instead confers broad discretion on EPA. Moreover, while we have chosen to estimate reasonably attainable and attainable volumes of advanced biofuel, these volumes do not equate to projected production alone. Rather, in exercising the discretionary portion of the cellulosic waiver authority, we also consider a range of policy factors—such as costs, greenhouse gas emissions, energy security, market disruptions, etc., as described throughout this section.

[73] See *ACE,* 864 F.3d at 735–36.

[74] See *id.* at 730–35.

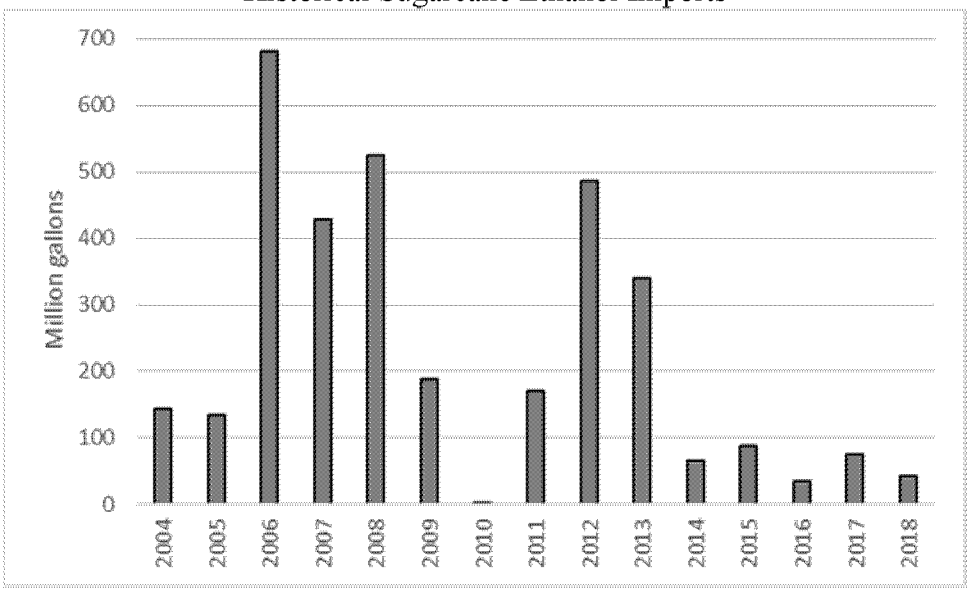
available 5.04 billion gallons of advanced biofuels.

1. Imported Sugarcane Ethanol

The predominant available source of advanced biofuel other than cellulosic biofuel and BBD has historically been imported sugarcane ethanol. Imported sugarcane ethanol from Brazil is the predominant form of imported ethanol and the only significant source of imported advanced ethanol. In setting the 2019 standards, we estimated that 100 million gallons of imported sugarcane ethanol would be reasonably attainable.[75] This was based on a combination of data from recent years demonstrating relatively low import volumes and older data indicating that higher volumes were possible. We also noted the high variability in ethanol import volumes in the past (including of Brazilian sugarcane ethanol), increasing gasoline consumption in Brazil, and variability in Brazilian production of sugar as reasons that it would be inappropriate to assume that sugarcane ethanol imports would reach the much higher levels suggested by some stakeholders.

At the time of the 2019 standards final rule, we used available data from a portion of 2018 to estimate that import volumes of sugarcane ethanol were likely to fall significantly below the 200 million gallons we had assumed when we set the 2018 standards. Since the 2019 final rule, new data reveals a continued trend of low imports. Specifically, import data for all of 2018 is now available and indicates that imports of sugarcane ethanol reached just 44 million gallons.

Figure IV.B.1-1
Historical Sugarcane Ethanol Imports



Source: "US Imports of Brazilian Fuel Ethanol from EIA - Feb 2019," docket EPA-HQ-OAR-2019-0136. Includes imports directly from Brazil and those that are transmitted through the Caribbean Basin Initiative and Central America Free Trade Agreement (CAFTA).

While it is difficult to predict imports for 2020, we believe that the most recent data suggests that it would be unreasonable to expect more than 100 million gallons of sugarcane ethanol imports in 2020. Moreover, the E10 blendwall, the existence of a recurring tax credit for biodiesel with which it competes within the advanced biofuel category, and the fact that imported sugarcane ethanol typically costs more than corn ethanol create disincentives for increasing imports above the levels in recent years.[76] As a result of these factors and the lower levels that have occurred in recent years, we believe it would be appropriate to reduce the expected volume of imported sugarcane ethanol below 100 million gallons. Imports of sugarcane ethanol appear to have stabilized in the 2014–2018 timeframe in comparison to previous years. The average for these years was 62 million gallons. Due to the difficulty in precisely projecting future import volumes as described further below, we believe that a rounded value of 60 million gallons would be more appropriate and thus we use 60 million gallons of imported sugarcane ethanol for the purposes of projecting reasonably attainable volumes of advanced biofuel for 2020. While we have not conducted an in-depth assessment of the volume of sugarcane ethanol that could be imported into the U.S. without diverting this fuel from other markets, we believe the volume of fuel imported in previous years is a reasonable way to project the reasonably attainable volume of sugarcane ethanol in 2020.

We note that the future projection of imports of sugarcane ethanol is inherently imprecise and that actual imports in 2020 could be lower or higher than 60 million gallons. Factors that could affect import volumes include uncertainty in the Brazilian political climate, weather and harvests in Brazil, world ethanol demand and

[75] 83 FR 63704 (December 11, 2018).

[76] The difference between D5 and D6 RIN prices can also influence the relative attractiveness to consumers of advanced ethanol compared to conventional ethanol. However, there has been considerable variability in this particular RIN prices difference over the last few years.

prices, constraints associated with the E10 blendwall in the U.S., the status of the biodiesel tax credit, world demand for and prices of sugar, and the cost of sugarcane ethanol relative to that of corn ethanol. After considering these factors, and in light of the high degree of variability in historical imports of sugarcane ethanol, we believe that 60 million gallons is reasonably attainable for 2020.[77]

2. Other Advanced Biofuel

In addition to cellulosic biofuel, imported sugarcane ethanol, and advanced biodiesel and renewable diesel, there are other advanced biofuels that can be counted in the determination of reasonably attainable volumes of advanced biofuel for 2020. These other advanced biofuels include non-cellulosic CNG, naphtha, heating oil, and domestically produced advanced ethanol. However, the supply of these fuels has been relatively low in the last several years.

TABLE IV.B.2–1—HISTORICAL SUPPLY OF OTHER ADVANCED BIOFUELS

[Million ethanol-equivalent gallons]

	CNG/LNG	Heating oil	Naphtha	Domestic ethanol	Total [a]
2013	26	0	3	23	52
2014	20	0	18	26	64
2015	0	1	24	25	50
2016	0	2	26	27	55
2017	2	2	32	26	62
2018	1	3	31	25	60

[a] Excludes consideration of D5 renewable diesel, as this category of renewable fuel is considered as part of BBD as discussed in Section IV.B.3.

The significant decrease after 2014 in CNG/LNG from biogas as advanced biofuel with a D code of 5 is due to the re-categorization in 2014 of landfill biogas from advanced (D code 5) to cellulosic (D code 3).[78] Subsequently, total supply of these other advanced biofuels has exhibited no consistent trend during 2015 to 2018. Based on this historical record, we believe that 60 million gallons is reasonably attainable in 2020.[79] As with sugarcane ethanol, we have not conducted an in-depth assessment of the volume of other advanced biofuels that could be made available to the U.S. without diverting this fuel from other markets. We believe the volume of fuel supplied in previous years is a reasonable way to project the reasonably attainable volume of sugarcane ethanol in 2020.

We recognize that the potential exists for additional volumes of advanced biofuel from sources such as jet fuel, liquefied petroleum gas (LPG), butanol, and liquefied natural gas (as distinct from CNG), as well as non-cellulosic CNG from biogas produced in digesters. However, since they have been produced, if at all, in only de minimis and sporadic amounts in the past, we do not have a reasonable basis for projecting substantial volumes from these sources in 2020.[80]

3. Biodiesel and Renewable Diesel

Having projected the production volume of cellulosic biofuel, and the reasonably attainable volumes of imported sugarcane ethanol and ''other'' advanced biofuels, we next assess the potential supply of advanced biodiesel and renewable diesel. First, we calculate the amount of advanced biodiesel and renewable diesel that would need to be supplied to meet the advanced requirement were we to exercise our maximum discretion under the cellulosic authority: 2.83 billion gallons. This calculation, shown in Table IV.B.3–1, helps inform the exercise of our waiver authorities. Second, we consider the historical supply of these fuels and the impact of the biodiesel tax policy on advanced biodiesel and renewable diesel use in the U.S. Next, we consider factors that could potentially limit the supply of these fuels including the production capacity of advanced biodiesel and renewable diesel production facilities, the ability for the market to distribute and use these fuels, the availability of feedstocks to produce these fuels, and fuel imports and exports. Based on our projection of the domestic growth in advanced biodiesel and renewable diesel feedstocks, we project a reasonably attainable volume of 2.75 billion gallons of advanced biodiesel and renewable diesel in 2020. Since this volume is lower than the 2.83 billion gallons we calculated would need to be supplied to meet the advanced requirement were we to exercise our maximum discretion under the cellulosic authority, we finally consider if additional supplies of advanced biodiesel and renewable diesel are attainable. Ultimately, we conclude that a volume of at least 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable in 2020. We note that we have not attempted to determine the maximum attainable volume of these fuels. While the maximum attainable volume of advanced biodiesel and renewable diesel in 2020 is likely greater than 2.83 billion gallons we do not believe it would be appropriate to require a greater volume of these fuels due to the high cost and the increased likelihood of adverse unintended impacts associated with these fuels.

Calculating the volume of advanced biodiesel and renewable diesel that would be needed to meet the volume of advanced biofuel for 2020 is an important benchmark to help inform EPA's consideration of our waiver authorities. In situations where the reasonably attainable volume of biodiesel and renewable diesel exceeds the volume of these fuels that would be needed to meet the volume of advanced biofuel after reducing the advanced biofuel volume by the same amount as

[77] Given the relatively small volumes of sugarcane ethanol we are projecting (approximately 1% of the advanced biofuel standard), even a significant deviation in its actual availability would likely have negligible impact on the market's ability to meet the advanced biofuel volumes.

[78] 79 FR 42128 (July 18, 2014).

[79] The imprecision in projecting volumes of other advanced biofuel has the same relative impact on our overall assessment of the attainability of advanced biofuel as our consideration of imports of sugarcane ethanol. Namely, even a significant deviation in the actual availability of other advanced biofuel would likely have negligible impact on the market's ability to meet the advanced biofuel volumes.

[80] No RIN-generating volumes of these other advanced biofuels were produced in 2018, and less than 1 million gallons total in prior years.

the cellulosic biofuel volume, as was the case in 2017 and 2018, EPA may consider whether or not to allow additional volumes of these fuels to backfill for missing cellulosic biofuel volumes. In situations where the reasonably attainable volume of advanced biodiesel and renewable diesel is less than the volume of these fuels that would be needed to meet the volume of advanced biofuel after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume, EPA may consider whether or not to use additional waiver authorities, to the extent available, to make further reductions to the advanced biofuel volume.

TABLE IV.B.3–1—DETERMINATION OF VOLUME OF BIODIESEL AND RENEWABLE DIESEL NEEDED IN 2020 TO ACHIEVE 5.04 BILLION GALLONS OF ADVANCED BIOFUEL

[Million ethanol-equivalent gallons except as noted]

Lowest 2020 advanced biofuel volume requirement permitted using under the cellulosic waiver authority	5,040
Cellulosic biofuel	540
Imported sugarcane ethanol	60
Other advanced	60
Calculated advanced biodiesel and renewable diesel needed (ethanol-equivalent gallons/physical gallons) [81]	4,380/2,826

Having calculated the volume of advanced biodiesel and renewable diesel that would need to be supplied to meet the volume of advanced biofuel for 2020 after reducing the advanced biofuel volume by the same amount as the cellulosic biofuel volume, EPA next projected the reasonably attainable volume of these fuels for 2020. With regard to advanced biodiesel and renewable diesel, there are many different factors that could potentially influence the reasonably attainable volume of these fuels used as transportation fuel or heating oil in the U.S. These factors include the availability of qualifying biodiesel and renewable diesel feedstocks, the production capacity of biodiesel and renewable diesel facilities (both in the U.S. and internationally), and the availability of imported volumes of these fuels.[82] A review of the volumes of advanced biodiesel and renewable diesel used in previous years is especially useful in projecting the potential for growth in the production and use of such fuels, since for these fuels there are a number of complex and inter-related factors beyond simply total production capacity (including the availability of advanced feedstocks, the expiration of the biodiesel tax credit, recent tariffs on biodiesel from Argentina and Indonesia, and other market-based factors) that are likely to affect the supply of advanced biodiesel and renewable diesel.

In addition to a review of the volumes of advanced biodiesel and renewable diesel used in previous years, we believe the likely growth in production of feedstocks used to produce these fuels, as well as the total projected available volumes of these feedstocks, are important factors to consider. This is because while there are many factors that could potentially limit the production and availability of these fuels, the impacts of increasing production of advanced biodiesel and renewable diesel on factors such as costs, energy security, and GHG emissions are expected to vary depending on whether the feedstocks used to produce these fuels are sourced from waste sources or by-products of other industries (such as the production of livestock feed or ethanol production),[83] from the diversion of feedstocks from existing uses, or whether they drive increased oilseed production, or from the diversion of feedstocks from existing uses. The energy security and GHG reduction value associated with the growth in the use of advanced biofuels is greater when these fuels are produced from waste fats and oils or feedstocks that are byproducts of other industries (such as soybean oil from soybeans primarily grown as animal feed), rather than from materials that represent a switching of existing advanced feedstocks from other uses to renewable fuel production or the diversion of advanced biodiesel and renewable diesel from foreign markets. This is especially true if the parties that previously used the advanced biofuel or feedstocks replace these oils with low cost palm oil [84] or petroleum-derived products, as we believe would likely be the case in 2020.[85] In this case the global production of advanced biodiesel and renewable diesel would not increase, and the potential benefits associated with increasing the diversity of the supply of transportation fuel (energy security) [86] and the production of additional volumes of advanced biodiesel and renewable diesel (low GHG sources of transportation fuel) would be reduced.

a. Historical Supply of Biodiesel and Renewable Diesel

Before considering the projected growth in the production of qualifying feedstocks that could be used to produce advanced biodiesel and renewable diesel, as well as the total

[81] To calculate the volume of advanced biodiesel and renewable diesel that would generate the 4.38 billion RINs needed to meet the advanced biofuel volume EPA divided the 4.38 billion RINs by 1.55. 1.55 is the approximate average (weighted by the volume of these fuels expected to be produced in 2020) of the equivalence values for biodiesel (generally 1.5) and renewable diesel (generally 1.7).

[82] Throughout this section we refer to advanced biodiesel and renewable diesel as well as advanced biodiesel and renewable diesel feedstocks. In this context, advanced biodiesel and renewable diesel refer to any biodiesel or renewable diesel for which RINs can be generated that satisfy an obligated party's advanced biofuel obligation (*i.e.,* D4 or D5 RINs). While cellulosic diesel (D7) also contributed towards an obligated party's advanced biofuel obligation, these fuels are discussed in Section III rather than in this section. An advanced biodiesel or renewable feedstock refers to any of the biodiesel, renewable diesel, jet fuel, and heating oil feedstocks listed in Table 1 to 40 CFR 80.1426 or in petition approvals issued pursuant to section 80.1416, that can be used to produce fuel that qualifies for D4 or D5 RINs. These feedstocks include, for example, soy bean oil; oil from annual cover crops; oil from algae grown photosynthetically; biogenic waste oils/fats/greases; non-food grade corn oil; camelina sativa oil; and canola/rapeseed oil (See pathways F, G, and H of Table 1 to section 80.1426).

[83] Vegetable oils from oilseeds grown in the U.S. such as soybeans and canola are generally by-products or secondary products of the production of livestock feed. However, depending on the relative value of protein meal and vegetable oil, as well as the cost of production of oilseed crops, higher demand for vegetable oil can lead to increased planting of oilseed crops. Vegetable oil is the primary product of palm oil plantations, and demand for this oil is the primary driver for increased planting of palm oil plantations.

[84] For instance, see the draft GHG assessment of palm oil biodiesel and renewable diesel at 77 FR 4300 (January 27, 2012).

[85] We believe palm or petroleum-derived products would likely be used replace advanced biodiesel and renewable diesel diverted to the U.S. as these products are currently the lowest cost sources.

[86] If qualifying vegetable oils that are diverted to produce biodiesel and renewable diesel in the U.S. are replaced with vegetable oil or petroleum products that would otherwise have been used in the transportation fuel pool there would be no increase in energy security. Conversely, if diverting vegetable oils to produce biodiesel and renewable diesel results in the increased production of vegetable oils or increased extraction of crude oil we would expect some energy security benefits.

volume of feedstocks that could be used to produce these fuels, it is helpful to review the volumes of biodiesel and renewable diesel that have been used in the U.S. in recent years. While historic data and trends alone are insufficient to project the volumes of biodiesel and renewable diesel that could be provided in future years, historic data can serve as a useful reference in considering future volumes. Past experience suggests that a high percentage of the biodiesel and renewable diesel used in the U.S. (from both domestic production and imports) qualifies as advanced biofuel.[87] In previous years, biodiesel and renewable diesel produced in the U.S. have been almost exclusively advanced biofuel.[88] Imports of advanced biodiesel increased through 2016, but were lower in 2017 and 2018, as seen in Table IV.B.2–1. Volumes of imported biodiesel and renewable diesel, which include both advanced and conventional biodiesel and renewable diesel, have varied significantly from year to year, as they are impacted both by domestic and foreign policies, as well as many economic factors.

TABLE IV.B.3–2—ADVANCED (D4 AND D5) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2018

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016	2017	2018
Domestic Biodiesel (Annual Change)	967 (N/A)	1,014 (+47)	1,377 (+363)	1,303 (−74)	1,253 (−50)	1,633 (+380)	1,573 (−60)	1,844 (+271)
Domestic Renewable Diesel (Annual Change)	62 (N/A)	23 (−39)	98 (+75)	156 (+58)	175 (+19)	226 (+51)	258 (+32)	306 (+48)
Imported Biodiesel (Annual Change)	44 (N/A)	40 (−4)	156 (+116)	130 (−26)	261 (+131)	562 (+301)	462 (−100)	173 (−289)
Imported Renewable Diesel (Annual Change)	0 (N/A)	28 (+28)	145 (+117)	129 (−16)	121 (−8)	170 (+49)	193 (+23)	185 (−8)
Exported Biodiesel and Renewable Diesel (Annual Change)	48 (N/A)	68 (+20)	83 (+15)	89 (+6)	96 (+7)	135 (+39)	171 (+36)	163 (−8)
Total [c] (Annual Change)	1,025 (N/A)	1,037 (+12)	1,693 (+656)	1,629 (−64)	1,714 (+85)	2,456 (+742)	2,315 (−141)	2,345 (+30)

[a] All data from EMTS. EPA reviewed all advanced biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.
[b] RFS required volumes for these years were not established until December 2015.
[c] Total is equal to domestic production of biodiesel and renewable plus imported biodiesel and renewable diesel minus exports.

TABLE IV.B.3–3—CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2018

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016	2017	2018
Domestic Biodiesel (Annual Change)	0 (N/A)	0 (+0)	6 (+6)	1 (−5)	0 (+0)	0 (+0)	0 (+0)	0 (+0)
Domestic Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)
Imported Biodiesel (Annual Change)	0 (N/A)	0 (+0)	31 (+31)	52 (+21)	74 (+22)	113 (+39)	0 (−113)	0 (+0)
Imported Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	53 (+53)	0 (−53)	106 (+106)	43 (−63)	144 (+101)	33 (−111)
Exported Biodiesel and Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	1 (+1)	0 (−1)	0 (+0)
Total [c] (Annual Change)	0 (N/A)	0 (+0)	90 (+90)	53 (−37)	180 (+127)	155 (−25)	144 (−11)	33 (−111)

[a] All data from EMTS. EPA reviewed all conventional biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.
[b] RFS required volumes for these years were not established until December 2015.
[c] Total is equal to domestic production of biodiesel and renewable plus imported biodiesel and renewable diesel minus exports.

Since 2011, the year-over-year changes in the volume of advanced biodiesel and renewable diesel used in the U.S. have varied greatly, from a low of 141 million fewer gallons from 2016 to 2017 to a high of 742 million additional gallons from 2015 to 2016. These changes were likely influenced by multiple factors such as the cost of biodiesel feedstocks and petroleum diesel, the status of the biodiesel blenders tax credit, growth in marketing of biodiesel at high volume truck stops and centrally fueled fleet locations, demand for biodiesel and renewable diesel in other countries, biofuel policies in both the U.S. and foreign countries, and the volumes of renewable fuels (particularly advanced biofuels) required by the RFS. This historical information does not indicate that the maximum previously observed increase of 742 million gallons of advanced biodiesel and renewable diesel would be reasonable to expect in 2019 or 2020, nor does it indicate that the low (or negative) growth rates observed in other years would recur. Rather, these data illustrate both the magnitude of the changes in advanced biodiesel and renewable diesel in previous years and the significant variability in these changes.

