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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 84 Thursday,
No. 182 September 19, 2019

Pages 49191–49434

OFFICE OF THE FEDERAL REGISTER

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

[Document Number NASA–19–028: Docket Number NASA–2019–0003]

RIN 2700–AE49

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects section IV. Regulatory Analysis within the Supplementary Information section of the preamble in the final regulations, which were published in the **Federal Register** of Thursday, May 9, 2019. The regulations relate to removing Certifications, Assurances, and Representations and Terms and Conditions from NASA's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations and all references to both because this information is already available in NASA's Grant and Cooperative Agreements Manual.

DATES: Effective September 19, 2019.

Correction

In final regulations FR Doc. 2019–09569, on page 20239 in the issue of May 9, 2019, make the following corrections:

1. On page 20239, in the third column, under the heading ''Executive Orders 12866 and Executive Order 13563,'' remove the sentence ''This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866'' and add in its place the sentence ''This rule is not a significant regulatory action under Executive Order 12866 and was not reviewed by the Office of Management and Budget.''

2. On page 20239 in the third column, before the heading ''Regulatory Flexibility Act,'' add a new heading and paragraph to read as follows:

Executive Order 13771, Reducing Regulation and Controlling Cost

This rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–19948 Filed 9–18–19; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2016–0009]

Notification of Decision To Authorize the Importation of Fresh Cape Gooseberry Fruit From Ecuador to the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

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

DATES: The articles covered by this notification may be authorized for importation after September 19, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

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

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS then publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable.

On April 20, 2018, we published in the **Federal Register** (83 FR 17503–17506, Docket No. APHIS–2016–0009) a proposal [1] to amend the regulations by allowing for the importation of commercially produced fresh cape gooseberry fruit (*Physalis peruviana*) from Ecuador into the continental United States.

We solicited comments concerning our proposal for 60 days ending June 19, 2018. We received two comments by that date. They were from the national plant protection organization (NPPO) of Ecuador and a State department of agriculture and are discussed below.

One commenter stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the issuance of any proposals such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of fresh cape gooseberry

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0009.*

fruit from Ecuador, it is outside the scope of the proposed action.

The PRA that accompanied the proposed rule identified *Ceratitis capitata* (Medfly) as the one quarantine pest that could be introduced into the United States in consignments of fresh cape gooseberry fruit from Ecuador. The commenter observed several areas of phytosanitary risk as outlined in the PRA:

- Due to the short distance between Ecuador and the continental United States, the duration of low temperatures during transport does not control, reduce, or eliminate this pest species. Fruit fly larvae within fruits can survive shipments when exported without mitigating treatment, as it is shown by numerous interceptions at U.S. ports-of-entry with other fruits.
- Fruit fly larvae within fruits can survive shipments when exported without mitigating treatment, as it is shown by numerous interceptions at U.S. ports-of-entry with other fruits.
- Ecuador does not have a point-of-origin protocol for fruit inspection. In addition to this, internal feeders, such as fruit flies, are difficult to detect during non-targeted USDA inspection procedures at ports-of-entry.

While it is true that the aspects of the PRA highlighted by the commenter led us to classify the pest risk potential associated with Medfly as high, pest risk potential is a baseline estimate of the risks associated with importation of the commodity in the absence of phytosanitary mitigation measures beyond standard post-harvest processing. That is why we are only allowing for the importation of fresh cape gooseberry fruit from Ecuador into the continental United States if it is produced under a systems approach or subject to cold treatment or irradiation in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual [2] and 7 CFR part 305. These measures effectively mitigate the risks described in the PRA and pointed out by the commenter.

Only commercial consignments of fresh cape gooseberry fruit from Ecuador will be allowed to be imported into the continental United States. The commenter posited that if non-commercially produced fresh cape gooseberry fruit were mixed with or mistaken for commercially produced fresh cape gooseberry fruit, the likelihood of Medfly infestation would be very high.

Since fresh cape gooseberry fruit from non-registered places of production present a greater pest risk than does fruit grown in registered places of production, we believe that it is unlikely that the growers and packers in a registered place of production would allow their entire export operation to be jeopardized by allowing potentially infested fruit from nonregistered places of production to be commingled with their export-quality fruit. Additionally, this rule requires the NPPO of Ecuador to provide an operational workplan to APHIS regarding the day-to-day administration of the export program for cape gooseberries from Ecuador, and also requires APHIS approval of the operational workplan. We will not approve an operational workplan unless it provides safeguards against the commingling of commercially produced and non-commercially produced cape gooseberries. Finally, we note that all shipments of cape gooseberries are subject to inspection at ports of entry into the United States in accordance with our general requirements for the importation of fruits and vegetables, which are found in § 319.56–3. Among other benefits, port-of-entry inspections allow us to verify an exporting country's adherence to the terms of the regulations on an ongoing basis.

We proposed to require the use of trapping to monitor the places of production within low prevalence areas as part of the systems approach to mitigate the risk posed by Medfly. While we did not specify the intervals at which the fruit fly traps would be required to be placed to demonstrate place of production freedom from Medfly in the proposed rule, the risk management document (RMD) did provide a recommended trapping protocol.

The NPPO of Ecuador suggested an additional fruit fly trapping protocol, scaled specifically for smaller production sites, which would allow more producers to potentially participate in the export program.

While the RMD provides a recommended trapping protocol, the specific trapping requirements will be set forth in the required operational workplan established between APHIS and the NPPO of Ecuador, and therefore may differ from the recommendations set out in the RMD. We will evaluate the trapping protocol suggested by the NPPO during the development of the operational workplan.

Fresh cape gooseberry fruit that comes from a place of production that does not qualify as a pest free place of production in an area of low pest prevalence may still be exported to the continental United States subject to cold treatment or irradiation treatment in accordance with the PPQ Treatment Manual and 7 CFR part 305. Another commenter said that it was not clear whether these treatments would be administered in Ecuador, while consignments are in transit, or upon arrival in the United States.

Under the regulations, treatment may occur at any of the stages identified by the commenter. However, because Ecuador does not currently have APHIS-approved irradiation or cold treatment facilities, and because the journey from Ecuador to the United States is generally significantly shorter than the length of time necessary for the required cold treatment, we anticipate that most treatments will be administered in the United States.