[87] From 2011 through 2018 approximately 96 percent of all biodiesel and renewable diesel supplied to the U.S. (including domestically produced and imported biodiesel and renewable diesel) qualified as advanced biodiesel and renewable diesel (14,214 million gallons of the 14,869 million gallons) according to EMTS data.

[88] From 2011 through 2018 over 99.9 percent of all the domestically produced biodiesel and renewable diesel supplied to the U.S. qualified as advanced biodiesel and renewable diesel (12,268 million gallons of the 12,275 million gallons) according to EMTS data.

The historic data indicates that the biodiesel tax policy in the U.S. can have a significant impact on the volume of biodiesel and renewable diesel used in the U.S. in any given year.[89] While the biodiesel blenders tax credit has applied in each year from 2010 to 2017, it has only been prospectively in effect during the calendar year in 2011, 2013, and 2016, while other years it has been applied retroactively. The biodiesel blenders tax credit expired at the end of 2009 and was re-instated in December 2010 to apply retroactively in 2010 and extend through the end of 2011. Similarly, after expiring at the end of 2011, 2013, and 2014 the tax credit was re-instated in January 2013 (for 2012 and 2013), December 2014 (for 2014), December 2015 (for 2015 and 2016), and February 2018 (for 2017). Each of the years in which the biodiesel blenders tax credit was in effect during the calendar year (2013 and 2016) resulted in significant increases in the volume of advanced biodiesel and renewable diesel used in the U.S. over the previous year (656 million gallons and 742 million gallons respectively). However, following these large increases in 2013 and 2016, there was little to no growth in the use of advanced biodiesel and renewable diesel in the following years: Only 21 million gallons from 2013 to 2015, negative 141 million gallons from 2016 to 2017, and 30 million gallons from 2017 to 2018. This decrease from 2016 to 2017 occurred even though the required volume of advanced biofuel increased from 3.61 in 2016 to 4.28 billion gallons in 2017. This pattern is likely the result of both accelerated production and/or importation of biodiesel and renewable diesel in the final few months of years during which the tax credit was available to take advantage of the expiring tax credit, as well as relatively lower volumes of biodiesel and renewable diesel production and import in 2014, 2015, and 2017 than would have occurred if the tax credit had been in place.[90] The availability of this tax credit also provides biodiesel and renewable diesel with a competitive advantage relative to other advanced biofuels that do not qualify for the tax credit.

Another important factor highlighted by the historic data is the impact of the recently imposed tariffs imposed the U.S. on biodiesel imported from Argentina and Indonesia. In December 2017 the U.S. International Trade Commission adopted tariffs on biodiesel imported from Argentina and Indonesia.[91] According to data from EIA,[92] no biodiesel was imported from Argentina or Indonesia since September 2017, after a preliminary decision to impose tariffs on biodiesel imported from these countries was announced in August 2017. As a result of these tariffs, total imports of biodiesel into the U.S. were significantly lower in 2018 than they had been in 2016 and 2017. The decrease in imported biodiesel did not, however, result in a decrease in the volume of advanced biodiesel and renewable diesel supplied to the U.S. in 2018. Instead, higher domestic production of advanced biodiesel and renewable diesel, in combination with lower exported volumes of domestically produced biodiesel, resulted in an overall increase in the volume of advanced biodiesel and renewable diesel supplied in 2018.

The historical data suggests that the supply of advanced biodiesel and renewable diesel could potentially increase from the projected 2.35 billion gallons in 2018 to 2.83 billion gallons in 2020 (the projected volume needed to meet the advanced biofuel volume for 2020 after reducing the statutory advanced biofuel volume by the same amount as the cellulosic biofuel reduction). This would represent an average annual increase of approximately 240 million gallons from 2018 to 2020. These increases are very similar to the average increase in the volume of advanced biodiesel and renewable diesel used in the U.S. from 2011 through 2018 (190 million gallons per year) and significantly less than the highest annual increase during this time (742 million gallons from 2015 to 2016).

b. Assessment of Qualifying Feedstocks for Biodiesel and Renewable Diesel

After reviewing the historical volume of advanced biodiesel and renewable diesel used in the U.S. and considering the possible impact of the expiration of the biodiesel tax credit (discussed in Section IV.B.3.a), EPA next considers other factors that may impact the production, import, and use of advanced biodiesel and renewable diesel in 2020. The production capacity of registered advanced biodiesel and renewable diesel production facilities is highly unlikely to limit the production of these fuels, as the total production capacity for biodiesel and renewable diesel at registered facilities in the U.S. (4.1 billion gallons) exceeds the volume of these fuels that are projected to be needed to meet the advanced biofuel volume for 2020 after exercising the cellulosic waiver authority (2.83 billion gallons).[93] Significant registered production also exists internationally. Similarly, the ability for the market to distribute and use advanced biodiesel and renewable diesel appears unlikely constrain the growth of these fuels to a volume lower than 2.83 billion gallons. The investments required to distribute and use this volume of biodiesel and renewable diesel are expected to be manageable by the marketplace given the RIN value incentive, as this volume is less than 400 million gallons greater than the volume of biodiesel and renewable diesel produced, imported, and used in the U.S. in 2018.

Conversely, the availability of advanced feedstocks that can be used to produce advanced biodiesel and renewable diesel, as well as the availability of imported advanced biodiesel and renewable diesel, may be limited in 2020. We acknowledge that an increase in the required use of advanced biodiesel and renewable diesel could be realized through a diversion of advanced feedstocks from other uses, or a diversion of advanced biodiesel and renewable diesel from existing markets in other countries. Furthermore, the volume of advanced biodiesel and renewable diesel and their corresponding feedstocks projected to be produced globally exceeds the volume projected to be required in 2020 (2.83 billion gallons of advanced biodiesel and renewable diesel and the corresponding volume of advanced feedstocks) by a significant margin.[94] In

[89] The status of the tax credit does not impact our assessment of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2020 as our assessment is primarily based on feedstock availability. The status of the tax credit may affect the maximum attainable volume of these fuels, but our assessment demonstrates that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable whether or not the tax credit is renewed prospectively (or retrospectively) for 2020.

[90] We also acknowledge that EPA not finalizing the required volumes of renewable fuel under the RFS program for 2014 and 2015 until December 2015 likely affected the volume of advanced biodiesel and renewable diesel supplied in these years. Further, the preliminary tariffs on biodiesel imported from Argentina and Indonesia announced in August 2017 likely negatively affected the volume of biodiesel supplied in 2017 and 2018.

[91] ''Biodiesel from Argentina and Indonesia Injures U.S. Industry, says USITC,'' Available online at: *https://www.usitc.gov/press_room/news_release/2017/er1205ll876.htm.*

[92] See ''EIA Biomass-Based Diesel Import Data'' available in docket EPA–HQ–OAR–2019–0136.

[93] The production capacity of the sub-set of biodiesel and renewable diesel producers that generated RINs in 2018 is approximately 2.9 billion gallons. See ''Biodiesel and Renewable Diesel Registered Capacity (March 2019)'' Memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[94] The March 2019 WASDE projects production of vegetable oils in 2018/2019 in the World to be 203.93 million metric tons. This quantity of vegetable oil would be sufficient to produce approximately 58.3 billion gallons of biodiesel and renewable diesel. Global production of biodiesel is

Continued

addition, actions unrelated to the RFS program, such as recent tariffs on soybeans exported to China, could result in increased supplies of domestic biodiesel feedstocks.[95] However, we expect that further increases in advanced biofuel and renewable fuel volumes would be increasingly likely to incur adverse unintended impacts.

We perceive the net benefits to be lower both because of the potential disruption of the current biogenic fats, oils, and greases market, the associated cost impacts to other industries resulting from feedstock switching, and the potential adverse effect on lifecycle GHG emissions associated with feedstocks for biofuel production that would have been used for other purposes and which must then be backfilled with other feedstocks. Similarly, increasing the supply of biodiesel and renewable diesel to the U.S. by diverting fuel that would otherwise have been used in other countries results in higher lifecycle GHG emissions than if the supply of these fuels was increased by an increased collection of waste fats and oils or increased production of feedstocks that are byproducts of other industries, especially if this diversion results in increased consumption of petroleum fuels in the countries that would have otherwise consumed the biodiesel or renewable diesel. By focusing our assessment on the expected growth in the production of advanced feedstocks (rather than the total supply of these feedstocks in 2020, which would include feedstocks currently being used for non-biofuel purposes), we are attempting to minimize the incentives for the RFS program to increase the supply of advanced biodiesel and renewable diesel through feedstock switching or diverting biodiesel and renewable diesel from foreign markets to the U.S.

Advanced biodiesel and renewable diesel feedstocks include both waste oils, fats, and greases; and oils from planted crops. The projected growth in these feedstocks is expected to be modest relative to the volume of these feedstocks that are currently being used to produce biodiesel and renewable diesel. Most of the waste oils, fats, and greases that can be recovered economically are already being recovered and used in biodiesel and renewable diesel production or for other purposes. The availability of animal fats will likely increase with beef, pork, and poultry production. Most of the vegetable oil used to produce advanced biodiesel and renewable diesel that is sourced from planted crops comes from crops primarily grown for purposes other than providing feedstocks for biodiesel and renewable diesel, such as for livestock feed, with the oil that is used as feedstock for renewable fuel production a co-product or by-product.[96] This is true for soybeans and corn, which are the two largest sources of feedstock from planted crops used for biodiesel production in the U.S.[97] We do not believe that the increased demand for soybean oil or corn oil caused by a higher 2020 advanced biofuel standard would result in an increase in soybean or corn prices large enough to induce significant changes in agricultural activity.[98] However, we acknowledge that production of these feedstocks is likely to increase as crop yields, oil extraction rates, and demand for the primary products increase in 2020.

We believe the most reliable source for projecting the expected increase in vegetable oils in the U.S. is USDA's World Agricultural Supply and Demand Estimates (WASDE). At the time of our assessment for this proposed rule, the most current version of the WASDE report (February 2019) only projects domestic vegetable oil production through 2018/2019. Based on domestic vegetable oil production from 2010/2011 through 2018/2019 as reported by WASDE, the average annual increase in vegetable oil production in the U.S. was 0.34 million metric tons per year.[99] Assuming a similar increase in domestic vegetable oil production from 2018/2019 to 2019/2020, this additional quantity of vegetable oils could be used to produce approximately 97 million additional gallons of advanced biodiesel or renewable diesel in 2020 relative to 2018.[100]

In the 2019 final rule we also noted that the WASDE projected a decrease in trade of both oilseeds and vegetable oils. This projected decrease in oilseed trade is likely due to tariffs enacted by China on soybean exports from the U.S. As noted in the 2019 final rule, the duration and ultimate impacts of these tariffs on total exports of U.S. soybeans are highly uncertain. As in the 2019 final rule, we did not include the potential biodiesel or renewable diesel that could theoretically be produced from the oilseeds and vegetable oil projected to remain in the U.S. due to reduced trade of these products in our projection of the reasonably attainable volumes. This is because any biodiesel and renewable diesel produced from soybeans previously exported to China are necessarily diverted from other uses (even if the reason for this diversion is the tariffs, rather than the RFS program), and biodiesel produced from these diverted feedstocks is therefore more likely to have the adverse unintended effects as previously discussed.

In addition to virgin vegetable oils, we also expect increasing volumes of distillers corn oil[101] to be available for use in 2020. The WASDE report does not project distillers corn oil production, so EPA must use an alternative source to project the growth in the production of this feedstock. For this proposed rule we use results from the World Agricultural Economic and Environmental Services (WAEES) model to project the growth in the production of distillers corn oil.[102] In assessing the

projected to be 39.0 billion liters (10.3 billion gallons) in 2019 according to the July 2018 OECD–FAO Agricultural Outlook. Based on the projected production of biodiesel by country we estimate that approximately 85% of this biodiesel (all biodiesel except that produced in Columbia, Indonesia, Malaysia, and Thailand) could qualify as advanced biofuel if the feedstocks meet the definition of renewable biomass.

[95] The potential impacts of this tariff on the availability of biodiesel feedstocks is discussed in our discussion of available vegetable oils in Section IV.B.3.c.

[96] For example, corn oil is a co-product of corn grown primarily for feed or ethanol production, while soy and canola are primarily grown as livestock feed.

[97] According to EIA data 7,542 million pounds of soy bean oil and 2,085 million pounds of corn oil were used to produce biodiesel in the U.S. in 2018. Other significant sources of feedstock were yellow grease (1,668 million pounds), canola oil (total volume withheld, but monthly data suggests greater than 700 million pounds), and white grease (618 million pounds). Numbers from EIA's April 2019 Monthly Biodiesel Production Report (With data for February 2019).

[98] This position is supported by several commenters, including the South Dakota Soybean Association (EPA–HQ–OAR–2018–0167–0389), the International Council on Clean Transportation (EPA–HQ–OAR–2018–0167–0531), and the Union of Concerned Scientists (EPA–HQ–OAR–2018–0167–0535).

[99] According ot the February 2019 WASDE report, U.S. vegetable oil production in the 2018/2019 agricultural marketing year is projected to be 12.48 million metric tons. According to the January 2013 WASDE report, U.S. vegetable oil production in the 2010/2011 agricultural marketing year was 9.76 million metric tons.

[100] To calculate this volume, we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel or renewable diesel. This is based on the expected conversion of soybean oil (*http://extension.missouri.edu/p/G1990*), which is the largest source of feedstock used to produce advanced biodiesel and renewable diesel. Conversion rates for other types of vegetable oils used to produce biodiesel and renewable diesel are similar to those for soybean oil.

[101] Distillers corn oil is non-food grade corn oil produced by ethanol production facilities.

[102] For the purposes of this rule, EPA relied on WAEES modeling results submitted as comments by the National Biodiesel Board on the 2019 proposed rule (Kruse, J., ''Implications of an Alternative Advanced and Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels,'' August 13, 2018, World Agricultural Economic and Environmental Services (WAEES)).

likely increase in the availability of distillers corn oil from 2019 to 2020, the authors of the WAEES model considered the effects of an increasing adoption rate of distillers corn oil extraction technologies at domestic ethanol production facilities, as well as increased corn oil extraction rates enabled by advances in this technology. The WAEES model projects that production of distillers corn oil will increase by approximately 120 million pounds from the 2018/2019 to the 2019/2020 agricultural marketing year. This quantity of feedstock could be used to produce approximately 15 million gallons of biodiesel or renewable diesel. We believe it is reasonable to use these estimates from the WAEES model for these purposes based on the projected increase in the use of corn oil extraction and corn oil yield increases.

While much of the increase in advanced biodiesel and renewable diesel feedstocks produced in the U.S. from 2019 to 2020 is expected to come from virgin vegetable oils and distillers corn oil, increases in the supply of other sources of advanced biodiesel and renewable diesel feedstocks, such as biogenic waste oils, fats, and greases, may also occur. The WAEES model projects an increase of only 14 million gallons in the volume of biodiesel produced from feedstocks other than soybean oil, canola oil, and distillers corn oil from 2019 to 2020.[103] Conversely, an assessment conducted by LMC in 2017 and submitted in comments on our 2018 proposed rule projected that the waste oil supply in the U.S. could increase by approximately 2.4 million metric tons from 2016 to 2022.[104] This estimate represents a growth rate of approximately 0.4 billion tons per year, or enough feedstock to produce approximately 115 million gallons of biodiesel and renewable diesel per year. This estimate, however, only accounts for potential sources of feedstock and not for the economic viability of recovering waste oils.

In the proposal we are not simply using the results from the WAEES model to project increases in the use of biogenic waste fats, oils, and greases (FOG), but have conducted our own analysis. To project the likely increase in the use of biogenic FOG we used historical data to determine the increase in the use of these feedstocks to produce biodiesel and renewable diesel. From 2015–2017 biodiesel and renewable diesel produced from biogenic FOG increased by an average of 32 million gallons per year.[105] This annual increase is higher than the increase in the use of these feedstocks projected by the WAEES model, but lower than the potential increase projected by LMC. We have included an additional 32 million gallons of advanced biodiesel and renewable diesel from FOG in our assessment of the reasonably attainable volume for 2020, consistent with the observed annual increase in advanced biodiesel and renewable diesel produced from these feedstocks in recent years.

In total, we expect that increases in feedstocks produced in the U.S. are sufficient to produce approximately 144 million more gallons of advanced biodiesel and renewable diesel in 2020 relative to 2019. This number includes 97 million gallons from increased vegetable oil production, 15 million gallons from increased corn oil production, and 32 million gallons from increased waste oil collection. This number does not include additional volumes related to decreases in exported volumes of soybeans or soybean oil to China as a result of tariffs. Decreased exports of soybeans and soybean oil represent feedstocks diverted from use in other countries, while any additional in the collection of waste oils is highly uncertain. Our projection also does not consider factors which could potentially decrease the availability of advanced biofuel feedstocks that could be used to produce biodiesel or renewable diesel, such as an increase in the volume of vegetable oils used in food markets or other non-biofuel industries. In our 2019 final rule, we determined that 2.61 billion gallons of advanced biodiesel and renewable diesel were reasonably attainable in 2019,[106] therefore our projection of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2020 is 2.75 billion gallons.

EPA's projections of the growth of advanced feedstocks does not, however, suggest that the total supply of advanced biodiesel and renewable diesel to the U.S. in 2020 will be limited to 2.78 billion gallons. Rather, this is the volume of these fuels that we project could be supplied while seeking to minimize diversions of advanced feedstocks or biofuels from existing uses. The March 2019 WASDE projects that production of vegetable oil in the U.S. in the 2018/2019 market year will be sufficient to produce approximately 3.6 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels) if the entire volume of vegetable oil was used to produce these fuels. Additional advanced biodiesel and renewable diesel could be produced from waste fats, oils, and greases. The global production of vegetable oil projected in the 2018/2019 marketing year would be sufficient to produce approximately 58.0 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels).[107] While it would not be reasonable to assume that all, or even a significant portion, of global vegetable oil production could be available to produce biodiesel or renewable diesel supplied to the U.S. for a number of reasons,[108] the large global supply of vegetable oil indicates that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable in 2019. Reaching this level, however, may result in the diversion of advanced feedstocks currently used in other markets and/or the import of biodiesel and renewable diesel from these feedstocks.

Further, the attainable volume of advanced biodiesel and renewable diesel to the U.S. in 2020 could be increased by approximately 163 million gallons if all of the exported volumes of these fuels were used domestically. Diverting this fuel to markets in the U.S. may be complicated, however, as doing so would likely require higher prices for these fuels in the U.S. to divert the fuels from foreign markets that are presumably more profitable currently. It may also be more difficult and costly to distribute this additional volume of biodiesel and renewable diesel to domestic markets than the current foreign markets. Finally, reducing advanced biodiesel and renewable diesel exports may indirectly result in the decreased availability of imported

[103] Kruse, J., ''Implications of an Alternative Advanced and Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels,'' August 13, 2018, World Agricultural Economic and Environmental Services.

[104] LMC International. *Global Waste Grease Supply.* August 2017 (EPA–HQ–OAR–2017–0091–3880).

[105] ''Projections of FOG biodiesel and renewable diesel,'' memorandum from David Korotney to EPA Docket, EPA–HQ–OAR–2019–0136.

[106] 83 FR 63704 (December 11, 2018).

[107] The March 2019 WASDE projects production of vegetable oils in 2018/19 in the U.S. and the World to be 12.54 and 203.93 million metric tons respectively. To convert projected vegetable oil production to potential biodiesel and renewable diesel production we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel or renewable diesel.

[108] These reasons include the demand for vegetable oil in the food, feed, and industrial markets both domestically and globally; constraints related to the production, import, distribution, and use of significantly higher volumes of biodiesel and renewable diesel; and the fact that biodiesel and renewable diesel produced from much of the vegetable oil available globally would not qualify as an advanced biofuel under the RFS program.

volumes of these fuels, as other countries seek to replace volumes previously imported from the U.S.

c. Biodiesel and Renewable Diesel Imports and Exports

EPA next considered potential changes in the imports of advanced biodiesel and renewable diesel produced in other countries. In previous years, significant volumes of foreign produced advanced biodiesel and renewable diesel have been supplied to markets in the U.S. (see Table IV.B.2–1). These significant imports were likely the result of a strong U.S. demand for advanced biodiesel and renewable diesel, supported by the RFS standards, the low carbon fuel standard (LCFS) in California, the biodiesel blenders tax credit, and the opportunity for imported biodiesel and renewable diesel to realize these incentives. We have not included the potential for increased (or decreased) volumes of imported advanced biodiesel and renewable diesel in our projection of the reasonably attainable volume for 2020. There is a far higher degree of uncertainty related to the availability and production of advanced biodiesel and renewable diesel in foreign countries, as this supply can be impacted by a number of unpredictable factors such as the imposition of tariffs and increased incentives for the use of these fuels in other countries (such as tax incentives or blend mandates). EPA also lacks the data necessary to determine the quantity of these fuels that would otherwise be produced and used in other countries, and thus the degree to which the RFS standards are simply diverting this fuel from use in other countries as opposed to incentivizing additional production.