The commenter concluded that, due to the risk factors described by the PRA, fresh cape gooseberry fruit from Ecuador should not be allowed into the State of Florida and other ports of entry south of the 39th parallel given that the climate in those areas is conducive to the establishment of Medfly.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh cape gooseberry fruit from Ecuador. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule [3] that revised the regulations in § 319.56–4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements database (FAVIR). With those changes to the regulations, we cannot issue the final regulations as contemplated in our April 2018 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to

[2] The PPQ Treatment Manual may be found on the internet at *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

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

authorize the importation into the continental United States of fresh cape gooseberry fruit from Ecuador subject to the following phytosanitary measures, which will be listed in FAVIR, available at *https://epermits.aphis.usda.gov/manual:*

- The NPPO of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to comply with the phytosanitary requirements. APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.
- The fresh cape gooseberry fruit may be imported in commercial consignments only.
- The production site where the fruit is grown must be registered with the NPPO of Ecuador.
- Harvested fresh cape gooseberry fruit must be placed in field cartons or containers that are marked to show the official identification of the production site.
- All openings to the outside of the packinghouse where the fruit is packed must be covered by screening or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the fresh cape gooseberry fruit is packed.
- Each consignment of fresh cape gooseberry fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador that contains an additional declaration stating that the fruit was produced in accordance with 7 CFR 319.56–4.
- To be eligible for importation, the fresh cape gooseberry fruit must either be treated or produced and shipped under the systems approach.
- Systems approach: Fresh cape gooseberry fruit may be imported without treatment if it is subject to a systems approach consisting of the following: Low-prevalence production site certification, fruit fly trapping, and phytosanitary inspection.
- Treatment: Fresh cape gooseberry fruit that does not meet the requirements of the systems approach may be imported into the continental United States if the fruit is subject to cold treatment or irradiation treatment in accordance with 7 CFR part 305. If the irradiation treatment is completed in Ecuador, each consignment of fresh cape gooseberry fruit must be accompanied by documentation to validate foreign site preclearance inspection of the consignment.

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this notification are covered under the Office of Management and Budget (OMB) control number 0579–0049. We estimate these burden activities to be 1,199 hours, which will be added to 0579–0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notification, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

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

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

Done in Washington, DC, this 11th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20096 Filed 9–18–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0735]

Special Local Regulations; Ironman Triathlon, Augusta, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Ironman Triathlon in Augusta, Georgia on September 29, 2019, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in Augusta, GA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 100.701, Table to § 100.701(f)(3) will be enforced from 6:30 a.m. until 11:30 a.m. on September 29, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Rachel Crowe, Marine Safety Unit Savannah Office of Waterways Management, U.S. Coast Guard; telephone 912–652–4353, extension 243, or email *Rachel.M.Crowe@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701 for the Ironman Triathlon regulated area listed in Table to § 100.701(f)(3)from 6:30 a.m. until 11:30 a.m. on September 29, 2019.

This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District, § 100.701, specifies the location of the regulated area for the Ironman Triathlon which encompasses portions of the Savannah River and its branches in Savannah, GA. During the enforcement periods, as reflected in 33 CFR 100.701(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notice of the regulated area via Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: September 16, 2019.

J.A. Coleman,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Savannah.

[FR Doc. 2019–20330 Filed 9–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0781]

RIN 1625–AA00

Safety Zone; Columbia River, Bonneville, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Columbia River between river mile 142 and 143 in vicinity of Bonneville, Oregon. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage operations of the tug DIANE. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Columbia River.

DATES: This rule is effective without actual notice from 9:00 a.m. until 11:59 p.m. on September 19, 2019. For the purposes of enforcement, actual notice will be used from September 13, 2019 until 8:59 a.m. on September 19, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0781 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 LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@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 to do so would be impracticable and delayed promulgation may result in injury or damage to the maritime public and/or the marine environment on the Columbia River due to the safety hazards associated with associated diving and vessel recovery operations.

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

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 Columbia River (COTP) has determined that potential hazards associated with diving and vessel recovery operations will be a safety concern for anyone transiting between Columbia River Mile 142 and 143 in vicinity of Bonneville, Oregon. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while salvage operations are occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from September 13, 2019 through September 19, 2019. The safety zone will cover all navigable waters on the Columbia River between river mile 142 and 143. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while salvage operations are occurring. Due to the unpredictable and potentially dangerous nature of diving and vessel recovery operations, the Coast Guard determined that the best to way to ensure public safety is to exclude all non-related vessel activity traffic around all vessels engaged in diving and vessel recovery operations from the area. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter 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 safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 7 days that will prohibit vessel traffic to transit between Columbia River Mile 142 and 143 during diving and vessel recovery operations. It is categorically excluded from further review under paragraph L60(c) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0781 to read as follows:

§ 165.T13–0781 Safety Zone; Columbia River, Tug Diane Salvage.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, Bonneville, OR from surface to bottom, between river mile 142 and 143.

(b) *Definitions.* As used in this section, *designated representative* means any Coast commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Columbia River (COTP) to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate with the safety zone may contact the COTP's on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone is in effect from September 13, 2019 through September 19, 2019. It will be subject to enforcement this entire period unless the Captain of the Port, Columbia River determines it is no longer needed. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

Dated: September 12, 2019.

J.C. Smith,

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

[FR Doc. 2019–20164 Filed 9–18–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0525; FRL–9995–90]

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinosad in or on tea, dried and tea, instant. Dow AgroSciences, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 19, 2019. Objections and requests for hearings must be received on or before November 18, 2019, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0525, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0525 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 18, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0525, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 24, 2018 (83 FR 42818) (FRL–9982–37), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8674) by Dow Agro Sciences LLC, 9330 Zionsville Road, Indianapolis, Indiana 46268–1054. The petition requested that 40 CFR 180.495 be amended by establishing import tolerances for residues of the insecticide spinosad, determined by measuring two related active ingredients: Spinosyn A (Factor A: CAS #131929–60–7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS #131929–63–0) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione], in or on tea, dried at 70 parts per million (ppm) and tea, instant at 70 ppm. That document referenced a summary of the petition prepared by Dow Agro Sciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received in response to the notice of filing, and the Agency's response can be found in Unit IV.D.

Based upon review of the data supporting the petition, EPA has established import tolerances for tea, dried and tea, instant each at 2 ppm rather than the requested 70 ppm. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for spinosad

including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with spinosad follows.

A. Toxicological Profile

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

Spinosad and spinetoram are considered by EPA to be toxicologically identical for human health risk assessment based on their very similar chemical structures and similarity of the toxicological databases for currently available studies. Therefore, the Agency has assessed and summarized the toxicological profile for both spinosad and spinetoram together. The primary toxic effect observed from exposure to spinosad and spinetoram was histopathological changes in multiple organs (specific target organs were not identified). Vacuolization of cells and/or macrophages was the most common histopathological finding noted across the toxicological database with the dog being the most sensitive species. In addition to the numerous organs observed with histopathological changes, anemia was noted in several studies. There was no evidence of increased quantitative or qualitative susceptibility from spinosad or spinetoram exposure. In developmental studies, no maternal or developmental effects were seen in rats or rabbits. In the rat reproduction toxicity studies, offspring toxicity (decreased litter size, survival, and body weights with spinosad; increased incidence of late resorptions and post-implantation loss with spinetoram) was seen in the presence of parental toxicity (increased organ weights, mortality, and histopathological findings) at approximately the same dose for both chemicals. Dystocia and/or other parturition abnormalities were observed with both spinosad and spinetoram in the reproduction toxicity studies. There was no evidence of neurotoxicity, immunotoxicity, or carcinogenicity from spinosad exposure.

Specific information on the studies received and the nature of the adverse effects caused by spinosad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Spinosad/Spinetoram. Human Health Risk Assessment in Support of Proposed Spinetoram Tolerance for Residues in/on Imported Tea'' at page 8 in docket ID number EPA–HQ–OPP–2017–0352 and in document ''Spinosad/Spinetoram. Draft Human Health Risk Assessment for Registration Review,'' at pages 12–17 in docket ID number EPA–HQ–OPP–2011–0666.

B. Toxicological Points of Departure/Levels of Concern

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

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

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPINOSAD/SPINETORAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	A dose and endpoint of concern attributable to a single dose was not observed.		
Chronic dietary (All populations)	NOAEL = 2.49 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.0249 mg/kg/day. cPAD = 0.0249 mg/kg/day.	Chronic Toxicity—Dog (Spinetoram). LOAEL = 5.36/5.83 mg/kg/day (males/females) based on arteritis and necrosis of the arterial walls of the epididymides in males and of the thymus, thyroid, larynx, and urinary bladder in females.
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 4.9 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE <100.	Subchronic Oral Toxicity—Dog Study (with spinosad). LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in body weights and food consumption, and biochemical evidence of anemia and liver damage.
Dermal (All durations)	No hazard was identified for dermal exposure; therefore, a quantitative dermal assessment is not needed.		
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Inhalation (or oral) study NOAEL = 4.9 mg/kg/day (inhalation assumed equivalent to oral). UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE <100.	Subchronic Oral Toxicity—Dog Study (with spinosad). LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in body weights and food consumption, and biochemical evidence of anemia and liver damage.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPINOSAD/SPINETORAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation)	Classified as ''not likely to be carcinogenic to humans.''		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UUF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spinosad, EPA considered exposure under the petitioned-for tolerances as well as all existing spinosad tolerances in 40 CFR 180.495 and existing spinetoram tolerances in 40 CFR 180.635. Spinosad is registered for application to all of the same crops as spinetoram, with similar pre-harvest and retreatment intervals, and application rates greater than or equal to spinetoram. Because both active ingredients control the same pest species, EPA has concluded it would overstate exposure to assume that residues of both spinosad and spinetoram would appear on the same food. The risk assessment includes commodities that have tolerances for both spinosad and spinetoram as well as commodities where only spinosad tolerances are established. EPA aggregated exposure by assuming that all commodities contain spinosad residues as either average field-trial residues; tolerance-level residues for crop commodities; spinosad residue estimates for fish/shellfish (spinetoram residues in fish/shellfish are expected to be insignificant); experimental or default processing factors; and refined milk, egg, and ruminant/hog/poultry tissue spinosad residue estimates. EPA assessed dietary exposures from spinosad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for spinosad or spinetoram; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA (2003–2008). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) for all commodities; average spinosad field-trial residues or tolerance-level residues for crop commodities (spinosad or spinetoram residues whichever was higher, assumed that crop will not be treated with both spinosad and spinetoram as they control the same pests); spinosad residue estimates for fish/shellfish (spinetoram residues in fish/shellfish are expected to be insignificant); spinetoram tea tolerance (established 70 ppm tea tolerance is higher than the petitioned-for spinosad tea tolerance); experimental or default processing factors; and refined milk, egg, and ruminant/hog/poultry tissue spinosad residue estimates.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that spinosad does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spinosad and spinetoram in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spinosad and spinetoram. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the surface water concentration calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of spinosad for chronic exposures for non-cancer assessments, the spinosad EDWCs are estimated to be 22.8 ppb for surface water and below the levels of detection for ground water. EDWCs of spinetoram for chronic exposures for non-cancer assessments are estimated to be 19.3 ppb for surface water and below the levels of detection for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 22.8 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

The use on tea will not result in residential exposure; however, spinosad and spinetoram are currently registered for the following uses that could result in residential exposures: Including home lawns and pet (cats/kittens) spot-on applications; therefore there is potential for residential handler and post-application exposures to both spinosad and spinetoram Since spinosad and spinetoram control the same pests, EPA concludes that these products will not be used for the same uses in combination with each other and thus combining spinosad and spinetoram residential exposures would overstate exposure. EPA assessed residential exposure for both spinosad and spinetoram using the most conservative residential exposure scenarios for either chemical.

EPA assessed the following ''worst-case'' residential exposure scenarios as: (1) Adult residential handler (inhalation exposure from applications to lawns and turf) and (2) child (1 to <2 years) (hand-to-mouth exposures from post-

application exposure to turf). Because EPA's level of concern for spinetoram is a MOE below 100, the MOEs for both of these residential exposure scenarios are not of concern. In addition, the short-term assessment is protective of intermediate-term exposure as the short- and intermediate-term PODs are identical. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found spinosad to share a common mechanism of toxicity with any other substances, and spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spinosad does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased prenatal or postnatal susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spinosad is complete for FQPA SF consideration.

ii. There is no evidence of neurotoxicity from spinosad exposure.

iii. There is no evidence that spinosad results in increased pre- or post-natal susceptibility in rats or rabbits.

iv. There are no residual uncertainties identified in the spinosad and spinetoram exposure databases. The dietary exposure assessment is conservative as it assumes 100 PCT and residue estimates are based on field trial data and fish nature of the residue studies. Moreover, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to spinosad and spinetoram in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by spinosad and spinetoram.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, spinosad is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spinosad from food and water will utilize 72% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of spinosad is not expected; therefore, the chronic dietary estimate represents the chronic aggregate estimate.