In addition to EPA's assessment of the market's ability to produce, import, distribute, and use the 2.83 billion gallons of advanced biodiesel and renewable diesel projected to be used in 2020 to meet the advanced biofuel volume requirement, EPA compared the projected increase in these fuels to the increases observed in recent years. A projected increase comparable to past increases further confirms that the volume is attainable. Domestic production of advanced biodiesel and renewable diesel, which averaged approximately 1.85 billion gallons in 2016 and 2017, increased to approximately 2.15 billion gallons in 2018. Of this total, approximately 163 million gallons of domestically produced biodiesel and renewable diesel was exported in 2018. If imported biodiesel and renewable diesel volumes remain constant at approximately 350 million gallons per year (the total volume of advanced biodiesel and renewable diesel imported in 2018) domestic production would need to increase by approximately 240 million gallons annually in 2019 and 2020 to reach a total advanced biodiesel and renewable diesel supply of 2.83 billion gallons by 2020.[109] This growth is attainable, as it is only slightly higher than the average annual increase in the domestic production of advanced biodiesel and renewable diesel from 2011 to 2018 (approximately 160 million gallons), and lower than the rate of growth observed from 2017 to 2018 (approximately 320 million gallons) and in previous years (for example the increase of 443 million gallons from 2012 to 2013 or the increase of 431 million gallons from 2015 to 2016). We note, however, that using this volume of advanced biodiesel and renewable diesel in the U.S. may result in the diversion of advanced biodiesel and renewable diesel and/or feedstocks used to produce these fuels, as what is currently exported may instead be used in the U.S. and alternative sources would be needed to replace these volumes.

d. Attainable Volume of Advanced Biodiesel and Renewable Diesel

After a careful consideration of the factors discussed above, EPA has determined that the 2.83 billion gallons of advanced biodiesel and renewable diesel projected to be needed to satisfy the implied statutory volume for non-cellulosic advanced biofuel in 2020 (4.5 billion gallons) are attainable. The total production capacity of registered biodiesel and renewable diesel producers is significantly higher than 2.83 billion gallons, even if only those facilities that generated RINs for advanced biodiesel and renewable diesel in 2018 are considered (2.9 billion gallons). This volume (2.83 billion gallons) is only 200 million gallons higher than the total volume of biodiesel and renewable diesel supplied in 2016 (approximately 2.6 billion gallons), strongly suggesting that production capacity and the ability to distribute and use biodiesel and renewable diesel will not limit the supply of advanced biodiesel and renewable diesel to a volume below 2.83 billion gallons in 2020. Sufficient feedstocks are expected to be available to produce this volume of advanced biodiesel and renewable diesel in 2020. However, doing so may result in some level of diversion of advanced feedstocks and/or advanced biodiesel and renewable diesel from existing uses. Finally, the increase in the production and import of advanced biodiesel and renewable diesel projected from 2018 to 2020 to supply a volume of 2.83 billion gallons in 2020 is comparable to (or has been exceeded) by the increases observed in the past. While we do not believe it will be necessary, in the event that the supply of advanced biodiesel and renewable diesel falls short of the projected 2.83 billion gallons in 2020, obligated parties could rely on the available supply of carryover advanced RINs projected to be available in 2020 (See Section II.B for a further discussion of carryover RINs).

C. Volume Requirement for Advanced Biofuel

In exercising the cellulosic waiver authority for 2017 and earlier, we determined it was appropriate to require a partial backfilling of missing cellulosic volumes with volumes of non-cellulosic advanced biofuel we determined to be reasonably attainable, notwithstanding the increase in costs associated with those decisions.[110] For the 2018 standards, in contrast, we placed a greater emphasis on cost considerations in the context of balancing the various considerations, ultimately concluding that the applicable volume requirement should be based on the maximum reduction permitted under the cellulosic waiver authority. In the 2019 standards final rule, we also concluded that it would be appropriate to exercise the maximum reduction permitted under the cellulosic waiver authority to set the advanced biofuel volume requirement at 4.92 billion gallons. We did this based on similar cost considerations as for 2018, as well as a shortfall in the reasonably attainable volume of advanced biofuels. We acknowledged it may be possible that more than 4.92 billion gallons of advanced biofuel is attainable in 2019, but did not believe that requiring higher volumes would be appropriate based on our expectation that doing so would lead to higher costs and feedstock switching and/or diversion of foreign advanced biofuels that would not be appropriate.

[109] This estimate assumes that the U.S. continues to export approximately 100 million gallons of biodiesel per year in 2020. Alternatively, if the U.S. consumes all domestically produced biodiesel and renewable diesel, rather than exporting any of this fuel, domestic production of advanced biodiesel and renewable diesel would have to increase by approximately 150 million gallons annually in 2019 and 2020.

[110] See, *e.g.,* Renewable Fuel Standards for 2014, 2015 and 2016, and the Biomass-Based Volume for 2017: Response to Comments (EPA–420–R–15–024, November 2015), pages 628–631, available in docket EPA–HQ–OAR–2015–0111–3671.

For 2020, the implied statutory volume target for non-cellulosic advanced biofuel is identical to that for 2019 at 4.5 billion gallons, and this is the level that would result from application of the maximum reduction permitted under the cellulosic waiver authority. Moreover, the concerns we expressed for the 2019 standards regarding impacts on costs and feedstock switching and/or diversion of foreign advanced biofuels remain valid for 2020. As in 2019, the reasonably attainable volume of advanced biofuel for 2020 falls short of the volume resulting from the maximum exercise of the cellulosic authority, although that volume is likely to be attainable. Moreover, while there is some uncertainty in the volume of advanced biofuel that may be attainable or reasonably attainable in 2020, even if greater volumes of advanced biofuel are attainable or reasonably attainable, the high cost of these fuels provides sufficient justification to reduce the advanced biofuel volume for 2020 by the maximum amount under the cellulosic waiver authority. In the 2019 final rule we presented illustrative cost projections for sugarcane ethanol and soybean biodiesel in 2019, the two advanced biofuels that would be most likely to provide the marginal increase in volumes of advanced biofuel in 2020 in comparison to 2019. Sugarcane ethanol results in a cost increase compared to gasoline that ranges from $0.39–$1.04 per ethanol-equivalent gallon. Soybean biodiesel results in a cost increase compared to diesel fuel that ranges from $0.74–$1.23 per ethanol-equivalent gallon. The cost of these renewable fuels is high as compared to the petroleum fuels they displace.

Based on the information presented above, we believe that 5.04 billion gallons of advanced biofuel is attainable in 2020. After a consideration of the projected volume of cellulosic biofuel and reasonably attainable volumes of imported sugarcane ethanol and other advanced biofuels, we determined that 2.83 billion gallons of advanced biodiesel and renewable diesel would be needed to reach 5.04 billion gallons of advanced biofuel. Based on a review of the factors relevant to the supply of advanced biodiesel and renewable diesel as discussed in Section IV.B.2, including historic production and import data, the production capacity of registered biodiesel and renewable diesel producers, and the availability of advanced feedstocks, we have determined that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable in 2020. This is similar to the conclusions we reached for 2019, where we also determined that the same volume of non-cellulosic advanced biofuel would be attainable.

We acknowledge that there is some uncertainty regarding whether the market will actually supply 5.04 billion gallons of advanced biofuel in 2020. In the event that the market does not supply this volume, the carryover RIN bank represents a source of RINs that could help obligated parties meet an advanced biofuel volume requirement of 5.04 billion gallons in 2020 if the market fails to supply sufficient advanced biofuels. As discussed in greater detail in Section II.C.1, carryover RINs provide obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace and provide a liquid and well-functioning RIN market upon which success of the entire program depends. We currently estimate that there are approximately 390 million advanced carryover RINs available.

D. Volume Requirement for Total Renewable Fuel

As discussed in Section II.A.1, we believe that the cellulosic waiver provision is best interpreted as requiring that the advanced biofuel and total renewable fuel volumes be reduced by equal amounts. For the reasons we have previously articulated, we believe this interpretation is consistent with the statutory language and best effectuates the objectives of the statute, including the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels and the legislative intent reflected in the statutory volume tables.[111] If we were to reduce the total renewable fuel volume requirement by a lesser amount than the advanced biofuel volume requirement, we would effectively increase the opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory volume of 15 billion gallons. Applying an equal reduction of 9.96 billion gallons to both the statutory target for advanced biofuel and the statutory target for total renewable fuel results in a total renewable fuel volume of 20.04 billion gallons as shown in Table IV.A–1.[112] This volume of total renewable fuel results in an implied volume of 15 billion gallons of conventional fuel, which is the same as in the 2019 final rule.

We note that because we are proposing to use the maximum reduction possible under the cellulosic waiver authority, no additional reductions are possible under that authority. While the general waiver authority does provide a means for further reductions in the applicable volume requirement for total renewable fuel, the record before us does not indicate that such a waiver is justified. In particular, in a separate memorandum we provide a description of the ways in which the market could make 20.04 billion gallons of total renewable fuel available in 2020.[113] In light of the total volume of ethanol that could be used in 2020,[114] along with the potential for conventional biodiesel and renewable diesel, we find that there would be sufficient volumes of conventional renewable fuel to reach 15 billion gallons and of total renewable fuel to reach 20.04 billion gallons.

V. Response to Remand of 2016 Rulemaking

In addition to proposing the applicable volume requirements and percentage standards for 2020, in this

[111] See 81 FR 89752–89753 (December 12, 2016). See also 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015).

[112] EPA also considered the availability of carryover RINs in determining whether reduced use of the cellulosic waiver authority would be warranted. For the reasons described in Section II.B, we do not believe this to be the case.

[113] ''Market impacts of biofuels in 2020,'' memorandum from David Korotney to docket EPA–HQ–OAR–2019–0136. In prior actions, similar analyses indicated that the market was capable of both producing and consuming the required volume of renewable fuels, and that as a result there was no basis for finding an inadequate domestic supply of total renewable fuel. See 82 FR 34229 & n.82 (July 21, 2017). Given the D.C. Circuit's decision in *ACE,* however, assessment of demand-side constraints is no longer relevant for determining inadequate domestic supply. However, we believe consideration of the ways that the market could make this volume available may still be generally relevant to whether and how EPA exercises its waiver authorities, such as our consideration of whether the volumes will cause severe economic harm.

[114] We note that the previously cited memorandum discusses the potential for total ethanol consumption in 2020, but does not make specific projections for E0, E15 and E85. Volumes of these ethanol blends are highly dependent upon consumer demand. In prior annual rules, we assessed volumes of these blends in determining whether and to what extent to exercise the inadequate domestic supply waiver authority. The D.C. Circuit's decision *ACE* precludes assessment of demand-side constraints in determining inadequate domestic supply, and consistent with that decision, we no longer assess such blend volumes. While we could still assess such blend volumes in deciding whether and to what extent to exercise our discretionary waiver authorities, and in evaluating the market's ability to meet the total renewable fuel requirement, doing so is not necessary. In terms of the market's ability to satisfy the total renewable fuel requirement, the more relevant consideration is whether the pool-wide ethanol volume, together with volumes of other biofuels, suffices. We note that EPA does not establish standards for E0, E15, or E85. Moreover, there has historically been a lack of reliable data on volumes of these blends.

rulemaking we are also proposing to address the remand of the 2016 annual rule by the D.C. Circuit Court of Appeals, in *ACE.* In light of the fact that we can no longer incent additional renewable fuel generation in 2016, and the significant burden on obligated parties of imposing an additional standard, we are proposing to retain the original 2016 total renewable fuel standard. This section describes the relevant aspects of the 2016 annual rule, the court's decision, EPA's responsibilities following the court's remand, and our proposed approach.

A. Reevaluating the 2016 Annual Rule

1. The 2016 Renewable Fuel Standard

On December 14, 2015, we promulgated a rulemaking establishing the volume requirements and percentage standards for 2014, 2015, and 2016.[115] In establishing those standards, we utilized the cellulosic waiver authority under CAA 211(o)(7)(D) to lower the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2016, and the general waiver authority under CAA 211(o)(7)(A) to lower total renewable fuel by an additional increment.

As an initial step, under CAA 211(o)(7)(D), we lowered the cellulosic biofuel volume requirement by 4.02 billion gallons, to the projected production of cellulosic biofuel for 2016, as required by the statute.[116] Using that same authority, we then elected to reduce the advanced biofuel and total renewable fuel volumes. We did not reduce the advanced biofuel volume requirement by the full 4.02 billion gallons that was permitted under this authority, but rather by a lesser 3.64 billion gallons that resulted in an advanced biofuel volume requirement that was ''reasonably attainable.'' [117] This allowed some advanced biofuel to ''backfill'' for the shortfall in cellulosic biofuel. We then reduced the total renewable fuel volume by an amount equivalent to the reduction in advanced biofuel in accordance with our longstanding interpretation that when making reductions to advanced biofuel and total renewable fuel under CAA 211(o)(7)(D), the best reading of the statute is to reduce them both by the same amount.[118]

As a second step, under CAA 211(o)(7)(A), under a finding of inadequate domestic supply, we further lowered the total renewable fuel standard by 500 million gallons for 2016.[119] In assessing ''inadequate domestic supply,'' we considered the availability of renewable fuel to consumers. Based on such demand-side considerations, we made the additional 500 million gallon reduction in the total renewable fuel requirement.

The 2016 total renewable fuel standard was challenged in court. In an opinion issued on July 28, 2017, the D.C. Circuit vacated our use of the general waiver authority under a finding of inadequate domestic supply to reduce the 2016 total renewable fuel standard, the second step of setting the 2016 total renewable fuel standard.[120] The court in *ACE* held that we had improperly focused on supply of renewable fuel to consumers, and that the statute instead requires a ''supply-side'' assessment of the volumes of renewable fuel that can be supplied to refiners, blenders, and importers.[121] Other components of our interpretation of ''inadequate domestic supply'' were either upheld by the court in *ACE* (*e.g.,* our interpretation that carryover RINs are not part of the ''supply'' for purposes of this waiver authority) or were not challenged (*e.g.,* our consideration of biofuel imports as part of the domestic supply). Our use of the cellulosic waiver authority to provide the initial reduction in total renewable fuel was also upheld by the court.

2. Agency Responsibility

The court in *ACE* upheld our volume requirements for advanced biofuel and cellulosic biofuel, so there is therefore no need for the agency to adjust those 2016 final volume requirements. The court also upheld EPA's use of the cellulosic waiver authority to reduce the 2016 total renewable fuel volume requirement. The court only vacated our decision to further reduce that requirement under the ''inadequate domestic supply'' waiver authority, remanding this issue to the Agency for further consideration consistent with the court's opinion.[122] Our obligation is thus to reevaluate the 2016 total renewable fuel volume requirement in accordance with the court's decision.

B. Consideration of the Burdens of a Retroactive Standard

We propose to find that imposing an additional burden on obligated parties for the 2016 volume requirements through a higher standard at this time would be unduly burdensome and inappropriate. In the *ACE* decision, and two previous decisions,[123] the court stated that in imposing a retroactive standard, we must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[124] We believe that in the case of the 2016 renewable fuel volumes, any approach that requires additional volumes of renewable fuel use would impose a significant burden on obligated parties, without any corresponding benefit as any additional standard cannot result in additional renewable fuel use in 2016. Thus, we are proposing to retain the original 2016 total renewable fuel standard.

We believe the burdens associated with altering the 2016 standard are high. In order to revise the 2016 standard EPA would need to rescind the 2016 standard and return the RINs used for compliance returned to the original owners. Once those RINs were unretired, a process that could take several months, trading of those RINs could resume for a designated amount of time before retirements would again be required to demonstrate compliance. Obligated parties could then comply with a new, higher standard that includes an adjustment to the required total renewable fuel volume to address the *ACE* decision.

Under our current regulations, only 2015 and 2016 RINs can be used to demonstrate compliance with the 2016 standard.[125] However, there are far fewer 2015 and 2016 RINs available today (*i.e.,* RINs that are valid but have not already been retired to comply with the 2015, 2016, or 2017 standards) than would be needed to comply with a supplemental standard commensurate with our exercise of the general waiver authority, that is, 500 million gallons. Additionally, the few 2015 and 2016 RINs available are unevenly held between obligated parties; because of the small number of RINs, any parties who held excess 2015 and 2016 RINs could attempt to sell them at a high price, creating dysfunction within the RIN market. These high prices would create a burden on obligated parties, without providing any incentive for additional renewable fuel use.

We also considered and rejected two alternative approaches for addressing the remand. First, we considered an

[115] 80 FR 77420.

[116] See *Id.* at 77499.

[117] *Id* at 77442–43.

[118] *Id.*

[119] *Id.* at 77444.

[120] *ACE,* 864 F.3d 691.

[121] *Id.* at 696.

[122] *Id.* at 703.

[123] *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *NPRA* v. *EPA,* 630 F.3d 145 (D.C. Cir. 2010).

[124] *E.g.,* in *Monroe,* the court held that EPA's action was reasonable because it ''considered various ways to minimize the hardship caused to obligated parties.'' *Monroe* at 920.

[125] 40 CFR 80.1427(a).

approach where 2016 RINs used for compliance with the 2017 standards could be unretired and used for compliance with the increased 2016 standard, but this would essentially also reopen 2017 compliance, and likely 2018 compliance for the same reason.[126] Reopening compliance would impose a significant burden on both obligated parties and EPA as described above. Moreover, stakeholders have expressed strong desires for consistent compliance requirements on an annual basis,[127] and having compliance for the prior year complete before requiring compliance with the subsequent year is essential to properly account for the status of RINs, due to the 2-year RIN lifespan. Reopening compliance for 2016–2018 could have cascading effects on compliance for 2019 and subsequent years. Compliance with an additional standard would also necessarily result in a drawdown of the carryover RIN bank. It is no longer possible to generate 2016, 2017, or 2018 RINs; an additional standard would require the use of carryover RINs and drawdown of the carryover RIN bank, which as explained in Section II, we do not believe to be appropriate. Therefore, we do not find that it would be appropriate or reasonable to reopen compliance with the entire 2016 total renewable fuel standard.

Second, we also considered imposing an additional obligation as a supplement to the 2020 standards and allowing compliance with 2019 and 2020 RINs. Under this approach, there would likely be sufficient RINs to comply with an additional 500 million gallon standard. However, as we believe there are very limited opportunities to use biofuels beyond the volumes we are proposing for 2020,[128] we believe that this is unlikely to incent significant new biofuel generation in 2020. Instead, it would likely lead to a significant draw-down of the carryover RIN bank, which as explained in section II, we do not believe to be appropriate.

For the forgoing reasons, we are proposing to retain the 2016 total renewable fuel in response to the court's remand in *ACE*.[129]

VI. Impacts of 2020 Volumes on Costs

In this section, EPA presents its assessment of the illustrative costs of this proposed rulemaking. It is important to note that these illustrative costs do not attempt to capture the full impacts of this proposed rule. We frame the analyses we have performed for this rule as ''illustrative'' so as not to give the impression of comprehensive estimates. These estimates are provided for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these illustrative cost estimates. For example, there are many different feedstocks that could be used to produce biofuels, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some renewable fuels may be cost competitive with the petroleum fuel they replace; however, we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

The volumes for which we have provided cost estimates are described in Sections III and IV. In this section, we examine the illustrative costs of two different cases. In the first case, we provide illustrative cost estimates by comparing the proposed 2020 renewable fuel volumes to 2020 statutory volumes. In the second case, we examine the proposed 2020 renewable fuel volumes to the final 2019 renewable fuel volumes to estimate changes in the annual costs of the proposed 2020 volumes in comparison to the 2019 volumes.[130]

A. Illustrative Costs Analysis of 2020 Proposed Volumes Compared to the 2020 Statutory Volumes Baseline

In this section, EPA provides illustrative cost estimates that compare the proposed 2020 cellulosic biofuel volume requirements to the 2020 cellulosic statutory volume that would be required absent the exercise of our cellulosic waiver authority under CAA section 211(o)(7)(D)(i). As described in Section III, we are proposing a cellulosic volume of 540 million gallons for 2020, using our cellulosic waiver authority to waive the statutory cellulosic volume of 10.5 billion gallons by 9.96 billion gallons. Estimating the cost savings from renewable fuel volumes that are not projected to be produced is inherently challenging. EPA has taken the relatively straightforward methodology of multiplying this waived cellulosic volume by the wholesale per-gallon costs of cellulosic biofuel production relative to the petroleum fuels they displace. Since the implied non-cellulosic advanced biofuel and implied conventional renewable fuel volumes are unchanged from the statutory implied volumes, there is no need to estimate cost impacts for these volumes.

While there may be growth in other cellulosic renewable fuel sources, we believe it is appropriate to use cellulosic ethanol produced from corn kernel fiber at an existing corn starch ethanol production facility as representative of all liquid cellulosic renewable fuel. Even though there is no increase in liquid cellulosic biofuels in this proposed annual 2020 RFS rule, we believe it is appropriate to use these costs to estimate the cost savings from the statutory volumes. The majority of liquid cellulosic biofuel in 2020 is expected to be produced using this technology. In addition, as explained in Section III, we believe that production of the major alternative cellulosic biofuel—CNG/LNG derived from biogas—is limited in 2020 due to a limitation in the number of vehicles capable of using this form of fuel.[131]

EPA uses a ''bottom-up'' engineering cost analysis to quantify the costs of producing a gallon of cellulosic ethanol derived from corn kernel fiber. There are multiple processes that could yield cellulosic ethanol from corn kernel fiber. EPA assumes a cellulosic ethanol production process that generates biofuel using distiller's grains, a co-product of generating corn starch ethanol that is commonly dried and sold into the feed market as distillers dried

[126] If 2017 compliance is reopened, 2018 compliance would then also need to be reopened due to the 2-year lifespan of RINs.

[127] See, *e.g.,* Comments from API/AFPM on the 2014–2016 annual rule suggesting that delayed compliance can make it difficult to assess the size of the RIN bank, Docket ID: EPA–HQ–OAR–2015–0111–1948.