3. *Short- and Intermediate-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Spinosad is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to spinosad.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 780 for adults (handler) and 200 for children (post-application). Because EPA's level of concern for spinosad are MOEs below 100, these MOEs are not of concern. The short-term assessment is protective of intermediate-term exposure as the short- and intermediate-term PODs are identical.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, spinosad is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to spinosad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate plant, ruminant, poultry, fish, and shellfish methods (high-performance liquid chromatography (HPLC)/ultraviolet (UV)) are available for enforcement of the established spinosad tolerances. These methods were forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Methods Volume II. Additional details on the analytical methods can be found in the supporting documentation in docket ID (EPA–HQ–OPP–2011–0667–0027).

Methods not found in PAM Vol II may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with

international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

An MRL for spinosad in/on tea has not been established by Codex.

C. Revisions to Petitioned-For Tolerances and Tolerance Definition

The registrant indicated that the proposed 70 ppm tolerances for tea, dried and tea, instant were based on translation of the recently established spinetoram tolerances on import tea to spinosad. However, based on the available residue data and the different application scenarios for spinosad and spinetoram, this translation is not appropriate. Based on the available data, EPA determined that import tolerances for residues of spinosad in or on tea, dried and tea, instant at 2 ppm are appropriate.

Additionally, the tolerance definition has been updated as shown in the part 180 Amendment to be consistent with Chemical Abstracts Service (CAS) Nomenclature.

D. Response to Comments

One comment was submitted opposing sale or use of Dow's product in the United States. This tolerance action does not permit sale or use of spinosad pesticide products in the United States; sale and use of pesticide products are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act. Moreover, the commenter provided no information to support a conclusion that this tolerance is not safe.

V. Conclusion

Therefore, tolerances are established for residues of spinosad, determined by measuring two related active ingredients: Spinosyn A (Factor A: CAS #131929–60–7; (2*R*,3a*S*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-indaceno[3,2-*d*]oxacyclododecin-7,15-dione); and Spinosyn D (Factor D; CAS #131929–63–0; (2*S*,3a*R*,5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-indaceno[3,2-*d*]oxacyclododecin-7,15-dione), in or on tea, dried at 2 ppm and tea, instant at 2 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: August 28, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.495, amend paragraph (a) by revising the introductory text and adding alphabetically the entries for ''Tea, dried''; and ''Tea, instant'' to the table to read as follows:

§ 180.495 Spinosad; tolerances for residue.

(a) *General.* Tolerances are established for residues of the insecticide spinosad, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of spinosyn A (Factor A: CAS #131929–60–7; (2*R*,3a*S*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-indaceno[3,2-*d*]oxacyclododecin-7,15-dione); and Spinosyn D (Factor D; CAS #131929–63–0) or (2*S*,3a*R*,5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-indaceno[3,2-*d*]oxacyclododecin-7,15-dione), calculated as the stoichiometric equivalent of spinosad.

Commodity	Parts per million
* * * * *	
Tea, dried [1]	2
Tea, instant [1]	2
* * * * *	

[1] There are no U.S. registrations for use on tea.

* * * * *

[FR Doc. 2019–19664 Filed 9–18–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 182

Thursday, September 19, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0431; FRL–9999–65–Region 9]

Approval and Conditional Approval of California Air Plan Revision, Imperial County Air Pollution Control District, Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and conditionally approve in part revisions to the Imperial County Air Pollution Control District (ICAPCD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern the ICAPCD's Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) and negative declarations for several source categories. We are proposing action on a local SIP revision under the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 21, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0431 at *http://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region IX, (415) 947–4304, *chen.eugene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What documents did the State submit?

On September 12, 2017, the ICAPCD adopted the ''Reasonably Availability Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-Hr Ozone Standard'' (2017 RACT SIP), and on November 14, 2017, the California Air Resources Board (CARB) submitted it to the EPA for approval as a revision to the California SIP. The submittal also included ICAPCD's Minute Order No. 20, adopting the 2017 RACT SIP and negative declarations for the 2017 RACT SIP.

On May 14, 2018, the submittals for ICAPCD's 2017 RACT SIP and negative declarations were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

In addition to these SIP submittals, the District and CARB transmitted commitment letters on May 8, 2019 and May 28, 2019 to the EPA to adopt and submit specific enforceable measures within 12 months of the effective date of EPA's final action on ICAPCD's RACT SIP.[1]

B. Are there other versions of these documents?

There are no previous versions of the RACT SIP and negative declarations in the ICAPCD portion of the California SIP for the 2008 8-hour ozone NAAQS.

C. What is the purpose of the submitted documents?

Volatile Organic Compounds (VOCs) and oxides of nitrogen (NO_X) contribute to the production of ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_X emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_X. The ICAPCD is subject to this requirement as it regulates a nonattainment area that is currently designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the ICAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_X within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_X is a major stationary source in a Moderate ozone nonattainment area.[2]

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS discusses RACT requirements.[3] It states in part that RACT SIPs must contain adopted RACT regulations, certifications where

[1] Letter dated May 8, 2019, from Matt Desert (ICAPCD), to Carol Sutkus, (CARB), and Doris Lo, (EPA Region IX); Letter dated May 28, 2019, from Dr. Michael Benjamin (CARB), to Michael Stoker, (EPA Region IX).

[2] CAA section 182(b)(2), (f) and 302(j).

[3] 80 FR 12264 (March 6, 2015).

appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG. *Id. at 12278.* It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS.[4]

The submitted 2017 RACT SIP and negative declarations provide ICAPCD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. The EPA's technical support document (TSD) has more information about the District's submission and the EPA's evaluation thereof.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO_X in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). On May 21, 2012, the EPA designated Imperial County as ''Marginal'' nonattainment for the 2008 8-hr ozone NAAQS.[5] On May 4, 2016, the EPA finalized a proposed determination that 11 areas, among them Imperial County, were previously classified as ''Marginal'' nonattainment and had failed to attain the 2008 ozone NAAQS by the applicable attainment date. These 11 areas were reclassified as ''Moderate'' nonattainment areas.[6] The states containing these areas were required to submit revised SIPs that addressed the requirements applicable to ''Moderate'' nonattainment areas, including a RACT SIP demonstration. As a result, the ICAPCD regulates a Moderate ozone nonattainment area[7] so the District's rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.[8] The submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the District.

The District's analysis must also demonstrate that each major source of VOCs or NO_X in the ozone nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration.

Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. EPA Office of Air Quality Planning and Standards, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' May 25, 1988 (''the Bluebook,'' revised January 11, 1990).
3. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (''the Little Bluebook'').
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (''the NO_X Supplement''), 57 FR 55620 (November 25, 1992).
5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers.''
6. ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).
7. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).

B. Do the documents meet the evaluation criteria?

ICAPCD's 2017 RACT SIP provides the District's demonstration that the applicable SIP for the ICAPCD satisfies CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. The District based its conclusion on its analysis of SIP-approved requirements that apply to: (1) Source categories for which a CTG has been issued, and (2) Major non-CTG stationary sources of VOC or NO_X emissions.

With respect to CTG source categories, ICAPCD identified several CTG categories with covered sources (*i.e.,* sources covered by the CTG and operating within the nonattainment area), and provided an evaluation of the local rules it relies upon to meet RACT for these categories. We reviewed the District's evaluation and agree that, with one exception, its rules implement RACT for the applicable CTG categories. The rule that does not implement RACT for the applicable CTG category is Rule 415 (Transfer and Storage of Gasoline). By letter dated May 8, 2019, the District committed to adopt a revised Rule 415 that will resolve the identified issue by establishing a more stringent VOC emission standard for gasoline terminals, and to transmit this rule to CARB within 11 months of the effective date of the EPA's final action on this submittal. By letter dated May 28, 2019, CARB committed to submit this rule to the EPA within 12 months of the effective date of the EPA final action on this submittal. These letters commit the District to adopt specific enforceable measures to address the identified issue, commit the State to submit them to the EPA by a date certain, and are clear and enforceable. Accordingly, we believe these commitments from the District and State are consistent with CAA section 110(k)(4)'s requirements regarding conditional approval for the 2017 RACT SIP with respect to the source category regulated by Rule 415.

With regard to non-CTG major stationary sources, the ICAPCD identified five major stationary sources of NO_X and one major stationary source of VOC not covered by a CTG document. The 2017 RACT SIP identifies the local RACT rules applicable to these sources, as well as the District's evaluation that these local rules implement RACT. We reviewed the District's evaluation and agree that the applicable local rules implement RACT for these sources.

In addition, where there are no existing sources covered by a particular CTG document, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area. Appendix B of the District's submittal lists the District's negative declarations that it has no sources subject to the applicable CTG. These negative declarations are listed in Table 1 below. The District concludes that it has no sources subject to these CTGs based on a review of its permit files, emission inventories, and District staff knowledge. The EPA reviewed CARB's emission inventory database, as well as business listings and the Chamber of Commerce directory for Imperial County. Based upon our review, we did not identify any facilities that would be subject to the CTG source categories for which the ICAPCD submitted negative declarations, and conclude that these negative declarations are consistent

[4] Id. and 70 FR 71612, 71652 (November 29, 2005).

[5] 77 FR 30088 (May 21, 2012).

[6] 81 FR 26697 (May 4, 2016).

[7] See, 40 CFR 81.305.

[8] 57 FR 13498, 13512 (April 16, 1992).

with the relevant policy and guidance regarding RACT.

TABLE 1—ICAPCD NEGATIVE DECLARATIONS

EPA document No.	Document title
EPA–450/2–77–008	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
EPA–450/2–77–022	Control of Volatile Organic Emissions from Solvent Metal Cleaning.
EPA–450/2–77–025	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
EPA–450/2–77–032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture.
EPA–450/2–77–033	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
EPA–450/2–77–034	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances.
EPA–450/2–78–015	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products.
EPA–450/2–78–029	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
EPA–450/2–78–030	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
EPA–450/2–78–032	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.
EPA–450/2–78–033	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts-Rotogravure and Flexography.
EPA–450/2–78–036	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
EPA–450/3–82–009	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.
EPA–450/3–83–006	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA–450/3–83–007	Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.
EPA–450/3–83–008	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA–450/3–84–015	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA–450/4–91–031	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA–453/R–96–007	Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations.
EPA–453/R–94–032; 61 FR 44050; 8/27/96.	Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating).
EPA–453/R–97–004; 59 FR 29216; 6/06/94.	Aerospace (CTG & MACT).
EPA–453/R–06–001	Control Techniques Guidelines for Industrial Cleaning Solvents.
EPA–453/R–06–002	Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing.
EPA–453/R–06–003	Control Techniques Guidelines for Flexible Package Printing.
EPA–453/R–06–004	Control Techniques Guidelines for Flat Wood Paneling Coatings.
EPA 453/R–07–003	Control Techniques Guidelines for Paper, Film, and Foil Coatings.
EPA 453/R–07–004	Control Techniques Guidelines for Large Appliance Coatings.
EPA 453/R–07–005	Control Techniques Guidelines for Metal Furniture Coatings.
EPA 453/R–08–003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 2—Metal Parts and Products.
EPA 453/R–08–003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 3—Plastic Parts and Products.
EPA 453/R–08–003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 4—Automotive/Transportation and Business Machine Plastic Parts.
EPA 453/R–08–003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 5—Pleasure Craft Surface Coating.
EPA 453/R–08–003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 6—Motor Vehicle Materials.
EPA 453/R–08–004	Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials.
EPA 453/R–08–005	Control Techniques Guidelines for Miscellaneous Industrial Adhesives.
EPA 453/R–08–006	Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings.
EPA 453/B16–001	Control Techniques Guidelines for the Oil and Natural Gas Industry.

Please consult our TSD for more information on our evaluation of the submitted 2017 RACT SIP.

C. Proposed Action and Public Comment

If a portion of a plan revision meets all the applicable CAA requirements, section 110(k)(3) authorizes the EPA to approve the plan revision in part.[9] In addition, section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.[10] In this instance, the enforceable measures that the state must submit are new or revised rules that correct the rule issues identified above. On May 8, 2019, the District transmitted to CARB and the EPA a commitment to adopt a revised Rule 415 (Transfer and Storage of Gasoline), that will resolve

[9] 42 U.S.C. 7410(k)(3).

[10] 42 U.S.C. 7410(k)(4).

the identified issue, and to transmit this rule to CARB within 11 months of the effective date of the EPA's final action on this submittal. On May 28, 2019, CARB committed to submit this rule to the EPA within 12 months of the effective date of the EPA final action on this submittal. If the ICAPCD or CARB fail to fulfill this commitment, this proposed conditional approval would convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan under CAA section 110(c)(1).

Based on our evaluation of the submitted documents, and as authorized in section 110(k)(3) and (4) of the Act, the EPA is proposing to conditionally approve the ICAPCD's 2017 RACT SIP with respect to the source category regulated by Rule 415 (Transfer and Storage of Gasoline). Simultaneously, the EPA proposes to fully approve the remainder of the ICAPCD's 2017 RACT SIP, and to fully approve the ICAPCD's negative declaration, submitted on November 14, 2017.

We will accept comments from the public on this proposal until October 21, 2019. If we take final action to approve the submitted documents, our final action will incorporate them into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 29, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–20195 Filed 9–18–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 19–193 and 17–105; FCC 19–74]

Low Power FM Radio Service Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a Notice of Proposed Rulemaking (NPRM) proposing to improve technical rules that primarily affect Low Power FM (LPFM) radio stations, based upon a petition for rulemaking filed by REC Networks.

DATES: Comments may be filed on or before October 21, 2019 and reply comments may be filed on or before November 4, 2019.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 19–193 and 17–105, by any of the following methods:

- *Federal Communications Commission's website: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Media Bureau, Audio Division, (202) 418–2785. Direct press inquiries to Janice Wise at (202) 418–8165. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM, in

MB Docket Nos. 19–193 and 17–105, FCC 19–74, adopted and released on July 30, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://fjallfoss.fcc.gov/ecfs2/.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM in document FCC 19–74 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. *Introduction.* On July 30, 2019, the Commission adopted a Notice of Proposed Rulemaking, Amendment of Parts 73 and 74 of the Commission's Rules to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative; FCC 19–75, MB Docket Nos. 19–193, 17–105, proposing to make the technical rules more flexible for LPFM stations. The NPRM states that the highly simplified engineering requirements adopted when it created the LPFM service almost 20 years ago do not provide LPFM applicants with transmission and siting options available to other broadcast stations, and that it may be possible to improve LPFM service by providing such options now that the LPFM service has matured.

2. The rule changes proposed in the NPRM would, if adopted, revise the technical rules in four main ways: (1) Allowing LPFM use of directional antennas to avoid interference to other FM stations; (2) Setting a July 13, 2021 sunset date for a current requirement that FM stations protect adjacent television stations operating on TV channel 6; (3) providing LPFM stations with greater flexibility to relocate their transmitter sites by providing applicants with an additional way to demonstrate that a proposed change is ''minor;'' and (4) permitting retransmission of LPFM signals over FM booster stations. The proposals, if implemented, could improve LPFM reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism.

3. *Directional Antennas.* The Commission proposes to amend section 73.816 of its rules (Rules) to expand the optional use of directional antennas in the LPFM service, including custom-designed models. The Commission expects that use of directional antennas would primarily assist LPFM licensees constructing stations near the borders with Canada and Mexico and those that must relocate in areas with few available transmitter sites. In connection with this proposal, the Commission seeks comment on whether to delineate specific circumstances in which LPFM directional antennas are permissible or, alternatively, to leave decisions about antenna use to the applicant's discretion. The Commission also seeks comment on the type of information that licensed applicants would submit to the Commission to verify proper installation and operation of such antennas and to prevent interference.

4. *Protecting TV Channel 6 Television Stations.* The Commission proposes to establish a July 13, 2021, sunset date for the requirement that LPFM stations operating on the FM reserved band (channels 201 to 220) protect television stations operating on adjacent television channel 6 (TV6). Because the precise TV6 protections issue also affects noncommercial FM (NCE), FM translator, and Class D radio stations on the reserved band, the Commission also proposes to eliminate the TV6 protection requirements for those stations. The proposed July 13, 2021, sunset date corresponds to the date by which all TV6 stations will have transitioned from analog to digital operations. The sunset date would be included in sections 73.525 (NCE–FM and Class D stations), 73.825 (LPFM stations), and 74.1205 (FM translators).

5. Since 1985, the Commission has required stations proposing operations on FM reserved band channels 201 through 220 to protect full service television, Low Power Television (LPTV), Class A, and television translator stations operating on TV6. The TV6 spectrum is located at 82 to 88 MHz, immediately adjacent to the FM band. Full power TV6 stations, however, transitioned to digital operations in 2009 and the Commission expects that most of the remaining LPTV stations on TV6 will transition by July 13, 2021. The Commission believes that the transition to digital and the use of digital receivers with improved selectivity reduces the need for radio stations to provide protection to TV6 stations.

6. Given these circumstances, the Commission proposes a July 13, 2021, sunset date for distance separation requirements between all reserved band radio stations and TV6 stations. In the intervening time between the effective date of final rules and July 13, 2021, the Commission proposes to implement a waiver process. Radio stations proposing facilities that do not meet TV6 spacing requirements could request a waiver by submitting exhibits demonstrating that their proposals would not cause interference to the TV6 station. The Commission would review these requests on a case-by-case basis.

7. The Commission invites comment on its proposal and on the tentative conclusion that TV6 spacing requirements can be eliminated upon completion of the television transition to digital without any resulting interference to TV6 station. The Commission also asks whether there are any better alternatives. The NPRM further notes that approximately 26 LPTV stations currently supplement their analog TV6 signals with audio programming on 87.7 FM and asks whether the proposed elimination of TV6 protection by LPFM and other radio stations would be compatible with LPTV audio operations on 87.7 MHz if such operations were allowed to continue.

8. *Redefine Minor Changes.* The NPRM proposes to amend section 73.870 to provide an additional way in which LPFM stations can demonstrate that a proposed facility change is ''minor.'' An LPFM station making a ''minor'' change to its transmitter site, currently defined as a move of 5.6

kilometers or less, may relocate without awaiting the opening of a filing window. The NPRM proposes to expand the definition of minor change to one which either: (1) Does not exceed 5.6 kilometers; or (2) involves overlapping 60 dBu contours of the existing and proposed facilities. The Commission accepts contour-based studies for FM translator stations seeking minor changes and has, on occasion, accepted such studies for LPFM stations on a waiver basis when the LPFM applicants demonstrated a lack of available fully-spaced sites. The proposal to incorporate a contour showing into the LPFM rules could provide additional flexibility for LPFM stations needing to relocate but faced with zoning and land use issues.

9. The Commission recognizes that providing a contour-based showing of a ''minor'' change can be expensive because it requires an engineering study. However, the Commission notes that applicants would not incur the expense unless they choose the alternative of moving greater distances than currently permissible. The Commission seeks comment on whether a new LPFM minor change analysis should focus, as with FM translators, solely on whether the contours of the current and proposed facilities overlap, or should also include a threshold requirement that LPFM stations show a lack of viable fully-spaced sites, similar to the current LPFM waiver standard.