[128] See section IV (finding that the advanced biofuel volume resulting from the full reduction under the cellulosic waiver authority is not reasonably attainable, and further noting uncertainties relating to the attainable volume) and ''Market impacts of biofuels in 2020,'' available in the docket (describing limitations on the ability of the market to use biofuels).

[129] In addition to today's response to the remand, we note that the precedential effect of the *ACE* decision has governed subsequent RFS annual rules. Compare, *e.g.,* 82 FR 34229 & n.82 (July 21, 2017) (2018 annual rule proposal, issued prior to *ACE*) (soliciting comment on whether it would be appropriate to exercise the inadequate domestic supply waiver authority based on the ''maximum reasonably achievable volume'' of renewable fuel, which incorporates demand-side considerations), with 82 FR 46177 (Oct. 4, 2017) (2018 annual rule availability of supplemental information and request for comment, issued after *ACE*) (recognizing, under *ACE,* that EPA may not consider demand-side constraints in determining inadequate domestic supply).

[130] This action imposes renewable fuel standards only for 2020. However, solely for E.O. 13771 purposes in this section, we estimate the costs of the relevant volumes as though they applied in future years as well. Therefore, we use the term ''annual costs'' in this section.

[131] See Section III.C.2 for a further discussion of the quantity of CNG/LNG projected to be used as transportation fuel in 2020.

grains with solubles (DDGS), as the renewable biomass feedstock. We assume an enzymatic hydrolysis process with cellulosic enzymes to break down the cellulosic components of the distiller's grains. This process for generating cellulosic ethanol is similar to approaches currently used by industry to generate cellulosic ethanol at a commercial scale, and we believe these cost estimates are likely representative of the range of different technology options being developed to produce ethanol from corn kernel fiber. We then compare the per-gallon costs of the cellulosic ethanol to the petroleum fuels that would be replaced at the wholesale stage, since that is when the two are blended together.

These cost estimates do not consider taxes, retail margins, or other costs or transfers that occur at or after the point of blending. Transfers are payments within society and are not additional costs (*e.g.,* RIN payments are one example of a transfer payment). We do not attempt to estimate potential cost savings related to avoided infrastructure costs (*e.g.,* the cost savings of not having to provide pumps and storage tanks associated with higher-level ethanol blends). When estimating per-gallon costs, we consider the costs of gasoline on an energy-equivalent basis as compared to ethanol, since more ethanol gallons must be consumed to travel the same distance as on gasoline due to the ethanol's lower energy content.

Table VI.A–1 below presents the cellulosic fuel cost savings with this proposed rule that are estimated using this approach.[132] The per-gallon cost difference estimates for cellulosic ethanol ranges from $0.28–$3.28 per ethanol-equivalent gallon ($/EEG).[133] Given that commercial cellulosic ethanol production is at an early stage in its deployment, these cost estimates have a significant range. Multiplying the per-gallon cost differences by the amount of cellulosic biofuel waived in this proposed rule results in approximately $2.8–$33 billion in cost savings.

TABLE VI.A–1—ILLUSTRATIVE COSTS ANALYSIS OF 2020 PROPOSED VOLUMES COMPARED TO THE 2020 STATUTORY VOLUMES BASELINE

Cellulosic Volume Required (Million Ethanol-Equivalent Gallons)	540
Change in Required Cellulosic Biofuel from 2020 Statutory Volume (Million Ethanol-Equivalent Gallons)	(9,960)
Cost Difference Between Cellulosic Corn Kernel Fiber Ethanol and Gasoline Per Gallon ($/Ethanol-Equivalent Gallons) [134] ($/EEG)	$0.28–$3.28
Annual Change in Overall Costs (Million $) [135]	$(2,800)–$(33,000)

B. Illustrative Costs Analysis of the 2020 Proposed Volumes Compared to the 2019 Volumes Baseline

In this section, we provide illustrative cost estimates for the proposed 2020 volumes compared to the final 2019 RFS volumes. This results in an increase in cellulosic volumes for the 2020 RFS of 126 gallons (ethanol-equivalent).[136]

Cellulosic Biofuel

We anticipate that the increase in the proposed 2020 cellulosic biofuel volumes is composed of 126 million gallons of CNG/LNG derived from landfill biogas. Unlike past RFS annual rulemakings, there is no projected increase in liquid cellulosic biofuel in this proposed annual 2020 RFS rulemaking. Thus, we provide costs estimates for cellulosic biofuel solely based upon the costs of using CNG/LNG-derived cellulosic biogas.[137] For CNG/LNG-derived cellulosic biogas, we provide estimates of the cost of displacing natural gas with CNG/LNG derived from landfill biogas to produce 126 million ethanol-equivalent gallons of cellulosic fuel. To estimate the cost of production of CNG/LNG derived from landfill gas (LFG), EPA uses Version 3.2 of the Landfill Gas Energy Cost Model, or LFG cost-Web. EPA ran the financial cost calculator for landfill projects with a design flow rate of 1,000 and 10,000 cubic feet per minute with the suggested default data. LFGcost-Web assumes that larger projects will result in lower fuel production costs, which in some cases are lower than the cost of fossil-fuel derived natural gas that is displaced due to economies of scale. The costs estimated for this analysis exclude any pipeline costs to transport the pipeline quality gas, as well as any costs associated with compressing the gas to CNG/LNG. These costs are not expected to differ significantly between LFG or natural gas. In addition, the cost estimates excluded the gas collection and control system infrastructure at the landfill, as EPA expects that landfills that produce high BTU gas in 2020 are likely to already have this infrastructure in place.[138]

To estimate the illustrative cost impacts of the change in CNG/LNG derived from LFG, we compared the cost of production of CNG/LNG derived from LFG in each case to the projected price of natural gas in 2020 in EIA's April 2019 STEO.[139] Finally, we converted these costs to an ethanol-equivalent gallon ($/EEG) basis. The resulting cost estimates are shown in Table VI.B–1. The total costs of the proposed 2020 cellulosic volume compared to 2019 RFS cellulosic volume range from $(3.2)–$10 million. The lower end of this range reflects a cost savings due to the estimated costs

[132] Details of the data and assumptions used can be found in a Memorandum available in the docket entitled ''Cost Impacts of the Proposed 2020 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel available in docket EPA–HQ–OAR–2019–0136.

[133] For the purposes of the cost estimates in this section, EPA has not attempted to adjust the price of the petroleum fuels to account for the impact of the RFS program, since the changes in the renewable fuel volume are relatively modest in comparison to the quantity of fuel associated with the petroleum market. Rather, we have simply used the wholesale price projections for gasoline and diesel as reported in EIA's April 2019 STEO.

[134] For this table and all subsequent tables in this section, approximate costs in per-gallon cost difference estimates are rounded to the cents place.

[135] For this table and all subsequent tables in this section, approximate resulting costs (other than in per-gallon cost difference estimates) are rounded to two significant figures.

[136] The implied non-cellulosic advanced biofuel and conventional renewable fuel volumes are the same for both years, so we do not need to estimate cost impacts for these volumes.

[137] Although there is no increase for liquid cellulosic biofuel in this proposed RFS annual 2020 rule, it is unknown if this volume may change in the final rule. While we do not present associated costs in this document, the methodology and assumptions we would use to represent liquid cellulosic biofuel can be found in a Memorandum available in the docket entitled, ''Cost Impacts of the Proposed 2020 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel available in docket EPA–HQ–OAR–2019–0136.

[138] Details of the data and assumptions used can be found in a Memorandum available in the docket entitled ''Cost Impacts of the Proposed 2020 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel available in docket EPA–HQ–OAR–2019–0136.

[139] Henry Hub Spot price estimate for 2020. EIA, Short Term Energy Outlook (STEO), April 2019, available in docket EPA–HQ–OAR–2019–0136.

of producing 10,000 cubic feet per minute of CNG/LNG landfill gas being lower than the projected cost of natural gas in EIA's STEO.

TABLE VI.B–1—ILLUSTRATIVE COSTS ANALYSIS OF THE 2020 PROPOSED VOLUMES COMPARED TO THE 2019 VOLUMES BASELINE

	Cellulosic volume
CNG/LNG Derived from Biogas Costs:	
Cost Difference Between CNG/LNG Derived from Landfill Biogas and Natural Gas Per Gallon ($/Ethanol-Equivalent Gallons) ($/EEG)	$(0.03)–$0.08
Change in Volume (Million Ethanol-Equivalent Gallons)	126
Annual Increase in Overall Costs (Million $)	$(3.2)–$10
Range of Annual Increase in Costs with Cellulosic Volume (Million $)	$(3.2)–$10

The annual volume-setting process encourages consideration of the RFS program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the full, long-term costs and benefits of the program. For the purposes of this proposed rule, other than the estimates of costs of producing a ''representative'' renewable fuel compared to cost of petroleum fuel, EPA did not quantitatively assess other direct and indirect costs or benefits of changes in renewable fuel volumes. These direct and indirect costs and benefits may include infrastructure costs, investment, climate change impacts, air quality impacts, and energy security benefits, which all are to some degree affected by the annual volumes. For example, we do not have a quantified estimate of the lifecycle GHG or energy security benefits for a single year (*e.g.,* 2020). Also, there are impacts that are difficult to quantify, such as rural economic development and employment changes from more diversified fuel sources, that are not quantified in this rulemaking. While some of these impacts were analyzed in the 2010 final rulemaking that established the current RFS program, we have not analyzed these impacts for the 2020 volume requirements.[140]

VII. Biomass-Based Diesel Volume for 2021

In this section we discuss the proposed BBD applicable volume for 2021. We are setting this volume in advance of those for other renewable fuel categories in light of the statutory requirement in CAA section 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time proposing to set the BBD percentage standards that would apply to obligated parties in 2021 but intend to do so in late 2020, after receiving EIA's estimate of gasoline and diesel consumption for 2021. At that time, we will also set the percentage standards for the other renewable fuel types for 2021. Although the BBD applicable volume sets a floor for required BBD use, because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any BBD produced can be used to satisfy both of these other applicable volume requirements, even beyond the mandated BBD volume.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;

2. The impact of renewable fuels on the energy security of the United States;

3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);

4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume specified in the statute for calendar year 2012, which is 1.0 billion gallons.[141] The statute does not, however, establish any other numeric criteria, and provides EPA discretion over how to weigh the importance of the often competing factors and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no numeric criteria, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and especially cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. In general, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to compete with cellulosic biofuel and BBD to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met.

[140] RFS2 Regulatory Impact Analysis (RIA). U.S. EPA 2010, Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. February 2010. Docket EPA–HQ–OAR–2009–0472–11332.

[141] See CAA section 211(o)(2)(B)(v).

B. Review of Implementation of the Program and the 2021 Applicable Volume of Biomass-Based Diesel

One of the considerations in determining the BBD volume for 2021 is a review of the implementation of the program to date, as it affects BBD. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, distribute, and use BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the availability of BBD. In reviewing the program, we assess numerous regulatory, economic, and technical factors, including the availability of BBD in past years relative to the BBD and advanced standards; the prices of BBD, advanced, and conventional RINs; the competition between BBD and other advanced biofuels in meeting the portion of the advanced standard not required to be met by BBD or cellulosic RINs; the maturation of the BBD industry over the course of the RFS program; and the effects of BBD standard on the production and development of both BBD and other advanced biofuels.

Table VII.B.1–1 shows, for 2011–2018, the number of BBD RINs generated, the number of RINs retired due to export, the number of RINs retired for reasons other than compliance with the annual BBD standards, and the consequent number of available BBD RINs; for 2011–2019, the BBD and advanced biofuel standards; and for 2020, the proposed advanced biofuel standard, and the BBD standard.

TABLE VII.B.1–1—BIOMASS-BASED DIESEL (D4) RIN GENERATION AND ADVANCED BIOFUEL AND BIOMASS-BASED DIESEL STANDARDS IN 2011–2019

[Million RINs or gallons] [142]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons) [b]	BBD standard (RINs) [b]	Advanced biofuel standard (RINs) [b]
2011	1,692	72	98	1,522	800	1,200	1,350
2012	1,737	102	90	1,545	1,000	1,500	2,000
2013	2,740	125	93	2,523	1,280	1,920	2,750
2014	2,710	134	93	2,483	1,630	[c] 2,490	2,670
2015	2,796	143	30	2,622	1,730	[c] 2,655	2,880
2016	4,009	202	51	3,756	1,900	2,850	3,610
2017	3,849	257	35	3,557	2,000	3,000	4,280
2018	3,860	245	39	3,576	2,100	3,150	4,290
2019	N/A	N/A	N/A	N/A	2,100	3,150	4,920
2020	N/A	N/A	N/A	N/A	2,430	3,645	5,010

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons, due to rounding.

[b] The volumes for each year are those used as the basis for calculating the percentage standards in the final rule. They have not been retroactively adjusted for subsequent events, such as differences between projected and actual gasoline and diesel use and exempted small refinery volumes.

[c] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon, but generally has an equivalence value of 1.7. While some fuels that qualify as BBD generate more than 1.5 RINs per gallon, EPA multiplies the required volume of BBD by 1.5 in calculating the percent standard per 80.1405(c). In 2014 and 2015 however, the number of RINs in the BBD Standard column is not exactly equal to 1.5 times the BBD volume standard as these standards were established based on actual RIN generation data for 2014 and a combination of actual data and a projection of RIN generation for the last three months of the year for 2015, rather than by multiplying the required volume of BBD by 1.5. Some of the volume used to meet the BBD standard in these years was renewable diesel, with an equivalence value higher than 1.5.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011, 2012, 2013, 2016 and 2017, and 2018. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit,[143] and various other State and local incentives and mandates allowing for favorable blending economics. The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years, as the standards for these years were finalized at the end of November 2015 and EPA's intent at that time was to set the standards for 2014 and 2015 to reflect actual BBD use.[144] In 2016, with RFS standards established prior to the beginning of the year and the blenders tax credit in place, available BBD RINs exceeded the volume required by the BBD standard by 906 million RINs (32 percent), and exceeded the volume required by the advanced biofuel standard. In 2017, the RFS standards were established prior to the beginning of the year, and the blenders tax credit was only applied retroactively; even without the certainty of a tax credit, the available BBD RINs exceeded the volume required by the BBD standard by 557 million RINs (19 percent). In 2018, the RFS standards were again established prior to the beginning of the year, and the blenders tax credit was not in place; even without a tax credit, the available BBD RINs exceed the volume required by the BBD standard by 426 million RINs (14 percent). In the table VII.B.1–1, we excluded exported BBD RINs from the calculation of ''available RINs.'' [145] This indicates that in certain circumstances there is demand for BBD

[142] Available BBD RINs Generated, Exported BBD RINs, and BBD RINs Retired for Non-Compliance Reasons information from EMTS.

[143] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was authorized and applied retroactively for all of 2015 as well as through the end of 2016. In February 2018 the biodiesel tax credit was authorized and applied retroactively for all of 2017. The biodiesel tax credit is not currently in place for 2018 or 2019.

[144] See 80 FR 77490–92, 77495 (December 14, 2015).

[145] We have done so even though the exported RINs could have been used for compliance prior to export.

beyond the required volume of BBD. While EPA has consistently established the required volume in such a way as to allow non-BBD fuels to compete for market share in the advanced biofuel category, since 2016 the vast majority of non-cellulosic advanced biofuel used to satisfy the advanced biofuel obligations has been BBD.

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through December 2018 also support the conclusion that the advanced biofuel, and in some periods the total renewable fuel standards, provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[146] If, however, BBD RINs are being used (or are expected to be used) by obligated parties to satisfy their advanced biofuel obligations, above and beyond the BBD standard, we would expect the prices of advanced biofuel and BBD RINs to converge.[147] Further, if BBD RINs are being used (or are expected to be used) to satisfy obligated parties' total renewable fuel obligation, above and beyond their BBD and advanced biofuel requirements, we would expect the price for all three RIN types to converge.

When examining RIN price data from 2011 through December 2018, shown in Figure VI.B.2–1, we see that beginning in early 2013 and through December 2018 the advanced RIN (D5) price and BBD (D4) RIN prices were approximately equal. Similarly, from early 2013 through late 2016 the conventional renewable fuel (D6) RIN and BBD RIN prices were approximately equal. This suggests that the advanced biofuel standard, and in some periods the total renewable fuel standard, are capable of incentivizing increased BBD volumes beyond the BBD standard. The advanced biofuel standard has incentivized additional volumes of BBD since 2013, while the total standard had incentivized additional volumes of BBD from 2013 through 2016.[148] While final standards were not in place throughout 2014 and most of 2015, EPA had issued proposed rules for both of these years.[149] In each year, the market response was to supply volumes of BBD that exceeded the proposed BBD standard in order to help satisfy the proposed advanced and total biofuel standards.[150] Additionally, the RIN prices in these years strongly suggests that obligated parties and other market participants anticipated the need for BBD RINs to meet their advanced and total biofuel obligations, and responded by purchasing advanced biofuel and BBD RINs at approximately equal prices. We do note, however, that in 2011–2012 the BBD RIN price was significantly higher than both the advanced biofuel and conventional renewable fuel RIN prices. At this time, the E10 blendwall had not yet been reached, and it was likely more cost effective for most obligated parties to satisfy the portion of the advanced biofuel requirement that exceeded the BBD and cellulosic biofuel requirements with advanced ethanol.

[146] This is because when an obligated party retires a BBD RIN (D4) to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs (D5) count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

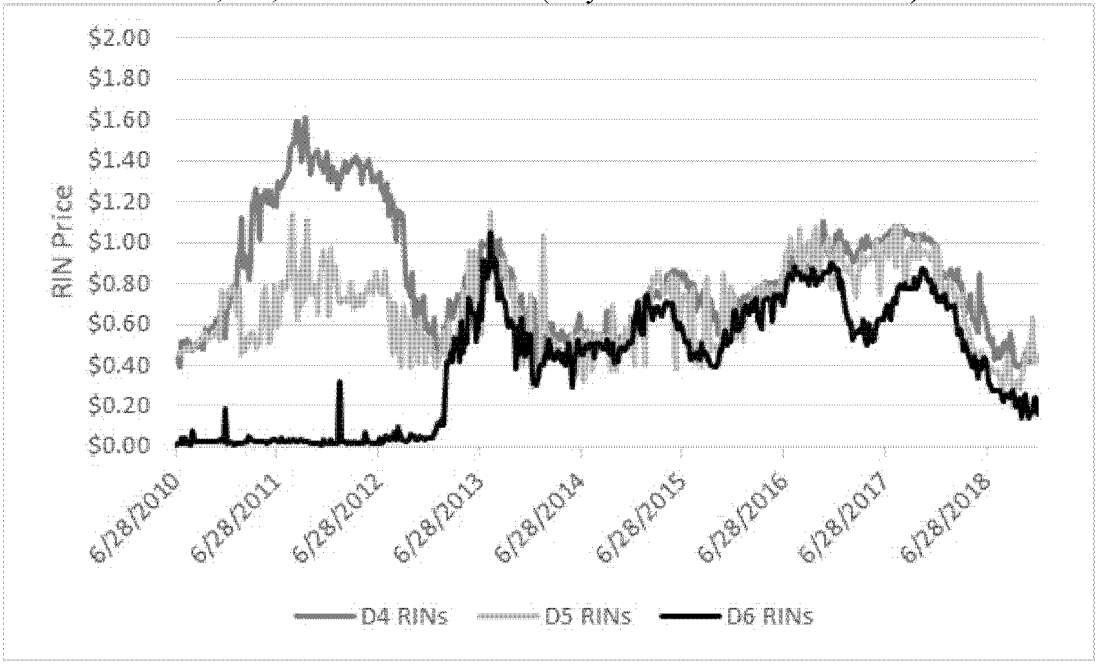
[147] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

[148] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 FR 38844, 38843 July 1, 2011).

[149] See 80 FR 33100 (2014–16 standards proposed June 10, 2015); 78 FR 71732 (2014 standards proposed Nov. 29, 2013).

[150] EPA proposed a BBD standard of 1.28 billion gallons (1.92 billion RINs) for 2014 in our November 2013 proposed rule. The number of BBD RINs available in 2014 was 2.48 billion. EPA proposed a BBD standard of 1.70 billion gallons (2.55 billion RINs) for 2015 in our June 2015 proposed rule. The number of BBD RINs available in 2015 was 2.62 billion.

Figure VII.B.2-1
D4, D5, and D6 RIN Prices (July 2010 – December 2018)



RIN Price Source: EMTS Data

In raising the 2013 BBD volume above the 1 billion gallon minimum mandated by the statute, the EPA sought to ''create greater certainty for both producers of BBD and obligated parties'' while also acknowledging that, ''the potential for somewhat increased costs is appropriate in light of the additional certainty of GHG reductions and enhanced energy security provided by the advanced biofuel volume requirement of 2.75 billion gallons.'' [151] Unknown at that time was the degree to which the required volumes of advanced biofuel and total renewable fuel could incentivize volumes of BBD that exceeded the BBD standard. In 2012 the available supply of BBD RINs exceeded the required volume of BBD by a very small margin (1,545 million BBD RINs were made available for compliance towards meeting the BBD requirement of 1,500 million BBD RINs). The remainder of the 2.0 billion-gallon advanced biofuel requirement was satisfied with advanced ethanol, which was largely imported from Brazil.[152] From 2012 to 2013 the statutory advanced biofuel requirement increased by 750 million gallons. If EPA had not increased the required volume of BBD for 2013, and the advanced biofuel standard had proved insufficient to increase the supply of BBD beyond the statutory minimum of 1.0 billion gallons, an additional 750 million gallons of non-BBD advanced biofuels beyond the BBD standard would have been needed to meet the advanced biofuel volume requirement.

The only advanced biofuel other than BBD available in appreciable quantities in 2012 and 2013 was advanced ethanol, the vast majority of which was imported sugarcane ethanol. We had significant concerns as to whether or not the supply of advanced ethanol could increase this significantly (750 million gallons) in a single year. These concerns were heightened by the approaching E10 blendwall, which had the potential to increase the challenges associated with supplying increasing volumes of ethanol to the U.S. If neither BBD volumes nor advanced ethanol volumes increased sufficiently, we were concerned that some obligated parties might be unable to acquire the advanced biofuel RINs necessary to demonstrate compliance with their RVOs in 2013. Therefore, as discussed above, we increased the volume requirement for BBD in 2013 to help create greater certainty for BBD producers (by ensuring demand for their product above the 1.0 billion gallon statutory minimum) and obligated parties (by ensuring that sufficient RINs would be available to satisfy their advanced biofuel RVOs). Since 2013, however, we have gained significant experience implementing the RFS program. As discussed above, RIN generation data has consistently demonstrated that the advanced biofuel volume requirement, and in some circumstances the total renewable fuel volume requirement, are capable of incentivizing the supply of BBD above and beyond the BBD volume requirement. The RIN generation data also show that while we have consistently preserved the opportunity for fuels other that BBD to contribute towards satisfying the required volume of advanced biofuel, these other advanced biofuels have not been supplied in significant quantities since 2013.

[151] 77 FR 59458, 59462 (September 27, 2012).

[152] 594 million advanced ethanol RINs were generated in 2012.

TABLE VII.B.1–2—OPPORTUNITY FOR AND RIN GENERATION OF "OTHER" ADVANCED BIOFUELS

[Million RINs]

	Opportunity for "Other" advanced biofuels [a]	Available advanced (D5) RINs	Available BBD (D4) RINs in excess of the BBD requirement [b]
2011	150	225	322
2012	500	597	45
2013	829	552	603
2014 [c]	192	143	−7
2015 [c]	162	147	−33
2016	530	98	906
2017	969	144	557
2018	852	178	426

[a] The opportunity for "other" advanced biofuel is calculated by subtracting the number of cellulosic biofuel and BBD RINs required each year from the number of advanced biofuel RINs required. This portion of the advanced standard can be satisfied by advanced (D5) RINs, BBD RINs in excess of those required by the BBD standard, or cellulosic RINs in excess of those required by the cellulosic standard.

[b] The available BBD (D4) RINs in excess of the BBD requirement is calculated by subtracting the required BBD volume (multiplied by 1.5 to account for the equivalence value of biodiesel) required each year from the number of BBD RINs available for compliance in that year. This number does not include carryover RINs, nor do we account for factors that may impact the number of BBD RINs that must be retired for compliance, such as differences between the projected and actual volume of obligated gasoline and diesel. The required BBD volume has not been retroactively adjusted for subsequent events, such as differences between projected and actual gasoline and diesel use and exempted small refinery volumes.

[c] The 2014 and 2015 volume requirements were established in November 2015 and were set equal to the number of RINs projected to be available for each year.

In 2014 and 2015, we set the BBD and advanced standards at actual RIN generation, and thus the space between the advanced biofuel standard and the biodiesel standard was unlikely to provide an incentive for "other" advanced biofuels. For 2016–2018, the gap between the BBD standard and the advanced biofuel provided an opportunity for "other" advanced biofuels to be generated to satisfy the advanced biofuel standard. While the RFS volumes created the opportunity for up to 530 million, 969 million, and 852 million gallons of "other" advanced for 2016, 2017, and 2018 respectively to be used to satisfy the advanced biofuel obligation, only 97 million, 144 million, and 178 million gallons of "other" advanced biofuels were generated. This is significantly less than the volumes of "other" advanced available in 2012–2013. Despite creating space within the advanced biofuel standard for "other" advanced, in recent years, only a small fraction of that space has been filled with "other" advanced, and BBD continues to fill most of the gap between the BBD standard and the advanced standard.

Thus, while the advanced biofuel standard is sufficient to drive biodiesel volume separate and apart from the BBD standard, there does not appear to be a compelling reason to increase the "space" maintained for "other" advanced biofuel volumes. The overall volume of non-cellulosic advanced biofuel increased by 500 million gallons for 2019. We determined that it was appropriate to also increase the BBD volume by the same amount as it would preserve the space already available for other advanced biofuels to compete in 2018 (850 million RINs). This space is nearly six times the amount of other advanced biofuels used in 2017, and over eight times that used in 2016. Even in an optimistic scenario, we do not believe that the use of other advanced biofuels will approach such amounts by 2021. We recognize, however, the dynamic nature of the fuels marketplace, and the impact that the BBD blender's tax credit can have on the relative economics of BBD versus other advanced biofuels, so going forward we intend to assess the appropriate space for other advanced biofuels in subsequent rules setting BBD volumes. The volume of non-cellulosic advanced biofuel remains the same (4.5 billion gallons) in 2019–2021, and therefore, increasing the 2021 BBD volume to maintain space is not necessary in this action.

At the same time, the rationale for preserving the "space" for "other" advanced biofuels remains. We note that the BBD industry in the U.S. and abroad has matured since EPA first increased the required volume of BBD beyond the statutory minimum in 2013. To assess the maturity of the biodiesel industry, EPA compared information on BBD RIN generation by company in 2012 and 2018 (the most recent year for which complete RIN generation by company is available). In 2012, the annual average RIN generation per company producing BBD was about 11 million RINs (about 7.3 million gallons) with approximately 50 percent of companies producing less than 1 million gallons of BBD a year.[153] The agency heard from multiple commenters during the 2012 and 2013 rulemakings that higher volume requirements for BBD would provide greater certainty for the emerging BBD industry and encourage further investment. Since that time, the BBD industry has matured in a number of critical areas, including growth in the size of companies, the consolidation of the industry, and more stable funding and access to capital. In 2012, the BBD industry was characterized by smaller companies with dispersed market share. By 2018, the average BBD RIN generation per company had climbed to over 36 million RINs (23.7 million gallons) annually, more than a 3-fold increase. Only 20 percent of the companies produced less than 1 million gallons of BBD in 2017.[154]

We are conscious of public comments claiming that BBD volume requirements that are a significant portion of the advanced volume requirements effectively disincentivize the future development of other promising advanced biofuel pathways.[155] A variety of different types of advanced biofuels, rather than a single type such as BBD, would increase energy security (*e.g.,* by increasing the diversity of feedstock

[153] "BBD RIN Generation by Company in 2012 and 2018," available in EPA docket EPA–HQ–OAR–2019–0136.

[154] Id.

[155] See, *e.g.,* Comments from Advanced Biofuel Association, available in EPA docket EPA–HQ–OAR–2018–0167–1277.

sources used to make biofuels, thereby reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[156]

We recognize that the space for other advanced biofuels in 2021 will ultimately depend on the 2021 advanced biofuel volume. While EPA is not establishing the advanced biofuel volume for 2021 in this action, we anticipate that the non-cellulosic advanced biofuel volume for 2021, when established, will be greater than 3.65 billion gallons (equivalent to 2.43 billion gallons of BBD, after applying the 1.5 equivalence ratio). This expectation is consistent with our actions in previous years. Accordingly, we expect that the 2021 advanced biofuel volume, together with the 2021 BBD volume proposed today, will continue to preserve a considerable portion of the advanced biofuel volume that could be satisfied by either additional gallons of BBD or by other unspecified and potentially less costly types of qualifying advanced biofuels.

C. Consideration of Statutory Factors Set Forth in CAA Section 211(o)(2)(B)(ii)(I)–(VI) for 2021 and Determination of the 2021 Biomass-Based Diesel Volume

The BBD volume requirement is nested within the advanced biofuel requirement, and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement.[157] This means that any BBD produced can be used to satisfy both these other applicable volume requirements even beyond the mandated BBD volume. The result is that in considering the statutory factors we must consider the potential impacts of increasing or decreasing BBD in comparison to other advanced biofuels.[158] For a given advanced biofuel standard, greater or lesser BBD volume requirements do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD requirement may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement. We are proposing to maintain the BBD volume for 2021 at 2.43 billion gallons based on our review of the statutory factors and the other considerations noted above and in the Draft Statutory Factors Assessment for Proposed 2021 BBD Docket Memorandum. This volume would preserve a gap for ''other'' advanced biofuels, that is the difference between the advanced biofuel volume and the sum of the cellulosic biofuel and BBD volumes. This would allow other advanced biofuels to continue to compete with excess volumes of BBD for market share under the advanced biofuel standard, while also supporting further growth in the BBD industry.

Consistent with our approach in setting the final BBD volume requirement for 2020, our primary assessment of the statutory factors for the 2021 BBD applicable volume is that because the BBD requirement is nested within the advanced biofuel volume requirement, we expect that the 2021 advanced volume requirement, when set next year, will determine the level of BBD use, production, and imports that occur in 2021. Therefore, we continue to believe that approximately the same overall volume of BBD would likely be supplied in 2021 even if we were to mandate a somewhat lower or higher BBD volume for 2021. Thus, we do not expect our 2021 BBD volume requirement to result in a significant difference in the factors we consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI) in 2021.

We also considered long-term impacts of the 2021 BBD volume.[159] We find that while BBD volumes and resulting impact on the statutory factors in 211(o)(2)(B)(ii) will not likely be significantly impacted by the 2021 BBD volume in the short term, leaving room for growth of other advanced biofuels could have a beneficial impact on certain statutory factors in the long term. Notably, this incentivizes the development of other advanced biofuels with potentially superior cost, climate, environmental, and other characteristics, relative to BBD.

With the considerations discussed above in mind, as well as our analysis of the factors specified in the statute, we are proposing to set the applicable volume of BBD at 2.43 billion gallons for 2021. This volume would continue to preserve a significant gap between the advanced biofuel volume and the sum of the cellulosic biofuel and BBD volumes. This would allow other advanced biofuels to continue to compete with excess volumes of BBD for market share under the advanced biofuel standard. This would allow some long term certainty for investments on other advanced biofuels that over time could compete with BBD to fill the advanced biofuel standard. We believe this volume sets the appropriate floor for BBD, and that the volume of advanced biodiesel and renewable diesel actually used in 2021 will be driven by the level of the advanced biofuel and potentially the total renewable fuel standards that the Agency will establish for 2021. It also recognizes that while maintaining an opportunity for other advanced biofuels is important, the vast majority of the advanced biofuel used to comply with the advanced biofuel standard in recent years has been BBD. Based on information now available from recent years, despite providing a significant degree of space for ''other'' advanced biofuels, smaller volumes of ''other'' advanced have been utilized to meet the advanced standard. EPA believes that the BBD standard we are proposing today still provides sufficient incentive to producers of ''other'' advanced biofuels, while also acknowledging that the advanced standard has been met predominantly with biomass-based diesel. Our assessment of the required statutory factors and the implementation of the program supports a proposed volume of 2.43 billion gallons.

VIII. Percentage Standards for 2020

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported.

Sections II through IV provide our rationale and basis for the proposed

[156] All types of advanced biofuel, including BBD, must achieve lifecycle GHG reductions of at least 50 percent. See CAA section 211(o)(1)(B)(i), (D).

[157] See CAA section 211(o)(2)(B)(i)(IV), (II).

[158] While excess BBD production could also displace conventional renewable fuel under the total renewable standard, as long as the BBD applicable volume is lower than the advanced biofuel applicable volume our action in setting the BBD applicable volume is not expected to displace conventional renewable fuel under the total renewable standard, but rather is expected to displace other advanced biofuels. We acknowledge, however, that under certain market conditions excess volumes of BBD may also be used to displace conventional biofuels as may have been the case in 2013–16 when the prices of BBD, advanced, and conventional RINs converged. We have not, however, observed similar market dynamics in more recent years, and we think it is unlikely that BBD RINs will become the marginal biofuel used to meet the total renewable fuel standard in subsequent years. Rather, conventional biodiesel and renewable diesel have and will likely continue to play that role.

[159] ''Memorandum to docket: Draft Statutory Factors Assessment for the 2021 Biomass-Based Diesel (BBD) Applicable Volumes.'' See Docket EPA–HQ–OAR–2019–0136.

volume requirements for 2020.[160] The volumes used to determine the proposed percentage standards are shown in Table VIII–1.

TABLE VIII–1—VOLUMES FOR USE IN DETERMINING THE PROPOSED 2020 APPLICABLE PERCENTAGE STANDARDS

[Billion gallons]

Cellulosic biofuel	0.54
Biomass-based diesel	2.43
Advanced biofuel	5.04
Renewable fuel	20.04

For the purposes of converting these volumes into percentage standards, we generally use two decimal places to be consistent with the volume targets as given in the statute, and similarly two decimal places in the percentage standards. In past years we have used three decimal places for cellulosic biofuel in both the volume requirement and percentage standards to more precisely capture the smaller volume projections and the unique methodology that in some cases results in estimates of only a few million gallons for a group of cellulosic biofuel producers (see Section III for a further discussion of the proposed methodology for projecting cellulosic biofuel production and our decision to round the projected volume of cellulosic biofuel to the nearest 10 million gallons). However, the volume requirements for cellulosic biofuel have increased over time, and today's proposed volume requirements are the highest ever. We propose that volume requirements and percentage standards for cellulosic biofuel use two decimal places.

A. Calculation of Percentage Standards

To calculate the percentage standards, we are following the same methodology for 2020 as we have in all prior years. The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA, and include projections of ethanol and biomass-based diesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer under 40 CFR 80.1407.

As specified in the RFS2 final rule,[161] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. The formula specified in the regulations for calculation of the BBD percentage standard is based on biodiesel-equivalence, and thus assumes that all BBD used to satisfy the BBD standard is biodiesel and requires that the applicable volume requirement be multiplied by 1.5 in order to calculate a percentage standard that is on the same basis (*i.e.,* ethanol-equivalent) as the other three standards. However, BBD often contains some renewable diesel, and a gallon of renewable diesel typically generates 1.7 RINs.[162] In addition, there is often some renewable diesel in the conventional renewable fuel pool. As a result, the actual number of RINs generated by biodiesel and renewable diesel is used in the context of our assessment of the applicable volume requirements and associated percentage standards for advanced biofuel and total renewable fuel, and likewise in obligated parties' determination of compliance with any of the applicable standards. While there is a difference in the treatment of biodiesel and renewable diesel in the context of determining the percentage standard for BBD versus determining the percentage standard for advanced biofuel and total renewable fuel, it is not a significant one given our approach to determining the BBD volume requirement. Our intent in setting the BBD applicable volume is to provide a level of guaranteed volume for BBD, but as described in Section VII.B of the 2019 standards final rule, we do not expect the BBD standard to be binding in 2020.[163] That is, we expect that actual supply of BBD, as well as supply of conventional biodiesel and renewable diesel, will be driven by the advanced biofuel and total renewable fuel standards.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries[164] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or based on an EPA determination of ''disproportionate economic hardship'' on a case-by-case basis in response to small refinery petitions. In reviewing petitions, EPA, in consultation with the Department of Energy, determines whether the small refinery has demonstrated disproportionate economic hardship and may grant refineries exemptions upon such demonstration.

EPA has granted exemptions pursuant to this process in the past. However, at this time no exemptions have been approved for 2020, and therefore we have calculated the percentage standards for 2020 without any adjustment for exempted volumes. We are maintaining our approach that any exemptions for 2020 that are granted after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2020.[165]

C. Proposed Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume

[160] The 2020 volume requirement for BBD was established in the 2019 standards final rule (83 FR 63704, December 11, 2018).

[161] See 75 FR 14670 (March 26, 2010).

[162] Under 40 CFR 80.1415(b)(4), renewable diesel with a lower heating value of at least 123,500 Btu/gallon is assigned an equivalence value of 1.7. A minority of renewable diesel has a lower heating value below 123,500 BTU/gallon and is therefore assigned an equivalence value of 1.5 or 1.6 based on applications submitted under 40 CFR 80.1415(c)(2).

[163] 83 FR 63704, December 11, 2018.

[164] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

[165] We are not reopening this policy or any other aspect of the formula at 40 CFR 80.1405(c). Any comments received on such issues will be deemed beyond the scope of this rulemaking.

requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and projected gasoline and diesel volumes from exempt small refineries. The values of all the variables used for this final rule are shown in Table VIII.C–1.[166]

TABLE VIII.C–1—VALUES FOR TERMS IN CALCULATION OF THE PROPOSED 2020 STANDARDS[167]

[Billion gallons]

Term	Description	Value
RFV_{CB}	Required volume of cellulosic biofuel	0.54
RFV_{BBD}	Required volume of biomass-based diesel	2.43
RFV_{AB}	Required volume of advanced biofuel	5.04
RFV_{RF}	Required volume of renewable fuel	20.04
G	Projected volume of gasoline	143.49
D	Projected volume of diesel	57.06
RG	Projected volume of renewables in gasoline	14.62
RD	Projected volume of renewables in diesel	2.48
GS	Projected volume of gasoline for opt-in areas	0
RGS	Projected volume of renewables in gasoline for opt-in areas	0
DS	Projected volume of diesel for opt-in areas	0
RDS	Projected volume of renewables in diesel for opt-in areas	0
GE	Projected volume of gasoline for exempt small refineries	0.00
DE	Projected volume of diesel for exempt small refineries	0.00

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were derived from values in the April 2019 version of EIA's Short-Term Energy Outlook. An estimate of fuel consumed in Alaska, derived from the June 29, 2018 release of EIA's State Energy Data System (SEDS) and based on the 2016 volumes contained therein, was subtracted from the nationwide volumes.

Using the volumes shown in Table VIII.C–1, we have calculated the proposed percentage standards for 2020 as shown in Table VIII.C–2.

TABLE VIII.C–2—PROPOSED PERCENTAGE STANDARDS FOR 2020

	Percent
Cellulosic biofuel	0.29
Biomass-based diesel	1.99
Advanced biofuel	2.75
Renewable fuel	10.92

IX. Amendments to the RFS Program Regulations

In implementing the RFS program, we have identified several changes to the program that would assist with implementation in future years. These proposed regulatory changes comprise clarification of diesel RVO calculations, pathway petition conditions, a biodiesel esterification pathway, distillers corn oil and distillers sorghum oil pathways, and renewable fuel exporter provisions. These regulatory changes are described in this section. In addition, as stated in Section I.A.8, we are considering finalizing certain provisions of the proposed REGS rule with the final 2020 RVO rule.[168]

A. Clarification of Diesel RVO Calculations

Historically, home heating oil (HO) and diesel fuel were virtually indistinguishable because both contained the same distillation range of hydrocarbons and high level of sulfur. EPA's diesel fuel sulfur regulations forced a distinction in the marketplace beginning in the 1990s and concluding in 2010 with the phase-in of the ultra-low sulfur diesel regulations for diesel fuel used in motor vehicles and motor vehicle engines (MV diesel fuel). Similarly, beginning in 2004, EPA promulgated requirements for diesel fuel used in nonroad, locomotive, and marine vehicles and engines (NRLM diesel fuel) that concluded phasing in at the end of 2014. Thus, all diesel fuel for use in motor vehicles and motor vehicle engines, and nonroad, locomotive, and marine vehicles and engines, is currently required to meet a 15 ppm sulfur per-gallon standard, under regulations set out in 40 CFR part 80, subpart I[169] (For purposes of subpart I, such diesel fuel is also now collectively known as MVNRLM diesel fuel). We did not set standards for HO under subpart I, with the result that it remained high in sulfur content and cost less to produce than MVNRLM diesel fuel. As such, subpart I also requires all parties in the distribution system to ensure that diesel fuel containing 15 ppm sulfur or less (referred to as 15 ppm diesel fuel, ultra-low sulfur diesel fuel, or ULSD) remains segregated from higher sulfur fuels and to take measures to prevent sulfur contamination of ULSD.

The RFS regulations, which place a renewable fuel obligation (RVO) on the production and importation of diesel transportation fuel, but not on the production or importation of HO, were promulgated in 2010 and, similar to subpart I regulations, made the same presumption that HO and MVNRLM diesel fuel would be segregated. The RFS regulations did not anticipate that these fuels would become indistinguishable, have the same value in the marketplace, and be commingled in the fuel distribution system. For example, 40 CFR 80.1407 set forth requirements for obligated parties to include all products meeting the definition of MVNRLM diesel fuel, collectively called ''diesel fuel,'' at 40 CFR 80.2(qqq) that are produced or imported during a compliance period in the volume used to calculate their RVOs

[166] To determine the 49-state values for gasoline and diesel, the amount of these fuels used in Alaska is subtracted from the totals provided by EIA because petroleum based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 29, 2018 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[167] See ''Calculation of proposed % standards for 2020'' in docket EPA–HQ–OAR–2019–0136.

[168] Any comments received on REGS provisions beyond the specific provisions listed in Section I.A.8 will be deemed beyond the scope of this rulemaking.

[169] Subpart I includes an exception to this requirement that allows diesel fuel used in locomotive or marine engines to meet a 500 ppm sulfur standard if the fuel is produced from transmix processors and distributed under an approved compliance plan.

unless the diesel fuel is not transportation fuel.[170] The definitions of MV and NRLM diesel fuel state that these products include fuel that is ''made available'' for use in motor vehicles and motor vehicle engines, and nonroad, locomotive, or marine vehicles and engines.[171]

When the RFS regulations were promulgated in 2010, the lower production cost of HO relative to diesel fuel provided economic incentive for refiners, pipelines, and terminals to produce and distribute HO separately from diesel fuel. After we promulgated the RFS regulations, however, many states began implementing programs designed to reduce the sulfur content of HO to 15 ppm or less (15 ppm HO). Currently, the majority of HO is required to meet a 15 ppm sulfur standard under numerous state and city programs in the Northeast and Mid-Atlantic,[172] making HO once again indistinguishable from ULSD and of the same economic value as MVNRLM diesel fuel.[173] Further, in 2015, additional regulations became effective that required marine diesel fuel used in Emissions Control Areas (ECA marine fuel) to contain 1,000 ppm sulfur or less.[174] In response, many companies have opted to produce and distribute ECA marine fuel containing 15 ppm sulfur or less (15 ppm ECA marine fuel) fungibly with 15 ppm diesel fuel, rather than invest in infrastructure to distribute and segregate higher-sulfur ECA marine fuel. Since HO, ECA marine fuel, and other non-transportation fuels that meet a 15 ppm sulfur standard are essentially identical in the marketplace, we believe that some parties in the fuel distribution system are distributing them together—*i.e.,* commingling MVNRLM diesel fuel with 15 ppm HO and 15 ppm ECA marine fuel.

The regulations in 40 CFR part 80, subpart I, do not prohibit parties from commingling MVNRLM diesel fuel with other 15 ppm distillate fuel that is designated for non-transportation purposes. However, commingled fuel must meet all of the applicable requirements in subpart I because the resulting fuel is ''made available'' for use in motor vehicles, or nonroad, locomotive, or marine vehicles and engines.[175] This means that any refiner or importer that produces or imports 15 ppm distillate fuel that is designated for non-transportation purposes and is commingled with MVNRLM diesel fuel must also certify the fuel as meeting the sampling, testing, reporting, and recordkeeping requirements in subpart I.[176]

Although this approach does not create compliance issues relating to subpart I requirements, we are concerned that some obligated parties (*e.g.,* refiners and importers) under the RFS program may be calculating RVOs without accounting for all of their 15 ppm distillate fuel (*i.e.,* distillate fuel that contains 15 ppm sulfur or less) that is ultimately sold for use as MVNRLM diesel fuel. Specifically, we are concerned that obligated parties may be excluding 15 ppm HO or 15 ppm ECA marine fuel from their RVO calculations, and that a downstream party may be re-designating this fuel as MVNRLM diesel fuel and not incurring an RVO.[177]

With the convergence of the MVNRLM diesel fuel, HO, and ECA marine fuel sulfur standards, some stakeholders have expressed confusion to EPA on accounting for 15 ppm distillate fuel that leaves the obligated party's gate designated as HO, ECA marine fuel, or other non-transportation fuels, but is subsequently re-designated as either MVNRLM diesel fuel or ultimately used as MVNRLM diesel fuel by a downstream entity. Specifically, some obligated parties have asked whether they are required to add re-designated MVNRLM diesel fuel back to their RVO calculations while some downstream entities have asked whether they are required to incur an RVO for MVNRLM diesel fuel they re-designate from non-transportation fuel to transportation fuel.

We intended for any diesel fuel not used as transportation fuel, such as HO or ECA marine fuel, to be excluded from RVO calculations in keeping with statutory requirements.[178] We also intended for all diesel fuel ultimately used as transportation fuel to incur an RVO, even 15 ppm distillate fuel that is initially designated as non-transportation fuel and subsequently re-designated as transportation fuel by downstream parties.[179] Thus, existing regulations allow downstream parties who are registered as refiners and who comply with all sampling, testing, recordkeeping, and other refiner requirements to ''produce'' MVNRLM diesel fuel from HO, ECA marine fuel, and other non-transportation fuels. These refiners incur RVOs for all MVNRLM diesel fuel that they ''produce'' from the non-transportation fuel. However, we believe that stakeholder confusion over who should account for re-designated fuel in their RVO may be causing the omission of some re-designated MVNRLM diesel fuel from RVO calculations altogether. Therefore, we are proposing to revise the RFS regulations to more clearly specify how volumes of re-designated MVNRLM diesel fuel are accounted for in obligated parties' RVO calculations in order to ensure that the RFS mandates continue to be met.

We are proposing to clarify the requirement for refiners and importers to include distillate fuel in their RVO compliance calculations by providing exceptions for the following three additional categories of fuel:

- Distillate fuel, such as HO or ECA marine fuel, with a sulfur content greater than 15 ppm that is clearly designated for a use other than transportation fuel.
- Distillate fuel that meets 15 ppm sulfur standard, is designated for non-transportation use, and that remains completely segregated from MVNRLM diesel fuel from the point of production through to the point of use for a non-transportation purpose.
- Distillate fuel that that meets the 15 ppm diesel sulfur standard, that is ultimately used for non-transportation purposes, and that does not remain completely segregated from MVNRLM diesel fuel.

Since the first two categories of distillate fuel above are completely segregated from MVNRLM diesel fuel, we are not concerned about them being used as a transportation fuel and are therefore not proposing any additional requirements for these fuels to be excluded from a refiner or importer's RVO compliance calculations. However, because the third category of distillate fuel is not completely segregated and is indistinguishable from MVNRLM diesel

[170] See 40 CFR 80.1407(e) and (f).

[171] See 40 CFR 80.2(y) and (nnn).

[172] Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, the District of Columbia, and the city of Philadelphia.

[173] See the New England Fuel Institute's (NEFI) ''State Sulfur & Bioheat Requirements for No. 2 Heating Oil in the Northeast & Mid-Atlantic States,'' available in the docket for this action.

[174] ECA marine fuel is not transportation fuel under the RFS regulations. Therefore, refiners and importers do not incur an RVO for ECA marine fuel that they produce or import.

[175] See 40 CFR 80.2(y) and (nnn).

[176] We have received requests from a number of regulated parties asking the agency to amend the fuels regulations to allow parties to more easily mix and fungibly ship HO, ECA marine fuel, and MVNRLM fuel that meet the 15 ppm sulfur standard. In a separate action, we intend to propose additional amendments that would significantly streamline these regulations (see RIN 2061–AT31 in EPA's Regulatory Agenda).

[177] A similar situation exists with respect to #1 diesel fuel which is used/blended in the winter due to cold temperature constraints and its often-identical counterparts of kerosene and jet fuel.

[178] See 40 CFR 80.1407(f)(8).

[179] With the other exceptions listed in 40 CFR part 80.1407(f).

fuel, we are proposing additional requirements for this type of distillate fuel to be excluded from a refiner or importer's RVO compliance calculations. Our proposed approach is described in Section IX.A.1; however, we are also seeking comment on two alternative approaches, which are described in Sections IX.A.2 and 3. We encourage stakeholders to comment on all three approaches because there is a reasonable likelihood that the agency may choose to finalize one of the alternative approaches.

1. Downstream Re-Designation of Certified Non-Transportation 15 ppm Distillate Fuel to MVNRLM Diesel Fuel

In order to allow refiners and importers to exclude distillate fuel that that meets the 15 ppm diesel sulfur standard, is ultimately used for non-transportation purposes, and does not remain completely segregated from MVNRLM diesel fuel from their RVO calculations, we are proposing to define a new category of distillate fuel: Certified non-transportation 15 ppm distillate fuel (''certified NTDF''). We are proposing to define certified NTDF as distillate fuel that meets all of the following requirements:

- The fuel is certified as complying with the 15 ppm sulfur standard, cetane/aromatics standard, and all applicable sampling, testing, and recordkeeping requirements of 40 CFR part 80, subpart I.
- The fuel is designated on the product transfer document as 15 ppm HO, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.,* jet fuel, kerosene, No. 4 fuel, or distillate fuel for export only) with a notation that the fuel ''Meets all MVNRLM diesel fuel standards,'' with no designation as MVNRLM diesel fuel.

Additionally, in order for a refiner or exporter to exclude certified NTDF from their RVO calculations, they must also have a reasonable expectation that the fuel will be used as HO, ECA marine fuel, or another non-transportation purpose. This requirement is designed to prevent refiners and importers from circumventing the requirement to incur an RVO for all transportation fuel by simply designating transportation fuel as non-transportation fuel. While we recognize that the complexity of the fuel distribution system makes it difficult for refiners and importers to ensure in all situations that the fuel they produce and exclude from their RVO calculations will be used for non-transportation purposes, we are nonetheless proposing criteria that refiners or importers would need to meet to demonstrate that they have a reasonable expectation that certified NTDF will not be used as transportation fuel:

- The refiner or importer supplies areas that use HO, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in the quantities being supplied by the refiner or importer.
- The refiner or importer has entered into a contractual arrangement that prohibits the buyer from selling the fuel as MVNRLM diesel fuel.
- The volume of fuel designated as HO, ECA marine fuel, or other non-transportation purposes is consistent with the refiner's or importer's past practices or reflect changed market conditions.

In addition, EPA may consider any other relevant information in assessing whether a refiner or importer has a reasonable expectation that the fuel was used for non-transportation purposes. We seek comment on whether these criteria are appropriate to determine that a refiner or importer has a reasonable expectation that their fuel will be used for non-transportation purposes.

Our intent is to ensure that all fuel ultimately used as MVNRLM diesel fuel incurs an RVO. In order to achieve this goal, we are proposing requirements that would allow parties in the fuel distribution system (*e.g.,* downstream of the original refinery or import facility) to sell certified NTDF as MVNRLM diesel fuel without incurring an RVO if the total volume of MVNRLM diesel fuel delivered during each compliance period does not exceed the amount of MVNRLM diesel fuel received during that compliance period. Parties who re-designate certified NTDF as MVNRLM diesel fuel would be a refiner for purposes of the RFS program and would therefore be required to register as a refiner. They would also be required to maintain a running balance of MVNRLM diesel fuel that they deliver and ensure that it does not exceed the volume of MVNRLM diesel fuel that they receive during the compliance period. If downstream parties deliver a volume of MVNRLM diesel fuel that exceeds the volume of MVNRLM diesel fuel they received in that compliance period, however, they would treat the difference as diesel fuel that they ''produced'' and incur an RVO on this volume. This will properly account for the aggregate volume of non-transportation fuel that is re-designated as MVNRLM diesel fuel under the RFS program. This one-sided test allows MVNRLM diesel fuel to be sold as HO or ECA marine fuel but prevents the erosion of the renewable fuel mandate. These parties would also be subject to recordkeeping requirements to ensure the enforceability of this program.

We are also proposing corresponding revisions to the RFS program reporting requirements, including requiring refiners and importers to report the volume of MVNRLM diesel fuel they produce or import, the volume of distillate fuel they produce or import that is not transportation fuel, and the volume of distillate fuel they produce or import that is certified NTDF. We are also proposing to require downstream parties who redesignate NTDF as MVNRLM diesel fuel to submit reports to EPA identifying the volume of MVNRLM diesel fuel received, the volume of MVNRLM diesel fuel discharged, the volume of fuel re-designated from certified NTDF to MVNRLM diesel fuel, and the volume of MVNRLM diesel fuel redesignated to non-transportation use. Further, for purposes of evaluating compliance, we are also proposing to:

- Require parties who re-designate certified NTDF to MVNRLM diesel fuel to keep all records relating to these transactions.
- Prohibit a party from exceeding its balance requirements without incurring an RVO.
- Ensure that the attest auditors review relevant information to ensure compliance with applicable RFS program requirements.

2. Presumptive Inclusion of 15 ppm Sulfur Diesel Fuel

Under this alternative approach, refiners and importers would assume that any 15 ppm distillate fuel they produce or import is ultimately used as transportation fuel and would include this fuel in their RVO calculations regardless of its designation, unless a downstream party informs the refiner or importer that certain volumes of their 15 ppm distillate fuel were not used as transportation fuel. Under this approach, we would require a downstream party that sold any 15 ppm distillate fuel for purposes other than transportation fuel to notify the original refiner or importer of a 15 ppm distillate fuel's non-transportation use. We would also allow the upstream party to subtract the non-transportation volume from its RVO calculations upon notification from a downstream entity. We seek comment on whether terminals or other downstream parties could feasibly trace a volume of fuel that was sold for a non-transportation use to the original refiner and, if so, how.

Under this alternative approach, we would require refiners to report the total volume of 15 ppm diesel fuel they produce and the volume that they

subtracted from their compliance calculations for fuel that was not used at transportation fuel. We would also require refiners and importers who exclude 15 ppm distillate fuel from their RVO calculation to obtain statements from downstream parties who sell the fuel certifying that it was used for a purpose other than transportation fuel. The downstream parties would also need to maintain sales records, contracts, or other documentation demonstrating that they sold the fuel to be used for a purpose other than transportation fuel. We would also prohibit a party from violating any of these new requirements and require that the attest auditor reviews relevant information to ensure compliance with applicable RFS regulations.

3. Presumptive Exclusion of 15 ppm Sulfur Diesel Fuel

Under this alternative approach, we would propose that a refiner or importer could exclude certified NTDF from its obligated volume of transportation fuel if it has a reasonable expectation that the fuel will not be used as transportation fuel, unless a downstream party notifies the refiner or importer that the certified NTDF was re-designated as transportation fuel. Under this alternative approach, we would require the downstream party to notify the refiner or importer prior to the downstream party's re-designation of the non-transportation fuel as transportation fuel.[180] We would require a refiner or importer to include any non-transportation fuel in their obligated volume of transportation fuel if they are notified by a downstream party that the non-transportation fuel was redesignated and sold as transportation fuel. Under this approach, downstream parties would only be allowed to sell certified NTDF as MVNRLM diesel fuel if they are able to trace the redesignated fuel back to the refiner or importer who excluded the fuel from their RVO. We seek comment on whether such tracking would in fact be possible, including what types of transaction structures might be less complex to track than others. For example, a transaction between a refiner and a direct user of HO may be a relatively simple transaction to trace. We seek comment on what type of documentation could serve as the notification to the original refiner or importer of re-designation, as well as timing of notification. Under this approach, we would also revise the reporting, recordkeeping, prohibited acts, and attest engagement requirements that have been discussed in the other approaches above.

4. Potential Expansion of Scope of Proposed Clarification to Gasoline

While this proposed clarification is designed specifically to address the issue of the redesignation of 15 ppm diesel fuel, this type of situation may also arise for gasoline. We have received inquiries from stakeholders asking whether obligated parties could use a similar volume balancing approach to exclude exported volumes of gasoline from their RVO calculations. Since the gasoline benzene and sulfur programs require refiners and importers to account for specific levels of benzene and sulfur in each batch of gasoline, we have required parties to keep gasoline designated for export segregated from gasoline included in their compliance calculations. We have expected that obligated parties follow similar procedures to exclude gasoline exports from incurring an RVO under the RFS program. However, we recognize that it is much more challenging to identify specific sulfur and benzene levels for exported fuels versus simply tracking volumes exported. Therefore, we seek comment on whether we should broaden the scope of this action to cover gasoline exports or potentially other scenarios that may arise for the production and distribution of gasoline. We believe that any of the discussed options above for diesel fuel could apply to gasoline exports and the proposed regulations could be made applicable to gasoline, if finalized.

B. Pathway Petition Conditions

We are proposing to clarify our authority to enforce conditions created by requirements included in an approved pathway petition submitted under 40 CFR 80.1416. Since December 2010, we have approved over 115 pathway petitions. To qualify for the generation of RINs under an approved petition, the fuel must meet the conditions and associated regulatory provisions specified in EPA's petition approval document and the other definitional and regulatory requirements for renewable fuel specified in the CAA and EPA implementing regulations, including for RIN generation, registration, reporting, and recordkeeping. Common conditions include, but are not limited to, compliance monitoring plans detailing how parties will accurately and reliably measure and record the energy and material inputs and outputs required to ensure the lifecycle analysis, process flow diagrams showing the energy used for feedstock, fuel, and co-product operations, and certifications signed by responsible corporate officers.

We have authority to bring an enforcement action of these conditions under 40 CFR 80.1460(a), which prohibits producing or importing a renewable fuel without complying with the RIN generation and assignment requirements. The RFS regulations provide that RINs may only be generated if the fuel qualifies for a D code pursuant to 40 CFR 80.1426(f) or an approved petition submitted under 40 CFR 80.1416.[181] If any of the conditions required by an approved petition are not met, then the fuel does not qualify for a D code, and RINs may not be generated. These conditions are also enforceable under 40 CFR 80.1460(b)(2), which prohibits creating a RIN that is invalid; a RIN is invalid if it was improperly generated.[182] As stated above, a RIN is improperly generated if the fuel representing the RIN does not qualify for a D code, and by not following the all required conditions the fuel does not qualify for a D code.

We propose to modify the RFS regulations to clarify that renewable fuel must be produced in compliance with all conditions set forth in an approved petition submitted under 40 CFR 80.1416 (in addition to the applicable requirements of subpart M). We also propose to add a prohibited act for generating a RIN for fuel that fails to meet all the conditions set forth in an approved petition submitted under 40 CFR 80.1416 in order to provide more clarity regarding our ability to bring enforcement actions for failure to meet such conditions. We seek comment on these proposed clarifications.

C. Esterification Pathway

Table 1 to 40 CFR 80.1426 includes pathways for the production of biodiesel using specified feedstocks and the production process transesterification. Transesterification is the most commonly used method to produce biodiesel and involves reacting triglycerides with methanol, typically under the presence of a base catalyst.[183] While the main component of oils, fats, and grease feedstocks are typically triglycerides, other components, such as free fatty acids (FFAs), can also exist. Removal or conversion of the FFAs is important where the traditional base-

[180] This requirement would be consistent with the prohibition in 40 CFR 80.1460(c) (''[n]o person shall cause another person to commit an act in violation of any prohibited act under this section.'').

[181] See 40 CFR 80.1426(a)(1)(i).

[182] See 40 CFR 80.1431(a)(ix).

[183] Commonly used base catalysts include sodium hydroxide (NaOH), potassium hydroxide (KOH) and sodium methoxide ($NaOCH_3$).

catalyzed transesterification production process is used; if they are not removed or converted prior to this process, FFAs will react with base catalysts to produce soaps that inhibit the transesterification reaction.

One of the most widely used methods for treating biodiesel feedstocks with a higher FFA content is acid catalysis. Acid catalysis typically uses a strong acid, such as sulfuric acid, to catalyze the esterification of the FFAs prior to the transesterification of the triglycerides as a pre-treatment step. Acid esterification can be applied to feedstocks with FFA contents above 5% to produce biodiesel. Because the transesterification of triglycerides is slow under acid catalysis, a technique commonly used to overcome the reaction rate issue is to first convert the FFAs through an acid esterification (also known as an acid ''pretreatment'' step), and then follow-up with the traditional base-catalyzed transesterification of triglycerides.

Under the RFS2 final rule, biodiesel from biogenic waste oils/fats/greases qualifies for D-codes 4 and 5 using a transesterification process. This conclusion was based on the analysis of yellow grease as a feedstock, where there was an acid pretreatment of the FFAs contained in the feedstock. In fact, one of the material inputs assumed in the modeling for the final RFS2 rule yellow grease pathway was sulfuric acid, which is the catalyst commonly used for acid esterification. As we had not stipulated transesterification with esterification pretreatment as a qualified production process in rows F and H to Table 1 to 40 CFR 80.1426, we are proposing to revise these entries to include esterification as a pretreatment step to transesterification.[184]

Further, there are feedstocks that may contain higher levels of FFAs compared to those included in the modeling for the RFS2 final rule from which FFAs could be seperated and processed into biodiesel through esterification.[185] In the modeling analysis, we evaluated the key variables associated with these high levels of FFAs to determine whether they might cause the biodiesel produced from these high-FFA feedstocks via esterification or transesterification with esterification pretreatment to exceed the lifecycle GHG threshold of 50%. The National Biodiesel Board (NBB) conducted a comprehensive survey of the actual energy used by commercial biodiesel production plants in the U.S.[186] The survey depicts the amount of energy and incidental process materials such as acids used to produce a gallon of biodiesel. The survey data returned represents 37% of the surveyed 230 NBB biodiesel members in 2008 and includes producers using a variety of virgin oils and recycled or reclaimed fats and oils. While there is no specific data on the FFA content of the feedstocks used, the feedstocks did include reclaimed greases, which represent the feedstocks which typically have the highest FFA content. As the data is partially aggregated, we used the maximum surveyed electricity and natural gas used at the facilities and a high estimate of ''materials used'' based on a sum of industry averages for all process materials for calculating potential GHG emissions.[187] Even though some of the facilities might be processing feedstocks with relatively low FFA content, we believe that using these maximum observed inputs for energy used plus a high estimate for process materials used will result in the highest GHG emissions profile estimate for biodiesel production GHG emissions.

Using the same methodology as was used for the yellow grease modeling under the RFS2 final rule, but using the high energy and materials use assumptions per the above discussion and omitting any glycerin co-product credit, we estimate the emissions from biodiesel processing via esterification at 23,708 grams carbon dioxide-equivalent per million British Thermal Units (gCO2eq per mmBtu) of biodiesel. The estimated GHG emissions reduction for the entire process is a 71% reduction relative to the petroleum diesel baseline. Since the GHG threshold is a 50% reduction for biomass-based diesel and advanced biofuel, we believe that there is a large enough margin in the results to reasonably conclude that biodiesel using esterification of specified feedstocks with any level of FFA content meets the biomass-based diesel and advanced biofuel 50% lifecycle GHG reduction threshold. Since the biodiesel modeling completed for the final RFS2 rule includes esterification upstream of the transesterification process, and since, as described below even using worst case assumptions the biodiesel produced from these feedstocks will still qualify as advanced biofuel with the inclusion of the esterification process step, we again propose that it is appropriate to revise Table 1 to 40 CFR 80.1426 to include esterification as a qualified process under which biodiesel can be produced from the feedstocks currently listed in rows F and H. This includes processes that produce biodiesel through esterification with no subsequent transesterification of the output from the esterification process.

This addition of an esterification process will allow parties who have processing units that can take high-FFA feedstocks listed in rows F and H of Table 1 to 40 CFR 80.1426 and separate the FFAs and triglycerides for chemical processing in separate standalone esterification and transesterification units to generate RINs for the biodiesel produced. It is important to note that while this proposal would allow the separation of FFAs and triglycerides in qualified high-FFA feedstocks at the facility producing the biodiesel through these processes, we have determined that regulatory amendments would be needed to address situations where this separation takes place at a facility other than the ultimate renewable fuel production facility. In the Renewables Enhancement and Growth Support (REGS) rule, we proposed amendments to the RFS regulations to provide an appropriate regulatory structure for the generation of RINs for renewable fuel produced from a biointermediate,[188] but those regulations have not been finalized. Therefore, any FFAs separated from triglycerides in a feedstock at a location other than the biodiesel production facility would be considered a biointermediate from which RINs cannot currently be generated.

[184] In 2012, we issued a direct final rule and a parallel proposed rule (see 77 FR 700 and 77 FR 462, respectively; January 5, 2012) that would have determined that, among other regulatory changes, biodiesel produced from esterification met the GHG reduction requirements. Because we received adverse comment, we withdrew the direct final rule in its entirety (see 77 FR 13009, March 5, 2012). In the 2013 final rule based on the parallel proposal (78 FR 14190, March 5, 2013), we decided not to finalize a determination at that time on biodiesel produced from esterification and noted that we would instead make a final determination at a later time.

[185] EPA. 2010. RFS Program (RFS2) Regulatory Impact Analysis, February 2010, EPA–420–R–10–006, Chapter 2 (Lifecycle GHG analysis), Section 2.4.7.3.3.

[186] National Biodiesel Board, Comprehensive Survey on Energy Use for Biodiesel Production (2008) *http://www.biodiesel.org/news/RFS/rfs2docs/NBB%20Energy%20Use%20Survey%20FINAL.pdf.*

[187] According to the survey, the maximum electricity use for a producer reached as high as 3,071 Btu per gallon biodiesel. This is about 5 times higher than the industry average. The maximum natural gas usage for a producer reached as high as 12,324 Btu per gallon biodiesel, which is about 3.5 times higher than the industry average. For ''materials used'' only an industry average for each material was provided in the survey. Therefore, as a conservative estimate, we totaled all the average material inputs to equal 0.51 kg/gal biodiesel even though not all facilities are likely to use each and every one of the process materials listed in the survey (*e.g.,* we totaled all the acids used even though a facility is not likely to use each different acid).

[188] See 81 FR 80828 (November 16, 2018).

Therefore, we are proposing to revise rows F and H of Table 1 to 40 CFR 80.1426 by changing the existing process ''Trans-Esterification'' to be ''Transesterification with or without esterification pretreatment'' and adding ''esterification'' as approved production process. We are proposing these revisions to rows F and H without modifying the feedstocks listed in those rows, as these changes not intended to make any additional feedstocks eligible beyond those already listed in rows F and H.

D. Distillers Corn Oil and Distillers Sorghum Oil Pathways

We are proposing to add distillers corn oil and commingled distillers corn oil and sorghum oil as feedstocks to row I of Table 1 to 40 CFR 80.1426. While the lifecycle GHG emissions associated with using a very similar feedstock—distillers sorghum oil—as part of this pathway were evaluated in the grain sorghum oil pathway final rule (''sorghum oil rule''),[189] these two feedstocks were not added to row I as part of that rulemaking. This section discusses the proposal to add distillers corn oil and commingled distillers corn oil and sorghum oil as feedstocks to row I and presents the lifecycle GHG emissions associated with these proposed pathways. We also explain why the most likely effect of adding these pathways will be to reduce the number of petitions submitted pursuant to 40 CFR 80.1416.

The March 2010 RFS2 rule included pathways for biodiesel and renewable diesel produced from non-food grade corn oil. The March 2013 Pathways I rule added pathways for heating oil and jet fuel from non-food grade corn oil in rows F and H of Table 1 to 40 CFR 80.1426, and added pathways for naphtha and LPG from *Camelina sativa* oil in row I.[190] The sorghum oil rule amended the RFS regulations to add a new definition of distillers sorghum oil and to replace existing references to non-food grade corn oil with the newly defined term distillers corn oil. That rule also added a number of pathways to rows F and H of Table 1 to 40 CFR 80.1426 for biodiesel, renewable diesel, jet fuel, and heating oil produced from distillers sorghum oil and commingled distillers sorghum and corn oil. Pathways for naphtha and LPG produced from distillers sorghum oil via a hydrotreating process were also added to row I of Table 1 to 40 CFR 80.1426.

Commingled distillers corn oil and sorghum oil was added as a feedstock to rows F and H of Table 1 to 40 CFR 80.1426 because distillers sorghum oil is often co-produced with distillers corn oil at ethanol plants using a combination of grain sorghum and corn as feedstocks for ethanol production. Due to the recovery process of the oils from the distillers grains and solubles (DGS), where the ethanol plant is using a feedstock that combines grain sorghum and corn, it is not possible to physically separate the distillers sorghum and corn oils into two streams, nor is it possible to account for the volume of sorghum oil or corn oil in this mixture. For these and other reasons,[191] after concluding that distillers sorghum oil satisfies the 50% GHG reduction threshold required for the advanced biofuel and biomass-based diesel, we added both distillers sorghum oil and ''commingled distillers corn oil and sorghum oil'' to rows F and H of Table 1 to 40 CFR 80.1426 in the sorghum oil rule. However, unlike rows F and H, row I did not include a pathway using ''non-food grade corn oil'' prior to that final rule, nor did we propose to add ''distillers corn oil'' to that row in the December 2017 sorghum oil proposed rule.[192] Thus, in the absence of an assessment of lifecycle emissions showing that distillers corn oil also meets the GHG reduction threshold required for the pathways therein, in sorghum oil rule we decided ''it would be premature for EPA to add either distillers corn oil or commingled distillers corn and sorghum oil as feedstocks in row I.'' [193] Currently, in order to generate D-code 5 RINs for naphtha and/or LPG produced from distillers corn oil and/or commingled distillers corn and sorghum oil, a fuel producer would first need to petition EPA pursuant to 40 CFR 80.1416, have EPA review and approve their requested pathway, and then submit and have EPA accept the registration for the new pathway. Adding these feedstocks to row I would eliminate the need for these petitions.

Table IX.D–1 shows the lifecycle GHG emissions associated with renewable diesel, jet fuel, naphtha, and LPG produced from distillers sorghum oil. These results are based on the analysis completed for the sorghum oil rule.[194] The lifecycle GHG emissions associated with the statutory baseline fuels, 2005 average diesel and gasoline, are shown for comparison. Based on these results, we are proposing that naphtha and LPG produced from distillers corn oil and commingled distillers corn and sorghum oil satisfy the 50% lifecycle GHG reduction requirement at CAA section 211(o)(1)(B), relative to the statutory petroleum baseline, to be eligible for advanced biofuel RINs.

TABLE IX.D–1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH BIOFUELS PRODUCED FROM DISTILLERS SORGHUM OIL ($kgCO_2$-eq/mmBtu)

Fuel	Renewable diesel, jet fuel	Naphtha	LPG	2005 Diesel baseline	2005 Gasoline baseline
Production Process	Hydrotreating			Refining	
Livestock Sector Impacts	19.4	19.4	19.4		
Feedstock Production	6.2	6.2	6.2	18.0	19.2
Feedstock Transport	0.3	0.3	0.3		
Feedstock Pretreatment	0.0	0.0	0.0		
Fuel Production	8.0	8.0	8.0		
Fuel Distribution	0.8	0.8	0.8		
Fuel Use	0.7	1.7	1.5	79.0	79.0
Total	35.4	36.4	36.2	97.0	98.2

[189] See 83 FR 37735 (August 2, 2018).

[190] See 78 FR 14190 (March 5, 2013).

[191] For the other reasons discussed in the sorghum oil rule preamble, see 83 FR 37737–39 (August 2, 2018).

[192] See 82 FR 61205 (December 27, 2017).

[193] See 83 FR 37738 (August 2, 2018).

[194] See Table III.4 of the sorghum oil rule preamble (83 FR 37743, August 2, 2018).

TABLE IX.D–1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH BIOFUELS PRODUCED FROM DISTILLERS SORGHUM OIL ($kgCO_2$-eq/mmBtu)—Continued

Fuel	Renewable diesel, jet fuel	Naphtha	LPG	2005 Diesel baseline	2005 Gasoline baseline
Percent Reduction	64%	63%	63%		

Although the lifecycle GHG analysis for the sorghum oil rule focused on distillers sorghum oil, we believe it is also applicable to distillers corn oil for purposes of determining whether the distillers corn oil pathways under consideration satisfy the 50% GHG reduction requirement. For the sorghum oil rule, we estimated the livestock sector impacts associated with distillers sorghum oil based on a set of assumptions about the type of feed that would need to backfill for the reduction in mass of de-oiled DGS as compared to full-oil DGS. For that analysis we calculated a substitution rate for how much corn would be needed to backfill in livestock feed for every pound of grain sorghum oil diverted to biofuel production, by livestock type. The amounts of corn needed to replace each pound of extracted sorghum oil were largely based on studies that evaluated the nutritional values of regular and reduced-oil distillers grains produced as a co-product of corn starch ethanol.[195] Given that the underlying data for our distillers sorghum oil assessment was largely based on studies conducted on corn ethanol co-products, we believe it is appropriate to apply the same results to similar proposed pathways using distillers corn oil feedstock.

One difference between distillers corn oil and sorghum oil is the rate of oil recovered per pound of corn versus grain sorghum processed. The distillers sorghum oil petition submitted by the National Sorghum Producers reported that 0.67 pounds of distillers sorghum oil are recovered per bushel of grain sorghum processed to ethanol, whereas 0.84 pounds of distillers corn oil is extracted per bushel of corn.[196] Adjusting for this difference results in slightly lower livestock sector GHG emissions associated with naphtha and LPG produced from distillers corn oil.[197] Based on this adjustment the results in Table IX.D–1 change from a 63% GHG reduction for naphtha and LPG produced from distillers sorghum oil to a 64% reduction for naphtha and LPG production from distillers corn oil. We therefore believe it is appropriate to conclude that these pathways satisfy the 50% GHG reduction requirement to qualify as advanced biofuel under the RFS program.

E. Clarification of the Definition of Renewable Fuel Exporter and Associated Provisions

We propose to clarify our definition of exporters of renewable fuel to ensure appropriate flexibility for market participants and to deter sham transactions. The current RFS regulations require an exporter of renewable fuel to acquire sufficient RINs to comply with all applicable RVOs incurred from the volumes of the renewable fuel exported.[198] Exporter of renewable fuel is currently defined in 40 CFR 80.1401 as: ''(1) A person that transfers any renewable fuel from a location within the contiguous 48 states or Hawaii to a location outside the contiguous 48 states and Hawaii; and (2) A person that transfers any renewable fuel from a location in the contiguous 48 states or Hawaii to Alaska or a United States territory, unless that state or territory has received an approval from the Administrator to opt in to the renewable fuel program pursuant to § 80.1443.'' During implementation of the RFS program, we have observed contract structuring that may erode compliance assurance. For example, we have observed instances of export transactions in which parties have sold renewable fuel for export to entities purporting to accept RIN retirement obligations that were then not fulfilled by the buyer. We believe that these instances are related to potential ambiguity in the definition of ''exporter of renewable fuel'' as to what parties ''transfer'' fuel out of RFS program areas. Therefore, we are proposing an update to the definition language in this action to resolve the potential ambiguity and clarify the parties who may, and may not, be liable for exporter obligations. We have also observed that this language could be construed to include parties who transfer renewable fuel from the contiguous 48 states and Hawaii, to an area (either Alaska or a U.S. territory) that has received an approval to opt in to the RFS program. We did not intend to impose a RIN retirement obligation on these parties and are further proposing to clarify that exporting renewable fuel to opt-in areas does not incur an exporter renewable volume obligation as detailed below.

We considered whether to amend the RFS program regulations to be consistent with concepts from the Foreign Trade Regulations (FTR) and other federal export-related regulations, such as United States Principal Party in Interest (USPPI) and Foreign Principal Party in Interest (FPPI).[199] However, the FTR and other export-related obligations in other federal programs use a traditional definition of ''export'' where exported goods leave the U.S. The RFS program addresses obligations incurred through the transfer of renewable fuel from areas covered by the program to both domestic and foreign areas not covered by the program. For instance, the transport of goods from Oregon to Alaska would not qualify as export under most federal export regulations, but the transport of biofuel from Oregon, a covered area, to Alaska, an uncovered

[195] See Table III.2 (Full-Oil and Reduced-Oil Sorghum Distillers Grains with Solubles Displacement Ratios) of the sorghum oil rule (83 FR 37741, August 2, 2018) and accompanying footnote number 36, which lists the sources for the data in that table.

[196] See Table 4 of ''Grain Sorghum Oil Pathway Petition,'' Docket Item No. EPA–HQ–OAR–2017–0655–0005.

[197] The source of the difference is the amount of corn needed to replace one pound of full-oil versus reduced-oiled DDGS in beef cattle diets. In our analysis for the sorghum oil rule, we assumed, based on the best available data provided by NSP, USDA and commenters, that reduced-oil DDGS are replaced at a lower rate (1.173 lbs corn per lbs DDGS) than full-oil DDGS (1.196 lbs corn per lbs DDGS). Increasing the rate of oil extraction produces less de-oiled DDGS and requires corn replacement at the lower rate of 1.173. Thus, all else equal, higher rates of oil extraction result in lower GHG emissions per pound of oil extracted. It's possible this effect would disappear if we had higher resolution data on corn displacement ratios for DDGS with different oil contents, but such data are currently not available.

[198] We are not reconsidering or seeking comment on our well-settled policy of exporter RVOs. Exporters of renewable fuel must continue to acquire sufficient RINs to comply with all applicable RVOs, and as such we are not making any substantive changes to the relevant provisions at 40 CFR 80.1430(a) or (b). Any comments on the legality or propriety of the exporter renewable volume obligations, or the substance of 40 CFR 80.1430(a) or (b), are beyond the scope of this action.

[199] See, *e.g.,* 15 CFR 772.1 (defining exporter as ''[t]he person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States'').

area (unless Alaska chooses to opt in), would qualify as export under the RFS program. In addition, if we only adopted the FTR approach to allow allocation of exporter obligations among parties to an export transaction, we have concerns that a party that is insolvent or lacking assets in the United States could undertake those obligations and enforcement efforts could become overly resource intensive where the fuel has left the country. Given our concerns along with the inconsistency between the RFS program requirements and other export regulations, we do not believe it would be appropriate to amend the RFS program regulations to define an exporter as the USPPI or the FPPI.

In reviewing the FTR, we also considered the concept of routed export transactions and the associated flexibility for parties to an export transaction to structure that transaction to place some responsibilities with an FPPI.[200] We believe that this framework is reflective of market custom, practice, and capability to contractually allocate liabilities and indemnities among parties to a commercial transaction. We prefer regulations that accommodate these flexibilities, while also balancing the need to protect RFS program integrity. Specifically, we want to allow parties to an export transaction to allocate RFS program exporter obligations as they see fit among themselves but protect against contract structuring that may erode compliance assurance.

Therefore, we are proposing to revise the definition of exporter of renewable fuel to clarify that it is ''all buyers, sellers, and owners of the renewable fuel in a transaction that results in renewable fuel being transferred from a covered location to a destination outside of any covered location.'' In conjunction with this proposed revision, we are proposing a definition of covered location as ''the contiguous 48 states, Hawaii, and any state or territory that has received an approval from the Administrator to opt-in to the RFS program pursuant to § 80.1443.'' As described above, we believe that this revised definition improves clarity on what constitutes an ''export'' under the RFS program (*e.g.,* how transfers to and from the contiguous 48 states and Hawaii relate to Alaska and U.S. territories). Our proposed regulations seek to permit contract flexibilities frequently employed in export transactions with respect to export obligations under other regulatory programs, such as the FTR, while providing compliance assurance so as to maintain a level playing field among would-be exporters and ensure RIN retirement so as to maintain the integrity of that market in accordance with the regulatory requirements.

Under the proposed definition, multiple parties may meet the definition of an exporter of renewable fuel. For instance, a person holding title to renewable fuel in the U.S. may sell renewable fuel to another person (either inside or outside of the covered areas) and cause the renewable fuel to leave the covered areas. Further, that buyer and seller may have a third party hold title to the renewable fuel during transit out of the covered areas. In this case, the buyer and the seller, both of whom are also owners of the renewable fuel, and the third-party holding company, as another owner of the renewable fuel in the transaction, would be jointly-and-severally liable for complying with the exporter provisions.[201]

EPA does not consider a person to be an exporter of renewable fuel if that person does not know or have reason to know that the renewable fuel will be exported. For instance, a renewable fuel producer who produces a batch of fuel, generates RINs, and sells the renewable fuel with attached RINs into the fungible fuel distribution system would not be considered an exporter of renewable fuel under the proposed definition unless they know or have reason to know that the batch of fuel would be exported. That is, the mere fact that a producer introduces renewable fuels into the stream of commerce, coupled with the fact that a significant portion of the overall biofuel is exported, does not make the producer an exporter of renewable fuel.

Our proposed regulations create broad flexibility for parties to assign responsibilities as they see fit among themselves in structuring an export transaction. These parties may contractually allocate RIN retirement, and associated registration, reporting, and attest engagement obligations, to any one of the parties that meets the definition of an exporter of renewable fuel. The party undertaking these requirements would then register as an exporter of renewable fuel as set forth in 40 CFR 80.1450(a). This approach is also consistent with our approach to the term ''refiner,'' under which multiple parties could be considered the refiner of a batch of fuel. In such instances, we have stated that each party meeting the definition of refiner will be held jointly-and-severally liable for refiner requirements, and we are proposing to adopt that approach for exporters of renewable fuel.[202]

We believe that the proposed amendments clarifying the definition of exporter of renewable fuel will provide flexibility to all parties in transactions that result in the transfer of renewable fuel from a covered location to locations outside of any covered location to contractually allocate RFS program obligations, indemnities, and pricing as they see fit in light of the regulatory requirements. Further, the existing RFS regulations provide that ''[n]o person shall cause another person to commit an act in violation of any prohibited act under this section.'' [203] We believe that this prohibition will deter parties from engaging in sham transactions to evade RIN retirement obligations by transferring ownership to undercapitalized entities that do not meet their RIN retirement obligations. We are soliciting comment on this clarification, including any ambiguities that may persist in the proposed revised definition.

Finally, we are proposing to make changes throughout the RFS regulations to more consistently use the term ''exporter of renewable fuel'' rather than the term ''exporter.'' These clarifying edits reflect that the ''exporter of renewable fuel'' may be different than the ''exporter'' under other state and federal regulatory programs.

X. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0136, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. 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

[200] Routed export transaction is the term used to describe an export transaction in which an FPPI directs the movement of goods out of the U.S. and authorizes a U.S. agent to file certain information required by the FTR.

[201] This example is meant to be a stylized illustration of how our proposed regulations could apply. It is not meant to exhaustively detail the entities that could meet the definition of exporter of renewable fuel in this type of transaction. To the extent that other parties meet the definition of exporter of renewable fuel, they would also be subject to the exporter provisions.

[202] See ''Consolidated List of Reformulated Gasoline and Anti-Dumping Questions and Answers: July 1, 1994 through November 10, 1997,'' EPA420–R–03–009, at 256 (July 2003) (discussing a scenario in which two parties would be considered refiners and would be independently responsible for all refinery requirements, which would only need to be met once).

[203] See 40 CFR 80.1460(c).

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of illustrative costs associated with this action. This analysis is presented in Section VI.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the illustrative costs associated with this action. This analysis is presented in Section VI.

C. Paperwork Reduction Act (PRA)

The existing Information Collection Request (ICR) covering the RFS program is entitled ''Recordkeeping and Reporting for the Renewable Fuel Standard Program,'' EPA ICR No. 2546.01, OMB Control Number 2060–NEW; it is currently under OMB review. The existing RFS ICR covers registration, recordkeeping, and reporting requirements currently in 40 CFR part 80, subpart M. The changes affecting RVO calculations will not change the recordkeeping and reporting burdens vis-à-vis the existing collection. Certain of the proposed amendments in this action would result in an additional burden. The information collection activities related to the proposed amendments to the RFS regulations in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. You can find a copy of the ICR in the docket for this rule, identified by EPA ICR Number 2595.01, OMB Control Number 2060–NEW, and it is briefly summarized here. The parties for whom we anticipate an increase in burden are generally described as RIN generators (specifically, those who are producers of renewable fuel) due the proposed amendments related to pathways, and those who are generally described as obligated parties (specifically, those who are refiners and importers) due to the proposed provisions for certified NTDF. The supporting statement clearly indicates the proposed amendments and includes detailed tables with regulatory burden laid out by type of party, regulatory citation, description of information to be collected, estimated burden in hours and dollars, and reporting form or format. The following summarizes the burden:

Respondents/affected entities: The respondents to this information collection fall into the following general industry categories: Petroleum refineries, ethyl alcohol manufacturers, other basic organic chemical manufacturing, chemical and allied products merchant wholesalers, petroleum bulk stations and terminals, petroleum and petroleum products merchant wholesalers, gasoline service stations, and marine service stations.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 6,323.

Total number of responses: 357,826.

Frequency of response: Quarterly, annually, and occasionally.

Total estimated burden: 28,902 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,162,321 (per year).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than August 28, 2019. EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. With respect to the proposed amendments to the RFS regulations, this action will not impose any requirements on small entities that were not already considered under the final RFS2 regulations. This action makes relatively minor corrections and modifications to those regulations, and we do not anticipate that there will be any significant costs or cost savings associated with these proposed revisions.

With respect to the proposed 2020 percentage standards, we have evaluated the impacts on small entities from two perspectives: As if the standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the standards as if they were a standalone action separate and apart from the original rulemaking that established the RFS2 program, the standards could be viewed as increasing the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements by 120 million gallons between 2019 and 2020. To evaluate the impacts of the volume requirements on small entities relative to 2019, we have conducted a screening analysis [204] to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule will not be significant. We have reviewed and assessed the available information, which shows that obligated parties,

[204] ''Screening Analysis for the Proposed Renewable Fuel Standards for 2020,'' memorandum from Dallas Burkholder and Nick Parsons to EPA Air Docket EPA–HQ–OAR–2018–0205.

including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[205] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs was not recovered by obligated parties, and we used the maximum values of the costs discussed in Section VI and the gasoline and diesel fuel volume projections and wholesale prices from the April, 2019 version of EIA's Short Term Energy Outlook, along with current wholesale biofuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales.

While the screening analysis described above supports a certification that this rule will not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of our ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule, which was the rule that implemented the entire program as required by EISA 2007.[206] As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, we conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, we estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this proposed rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. This rule proposes to increase the 2020 cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements by 120 million gallons relative to the 2019 volume requirements, but those volumes remain significantly below the statutory volume targets analyzed in the RFS2 final rule. Compared to the burden that would be imposed under the volumes that we assessed in the screening analysis for the RFS2 final rule (*i.e.,* the volumes specified in the Clean Air Act), the volume requirements proposed in this rule reduce burden on small entities. Regarding the BBD standard, we are proposing to maintain the volume requirement for 2020 at the same level as 2019. While this volume is an increase over the statutory minimum value of 1 billion gallons, the BBD standard is a nested standard within the advanced biofuel category, which we are significantly reducing from the statutory volume targets. As discussed in Section VII, the BBD volume requirement is below what is anticipated to be produced and used to satisfy the advanced biofuel requirement. The net result of the standards being proposed in this action is a reduction in burden as compared to implementation of the statutory volume targets assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, we realize that there may be cases in which a small entity may be in a difficult financial situation and the level of assistance afforded by the program flexibilities is insufficient. For such circumstances, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[207] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) that allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that the refinery is experiencing a ''disproportionate economic hardship.'' EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief (see 40 CFR 80.1442(h)). We have currently identified a total of 9 small refiners that own 11 refineries subject to the RFS program, all of which are also small refineries.

We evaluate these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, we consult with the U.S. Department of Energy and consider the findings of DOE's 2011 Small Refinery Study and other economic factors. To date, EPA has adjudicated petitions for exemption from 35 small refineries for the 2017 RFS standards (10 of which are owned by a small refiner).[208]

In sum, this proposed rule will not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to implement) and available information shows that the impact on small entities from implementation of this rule will not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program. We have therefore concluded that this action will have no net regulatory burden for directly regulated small entities.

[205] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, November 2017.

[206] 75 FR 14670 (March 26, 2010).

[207] See CAA section 211(o)(9)(B).

[208] EPA is currently evaluating 1 additional 2017 petition and 39 2018 petitions (10 of which are owned by a small refiner). More information on Small Refinery Exemptions is available on EPA's public website at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.*

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes the required renewable fuel content of the transportation fuel supply for 2020, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and security and lowering lifecycle GHG emissions of transportation fuel.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This regulatory action does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations.

XII. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: July 5, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Section 80.1401 is amended by adding in alphabetical order definitions for ''*Certified non-transportation 15 ppm distillate fuel* or *certified NTDF*'' and ''*Covered location*'' and revising the definition of ''*Exporter of renewable fuel*'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Certified non-transportation 15 ppm distillate fuel or *certified NTDF* means distillate fuel that meets all of the following:

(1) It has been certified as complying with the 15 ppm sulfur standard, cetane/aromatics standard, and all applicable sampling, testing, and recordkeeping requirements of subpart I of this part.

(2) It has been designated as 15 ppm heating oil, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.,* jet fuel, kerosene, No. 4 fuel, or distillate fuel for export only) on its product transfer document and has not been designated as MVNRLM diesel fuel.

(3) The PTD for the distillate fuel meets the requirements in § 80.1453(e).

* * * * *

Covered location means the contiguous 48 states, Hawaii, and any state or territory that has received an approval from the Administrator to opt-in to the renewable fuel program pursuant to § 80.1443.

* * * * *

Exporter of renewable fuel means all buyers, sellers, and owners of the renewable fuel in a transaction that results in renewable fuel being transferred from a covered location to a destination outside of the covered locations.

* * * * *

■ 3. Section 80.1405 is amended by adding paragraph (a)(11) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(11) *Renewable Fuel Standards for 2020.*

(i) The value of the cellulosic biofuel standard for 2020 shall be 0.29 percent.

(ii) The value of the biomass-based diesel standard for 2020 shall be 1.99 percent.

(iii) The value of the advanced biofuel standard for 2020 shall be 2.75 percent.

(iv) The value of the renewable fuel standard for 2020 shall be 10.92 percent.

* * * * *

■ 4. Section 80.1407 is amended by adding paragraphs (f)(9) through (11) to read as follows:

§ 80.1407 How are the Renewable Volume Obligations calculated?

* * * * *

(f) * * *

(9) Distillate fuel with a sulfur content greater than 15 ppm that is clearly

designated for a use other than transportation fuel, such as heating oil or ECA marine fuel.

(10) Distillate fuel that meets a 15 ppm sulfur standard, is designated for non-transportation use, and that remains completely segregated from MVNRLM diesel fuel from the point of production through to the point of use for a non-transportation purpose, such as heating oil or ECA marine fuel.

(11) Certified NTDF, if the refiner or importer has a reasonable expectation that the fuel will be used for non-transportation purposes. To establish a reasonable expectation that the fuel will be used for non-transportation purposes, a refiner or importer must, at a minimum, do the following:

(i) Demonstrate that the refiner or importer supplies areas that use heating oil, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in the quantities being supplied by the refiner or importer.

(ii) Demonstrate that the refiner or importer has entered into a contractual arrangement that prohibits the buyer from selling the fuel as MVNRLM diesel fuel.

(iii) Demonstrate that the volume of fuel designated as heating oil, ECA marine fuel, or other non-transportation purposes is consistent with the refiner's or importer's past practices or reflect changed market conditions.

(iv) EPA may consider any other relevant information in assessing whether a refiner or importer has a reasonable expectation that the fuel was used for non-transportation purposes.

■ 5. Section 80.1408 is added to read as follows:

§ 80.1408 What are the requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

(a) Parties that redesignate certified NTDF as MVNRLM diesel fuel must meet all of the following requirements:

(1) Register as a refiner under § 80.76 and as an obligated party under § 80.1450(a).

(2) Maintain a running balance of MVNRLM diesel fuel that they discharge and receive.

(i) Parties whose annual running balance at the end of the compliance period shows that the volume of MVNRLM diesel fuel discharged exceeds the volume of MVNRLM diesel fuel received incur an RVO for the volume of MVNRLM diesel fuel discharged above the volume of MVNRLM diesel fuel received during the compliance period. The volume of MVNRLM diesel fuel discharged above the volume of MVNRLM diesel fuel received is considered diesel fuel pursuant to § 80.1407(e) and contributes towards the party's annual RVO calculations.

(ii) Parties whose running balance for the compliance period shows that the volume of MVNRLM diesel fuel discharged did not exceed the volume of MVNRLM diesel fuel received do not incur an RVO on the MVNRLM diesel fuel for the compliance period.

(3) Comply with the reporting requirements of § 80.1451(a)(1)(xix) and (a)(3)(i).

(4) Comply with the recordkeeping requirements of § 80.1454(t).

(5) Comply with the attest engagement requirements of §§ 80.1464 and 80.1475, as applicable.

(b) Parties that incur an RVO under paragraph (a)(2)(i) of this section must comply with all applicable requirements for obligated parties under this subpart.

■ 6. Section 80.1426 is amended by:

■ a. Revising paragraph (a)(1)(iii); and

■ b. Revising table 1 in paragraph (f)(1) the entries ''F'', ''H'', and ''I''.

The revisions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

(a) * * *

(1) * * *

(iii) The fuel was produced in compliance with the registration requirements of § 80.1450, the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, all conditions set forth in an approved petition submitted under § 80.1416, and all other applicable regulations of this subpart M.

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-code
*	*	*	*	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
*	*	*	*	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil; Distillers corn oil; Commingled distillers corn oil and distillers sorghum oil.	Hydrotreating	5
*	*	*	*	*

* * * * *

■ 7. Section 80.1427 is amended by:

■ a. Revising in paragraph (b)(2) the definition of ''RVO_i''; and

■ b. Revising paragraph (c)(2).

The revisions read as follows:

§ 80.1427 How are RINs used to demonstrate compliance?

* * * * *

(b) * * *

(2) * * *

RVO_i = The Renewable Volume Obligation for the obligated party or exporter of renewable fuel for calendar year i, in gallons.

* * * * *

(c) * * *

(2) In fulfillment of its ERVOs, each exporter of renewable fuel is subject to the provisions of paragraphs (a)(2), (a)(3), (a)(6), and (a)(8) of this section.

* * * * *

■ 8. Section 80.1429 is amended by revising paragraph (b)(3) to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(3) Any exporter of renewable fuel must separate any RINs that have been assigned to the exported renewable fuel volume. An exporter of renewable fuel may separate up to 2.5 RINs per gallon of exported renewable fuel.

* * * * *

■ 9. Section 80.1430 is amended by:

■ a. Revising paragraph (a);

■ b. Revising in paragraph (b)(1) the definition of ''k'';

■ c. Revising paragraphs (c), (d)(1), and (e) introductory text; and

■ d. Adding paragraph (h).

The revisions and addition read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

(a) Any exporter of renewable fuel, whether in its neat form or blended shall acquire sufficient RINs to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel. No provision of this section applies to renewable fuel purchased directly from the renewable fuel producer and for which the exporter of renewable fuel can demonstrate that no RINs were generated through the recordkeeping requirements of § 80.1454(a)(6).

(b) * * *

(1) * * *

k = A discrete volume of renewable fuel that the exporter of renewable fuel knows or has reason to know is cellulosic biofuel that is exported in a single shipment.

* * * * *

(c) If the exporter of renewable fuel knows or has reason to know that a volume of exported renewable fuel is cellulosic diesel, the exporter of renewable fuel must treat the exported volume as either cellulosic biofuel or biomass-based diesel when determining his Renewable Volume Obligations pursuant to paragraph (b) of this section.

(d) * * *

(1) If the equivalence value for a volume of exported renewable fuel can be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used in the calculation of the exporter of renewable fuel's Renewable Volume Obligations under paragraph (b) of this section.

* * * * *

(e) For renewable fuels that are in the form of a blend at the time of export, the exporter of renewable fuel shall determine the volume of exported renewable fuel based on one of the following:

* * * * *

(h) Each person meeting the definition of exporter of renewable fuel for a particular export transaction is jointly and severally liable for completion of the requirements of this section and all associated RIN retirement demonstration, registration, reporting, and attest engagement obligations under this subpart. However, these requirements for exporters of renewable fuel must be met only once for any export transaction.

■ 10. Section 80.1431 is amended by revising paragraph (b)(2) to read as follows:

§ 80.1431 Treatment of invalid RINs.

* * * * *

(b) * * *

(2) Invalid RINs cannot be used to achieve compliance with the Renewable Volume Obligations of an obligated party or exporter of renewable fuel, regardless of the party's good faith belief that the RINs were valid at the time they were acquired.

* * * * *

■ 11. Section 80.1451 is amended by:

■ a. Revising paragraphs (a)(1)(i) and (v);

■ b. Adding paragraphs (a)(1)(xix), (a)(3)(i) and (ii); and

■ c. Revising paragraph (a)(4).

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(i) The obligated party's or exporter of renewable fuel's name.

* * * * *

(v) Separately, the production volume and import volume for the reporting year of all of the following:

(A) All of the gasoline products listed in § 80.1407(c).

(B) All of the MVNRLM diesel fuel products listed in § 80.1407(e).

(C) The combined production volume of all gasoline products and MVNRLM diesel fuel.

(D) Distillate fuel that is not transportation fuel.

(E) Distillate fuel that is certified NTDF.

* * * * *

(xix) For parties that redesignate certified NTDF as MVNRLM diesel fuel at any time in the compliance period pursuant to § 80.1408, all of the following:

(A) The volume of MVNRLM diesel fuel received during the compliance period.

(B) The volume of MVNRLM diesel fuel discharged during the compliance period.

(C) The volume of certified NTDF redesignated to MVNRLM diesel fuel during the compliance period.

(D) The volume of MVNRLM diesel fuel redesignated to non-transportation use during the compliance period.

* * * * *

(3) * * *

(i) For obligated parties that redesignate certified NTDF as MVNRLM diesel fuel for any quarter in the compliance period pursuant to § 80.1408, all of the following:

(A) The volume of MVNRLM diesel fuel received during the quarter.

(B) The volume of MVNRLM diesel fuel discharged during the quarter.

(C) The volume of certified NTDF redesignated to MVNRLM diesel fuel during the quarter.

(D) The volume of MVNRLM diesel fuel redesignated to non-transportation use during the quarter.

(ii) [Reserved]

(4) Reports required under this paragraph (a) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the obligated party or exporter of renewable fuel.

* * * * *

■ 12. Section 80.1453 is amended by:

■ a. Revising paragraph (b); and

■ b. Adding paragraph (e).

The revision and addition read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

* * * * *

(b) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraphs (a)(1)

through (a)(11) and (e) of this section if such codes are clearly understood by each transferee.

* * * * *

(e) On each occasion when any party transfers custody or ownership of certified NTDF, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, the transferor must provide to the transferee documents that include all the following information, as applicable:

(1) The transferrer of certified NTDF must list all applicable required information as specified at § 80.590 and, if the distillate fuel contains renewable fuel, all applicable required information in paragraphs (a), (b), and (d) of this section.

(2) The transferrer must include the following statement on the PTD: ''This fuel meets all MVNRLM diesel fuel standards.''

■ 13. Section 80.1454 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1), and (n);

■ b. Redesignating paragraph (t) as paragraph (u); and

■ c. Adding new paragraph (t). The revisions and addition reads as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

(a) *Requirements for obligated parties and exporters of renewable fuel.* Beginning July 1, 2010, any obligated party (as described at § 80.1406) or exporter of renewable fuel (as described at § 80.1430) must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453 and associated with the obligated party's or exporter of renewable fuel's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

* * * * *

(n) The records required under paragraphs (a) through (d), (f) through (l), and (t) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

* * * * *

(t) *Requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel.* Parties that redesignate certified NTDF as MVNRLM diesel fuel must keep all of the following additional records:

(1) Records related to all transactions in which certified NTDF is redesignated as MVNRLM diesel fuel.

(2) Records related to all transactions in which MVNRLM diesel fuel is redesignated to a non-transportation use.

(3) Records related to the volume of MVNRLM diesel fuel received.

(4) Records related to the volume of MVNRLM diesel fuel discharged.

(5) Records related to the volume of certified NTDF received.

(6) Records related to the volume of certified NTDF discharged.

* * * * *

■ 14. Section 80.1460 is amended by adding paragraphs (b)(7) and (j) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(7) Generate a RIN for fuel that fails to meet all the conditions set forth in an approved petition submitted under § 80.1416.

* * * * *

(j) *Redesignation violations.* No person may exceed the balance requirements at § 80.1408(a)(2)(i) without incurring an RVO.

■ 15. Section 80.1461 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 80.1461 Who is liable for violations under the RFS program?

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for a violation of § 80.1460(e).

* * * * *

■ 16. Section 80.1463 is amended by revising paragraph (d) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

* * * * *

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4), (b)(6), or (b)(7) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

■ 17. Section 80.1464 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1)(i)(A), (a)(1)(iii), (a)(1)(iv) introductory text, (a)(1)(iv)(A), (a)(1)(iv)(D), and (a)(1)(v); and

■ b. Adding paragraph (a)(1)(vii). The revisions and addition read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) *Obligated parties and exporters of renewable fuel.* The following attest procedures shall be completed for any obligated party (as described at § 80.1406(a)) or exporter of renewable fuel (as described at § 80.1430):

(1) * * *

(i) * * *

(A) The obligated party's volume of all products listed in § 80.1407(c) and (e), or the exporter of renewable fuel's volume of each category of exported renewable fuel identified in § 80.1430(b)(1) through (b)(4).

* * * * *

(iii) For obligated parties, compare the volumes of products listed in § 80.1407(c), (e), and (f) reported to EPA in the report required under § 80.1451(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under § 80.133 and the volume of non-renewable diesel produced or imported. Verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis and the volumes of non-renewable diesel produced or imported, and report as a finding any exception.

(iv) For exporters of renewable fuel, perform all of the following:

(A) Obtain the database, spreadsheet, or other documentation that the exporter of renewable fuel maintains for all exported renewable fuel.

* * * * *

(D) Select sample batches in accordance with the guidelines in § 80.127 from each separate category of renewable fuel exported and identified in § 80.1451(a); obtain invoices, bills of lading and other documentation for the representative samples; state whether any of these documents refer to the exported fuel as advanced biofuel or cellulosic biofuel; and report as a finding whether or not the exporter of renewable fuel calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to § 80.1430(b)(1) or § 80.1430(b)(3).

(v) Compute and report as a finding the obligated party's or exporter of renewable fuel's RVOs, and any deficit RVOs carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

* * * * *

(vii) For obligated parties that incur an RVO under § 80.1408(a)(2)(i), perform the additional attest engagement procedures described at § 80.1475 and report any findings in the

report described in paragraph (d) of this section.

* * * * *

■ 18. Section 80.1475 is added as follows:

§ 80.1475 What are the attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

(a)(1) In addition to the attest engagement requirements under § 80.1464, all parties that redesignate certified NTDF as MVNRLM diesel fuel pursuant to § 80.1408 must arrange for an annual attest engagement conducted by an auditor using the minimum attest procedures specified in this section.

(2) All applicable requirements and procedures outlined in §§ 80.125 through 80.127 and § 80.130 apply to the auditors and attest engagement procedures specified in this section.

(3) Obligated parties must include any additional information required under this section in the attest engagement report under § 80.1464(d).

(4) Report as a finding if the party failed to either incur or satisfy an RVO if required.

(b) *EPA reports.* Auditors must perform the following:

(1) Obtain and read a copy of the obligated party's reports filed with EPA as required by § 80.1451(a)(1)(xix) for the reporting period.

(2) In the case of an obligated party's report to EPA that represents aggregate calculations for more than one facility, obtain the facility-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the facility-specific totals and agree to the values in the aggregate report. The procedures in paragraphs (b) and (c) of this section are then performed separately for each facility.

(3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with EPA.

(4) Identify, and report as a finding, the name of the commercial computer program used by the refiner or importer to track the data required by the regulations in this part, if any.

(c) *Inventory reconciliation analysis.* Auditors must perform the following:

(1) Obtain an inventory reconciliation analysis for the facility for the reporting period for each of the following and perform the procedures at paragraphs (c)(2) through (4) of this section separately for each of the following products:

(i) The volume of certified NTDF that was redesignated as MVNRLM diesel fuel.

(ii) The volume of MVNRLM diesel fuel that was redesignated to a non-transportation use.

(iii) The volume of MVNRLM diesel fuel received.

(iv) The volume of MVNRLM diesel fuel discharged.

(v) The volume of certified NTDF received.

(vi) The volume of certified NTDF discharged.

(2) Foot and crossfoot the volume totals reflected in the analysis.

(3) Agree the beginning and ending inventory amounts in the analysis to the facility's inventory records.

(4) If the obligated party discharged more MVNRLM diesel fuel than received, agree the annual balance with the reports obtained at § 80.1475(b)(1) and verify whether the obligated party incurred and satisfied its RVO under § 80.1408(a)(2)(i).

(5) Report as a finding each of the volume totals along with any discrepancies.

(d) *Listing of tenders.* Auditors must perform the following:

(1) For each of the volumes listed in paragraphs (b)(1)(iii) through (b)(1)(vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders.

(2) Foot to the volume totals per the listings.

(3) Agree the volume totals on the listing to the tender volume total in the inventory reconciliation analysis obtained in paragraph (b) of this section.

(4) For each of the listings select a representative sample of the tenders in accordance with the guidelines in § 80.127, and for each tender selected perform the following:

(i) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents.

(ii) Note whether the product transfer documents include the information required by § 80.590 and, for tenders involving the transfer of certified NTDF, the information required by § 80.1453(e).

(5) Report as a finding any discrepancies.

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