10. *Cross Ownership of FM Booster Stations.* The Commission also proposes to amend Section 73.860 to allow cross-ownership of LPFM stations and FM boosters. Generally, LPFM licensees may not own non-LFPM stations. There is, however, a limited exception allowing non-Tribal LPFM licensees to operate up to two FM translator stations if they meet certain requirements. The Commission has occasionally granted waivers to allow LPFM stations to fill in terrain-associated gaps in service by using FM booster stations. Such waivers have permitted an LPFM station to substitute an FM booster for one of its permitted FM translators. In 2012, the Commission considered but declined to authorize LPFM cross-ownership of FM booster stations on a non-waiver basis. The Commission reasoned at that that there would be few situations in which an LPFM station could operate a booster without causing interference to its own signal.

11. The Commission now proposes to amend section 73.860 to incorporate guidelines for potential booster use by LPFM stations in lieu of use of an FM translator. Such a booster station could receive the signal of the commonly-owned LPFM station by any means authorized in section 74.1231(i), the rule that applies to all FM booster stations. While such a rule would likely affect only a limited number of LPFM stations and such stations could otherwise seek the same relief on a waiver basis, the NPRM tentatively concludes that a rule permitting use of FM boosters may improve LPFM reception in areas with irregular terrain and that in such situations the Commission should not require the filing of a waiver request.

12. *Miscellaneous Issues.* The NPRM proposes to make several additional changes and tentatively rejects others. First, the Commission proposes to make a non-substantive change to section 73.810, the rule governing LPFM third-adjacent channel interference. The current language of section 73.810 is virtually identical to that which we recently modified in Docket 18–119, for FM translators in sections 74.1203(a)(3) and 74.1204(f). To foster consistency and to clarify that LPFM stations and FM translator stations must protect the same stations, the NPRM proposes to alter section 73.810 in the same manner. The NPRM notes that section 73.810(a)(1)(iii) currently requires protection of ''previously authorized and operating LPFM stations,'' whereas the recently modified FM translator rules reference ''previously authorized'' stations without specifying an operational status. The Commission proposes to adopt the same language for LPFM stations as it did for FM translator stations, but seeks comment on whether there is a reason to retain the ''operating'' language specifically for the LPFM service.

13. The NPRM also proposes changes to correct small typographical errors, to eliminate repetitive language, and to remove out-of-date information in the LPFM Rules. The amendments would occur in sections 73.871(c) concerning ''minor'' amendments and 74.1290 which contains an outdated web page address.

14. The Commission briefly identifies and tentatively rejects several additional proposals from LPFM organizations. The suggestions tentatively rejected include those: (1) To alter the simplicity of LPFM licensing through use of a contour analysis rather than distance separations to evaluate potential interference to other stations (except for the TV6 waiver process); (2) to revisit an earlier decision not to authorize LPFM stations at powers exceeding 100 watts; (3) to alter the noncommercial nature or classification of LPFM stations; (4) to undertake the resource-intensive process of opening a new LPFM window when an LPFM station ceases operation so that others can provide replacement service; (5) to revisit the Commission's prior interpretation of language in the Local Community Radio Act describing LPFM stations and FM translator stations as ''equal in status,'' which the Commission has understood to simply require priority neither to new LPFM stations nor to new FM translators when making spectrum available for initial licensing; and (6) to update a list prepared in 2000 of stations carrying radio reading services for the blind and visually impaired where such a list would have limited longevity and contain information that LPFM applicants needing to protect reading services could obtain from other sources.

15. The Commission also tentatively rejects a suggestion to eliminate Emergency Alert System (EAS) requirements for LPFM stations. LPFM stations already have fewer EAS requirements than full service stations and it has not been shown that EAS requirements are unduly burdensome for LPFM stations. The Commission notes, however, that LPFM stations have not always participated fully in EAS testing and seeks comment on how to increase LPFM involvement in EAS testing.

16. Finally, the Commission encourages commenters to submit any additional technical proposals that follow logically from the proposals in the NPRM, excluding any proposals tentatively rejected above.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

18. *Need for and Objectives of the Proposed Rule Change.* Commission initiates this rulemaking proceeding to seek comment on certain proposals designed to improve the public's reception of LPFM broadcast station

signals and to provide greater flexibility to LPFM broadcasters. Specifically, the Commission seeks comment on the following: (1) Whether to expand the class of LPFM licensees able to use directional antennas and to allow LPFM use of antennas beyond off-the-shelf models; (2) whether to eliminate or modify the requirement that LPFM stations operating on Channels 201 to 220 (reserved band) protect television stations still operating on television channel 6; (3) whether to redefine a ''minor change'' for LPFM stations as one which either: (a) Does not exceed 5.6 kilometers (the simple standard currently in use), or (b) involves overlapping 60 dBu contours of the station's own existing and proposed facilities (a new standard that would generally be used by stations unable to meet the current 5.6 kilometer distance but that would be more complex and costly because it would require an engineering study); (4) whether to permit LPFM stations to retransmit LPFM signals over booster stations (which amplify and reradiate the signal) as a substitute for currently permissible use of FM translators (which retransmits the signal on a different channel without amplification); and (5) whether to update LPFM-related rules in Parts 73 and 74 to make a non-substantive change to conform the rule governing LPFM third-adjacent channel interference, correct typographical errors (repetitive language in 47 CFR 73.871), and remove outdated information. With respect to the proposed changes to TV Channel 6 protection, the Commission also asks whether it should eliminate or modify the requirement for all stations operating in the FM reserved band, not only LPFM stations in that band. The Commission also seeks any additional suggestions designed to enhance LPFM service to the public that would follow logically from the proposals in this proceeding.

19. These proposed changes may be needed to improve the public's ability to receive signals from low-powered stations, especially in areas with irregular terrain and near international borders. The proposed changes may also be needed to provide LPFM applicants greater flexibility in identifying initial and modified transmitter locations. The Commission's objectives are to improve LPFM reception and increase flexibility in LPFM siting while protecting primary stations and pre-existing secondary stations from interference and maintaining the core LPFM goals of diversity and localism.

20. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i), 301, 303, 307, 316, and 403 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 316, and 403.

21. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

22. *Low Power FM Radio Stations.* The proposed policies make relatively small rule adjustments that will primarily affect licensees and potential licensees of LPFM stations. LPFM stations are classified as radio broadcast stations. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Given the nature of the LPFM service, in which parties are generally not permitted to have other broadcast interests and eligibility is limited to non-profit organizations, governments, and tribal applicants, we will presume that all LPFM licensees and applicants qualify as small entities under the SBA definition. As of June 30, 2019, there are 2,178 licensed LPFM stations. In addition, there is one pending application from the 2013 LPFM filing window. This estimate may overstate the number of potentially affected licensees because existing LPFM stations that do not seek to modify their facilities would not be affected. The estimate may also be an overstatement because some of the proposals would affect only stations to be located in particular geographic regions, in certain topography, or on certain channels. With respect to applicants in future filing windows, we anticipate that we will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications.

23. *Noncommercial Educational (NCE) FM Radio Stations.* The proposed elimination of Channel 6 protection policies could apply to NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. The same SBA definition of $38.5 million in annual receipts applies to NCE FM stations. Radio stations that the Commission would consider commercial, as well as those it would consider NCE stations, are included in this industry. A Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database reflects that as of June 8, 2017, all 4,404 (100 percent) of radio stations operating as noncommercial have revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. Of these, no more than 4,139 authorized stations are potentially affected by the proposals because they are licensed as NCE stations, whereas BIA data also includes stations that are not licensed as NCE stations but choose to operate with a noncommercial format. The estimate may overstate the number of potentially affected licensees because Channel 6 protections apply only to stations operating in the reserved band (Channels 201 through 220), whereas the numbers include non-reserved band stations that would not be affected. The estimate may also overstate the number of small entities because in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate considers each station separately and does not include or aggregate revenues from affiliated organizations or from commonly controlled stations.

24. As noted above, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

25. *Channel 6 Television Stations.* The proposed elimination of Channel 6 protection would affect Television Broadcasting firms that continue to operate on analog Channel 6. This economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA defines Television Broadcasting firms as small businesses if they have $38.5 million or less in annual receipts. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The proposal would affect only television stations that operate on Channel 6 and that have not transitioned to digital operations. Approximately nine full-power television stations and about 117 LPTV and TV translator stations (54 analog and 63 digital) currently operate on Channel 6. The lower powered television stations are scheduled to transition to digital by July 13, 2021. Ten additional low power television stations that were displaced by an Incentive Auction process hold permits to move to Channel 6 in the future, but those operations will be digital rather than analog. We will presume that all of these remaining Channel 6 television stations are small businesses.

26. *FM Translator Stations.* FM translator stations operating in the reserved band would be affected by the proposed elimination of their protection to television stations operating on Channel 6. FM translators would continue to protect previously-filed LPFM applications and previously authorized LPFM stations. To the extent that proposals other than Channel 6 may alter the numbers and locations of LPFM facilities that FM translator licensees and proposed licensees must protect, the proposals could affect FM translator stations. The same $38.5 million SBA definition that applies to radio broadcast licensees applies to FM translator stations. There are 8,126 licensed FM translator and booster stations and we will presume that each is a small business. There are no remaining FM translator applications from the 2003 filing window, but there are eight applications from that window which were disposed but remain under appeal. There are six pending FM translator applications from the 2017 Auction 99 window as well as three applications from that window which were disposed of but are under appeal. There are 26 pending FM translator applications from the 2018 Auction 100 window. Seven others from that window were disposed of and are under appeal. We will presume that each applicant with an unresolved application is a small entity.

27. The proposals could also affect future FM translator applicants. We anticipate that in future filing windows we will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The 2003 FM translator filing window generated approximately 13,303 applications. The 2017 Auction 99 and 2018 Auction 100 windows, which were limited to applicants that are also licensees of AM radio stations, generated 1081 and 874 applications respectively.

28. The above-referenced estimates of licensed and future FM translator stations may overstate the number of small entities affected. The number of licensed stations includes boosters, which will not be affected. It may also be an overstatement because the proposals will only affect an existing FM translator if it must protect a previously LPFM station as part of a modification of the translator's facilities. The estimate may also overstate the number of small entities because in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate considers each station separately and does not include or aggregate revenues from affiliated organizations or from commonly controlled stations.

29. An additional element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

30. The proposed rule and procedural changes may, in some cases, impose different reporting requirements on LPFM applicants for new and modified facilities. Applicants will be able to demonstrate that their proposals are ''minor'' by submitting a different type of showing as an alternative to the current requirement. The NPRM also proposes to allow cross-ownership of LPFM stations and FM boosters. Stations choosing to own boosters would include the booster on bi-annual ownership reports. We expect this additional burden with respect to ownership reports for boosters to be minimal because LPFM stations would generally not choose to operate a booster unless they are experiencing unique terrain issues and because the report of booster ownership would be part of the same form the licensee would already be filing for its co-owned primary station. The NPRM proposes that LPFM applicants authorized to use directional antennas implement safeguards to prevent interference and submit that information to the Commission. We expect this additional burden concerning directional antennas to be minimal because it will affect only a small portion of LPFM applicants, primarily those constructing stations near the borders with Canada and Mexico.

31. *Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

32. In the NPRM, the Commission seeks comment on its proposal to assist LPFM broadcast stations and applicants by providing them with additional options that could increase coverage and choice of sites. The proposals, if adopted, would enable LPFM organizations: (1) To use directional antennas including custom and composite antennas; (2) to eliminate or modify protection of television stations operating on analog channel 6; (3) to use lack of contour overlap as an additional way to demonstrate that a proposed

LPFM modification qualifies as a ''minor change'' that does not require awaiting an application filing window; and (4) to retransmit LPFM signals over booster stations. The Commission seeks comment as to whether its goals of improving LPFM service to the public without negative impact on other FM listeners can be accomplished effectively through these means. The Commission recognizes that the TV6 proposal, which seeks to assist LPFM, NCE, and FM translator stations, also eliminates or modifies a current protection for television stations operating on Channel 6 which are also small entities. We believe that any potential negative impact on such television stations is minimal because full power TV6 stations transitioned to digital operations in 2009; there has been a lack of interference complaints from current full power digital TV6 stations since the transition; and low power television stations on TV6 are scheduled to transition by July 13, 2021. Further, digital television receivers are more selective than the analog equipment that existed when the Commission adopted the TV6 protection requirement. Nevertheless, the Commission does not propose complete elimination of TV6 protections until July 13, 2021, the date by which the remaining stations are scheduled to transition to digital. In the interim, the Commission would provide alternative protections such as allowing FM applicants to demonstrate no contour overlap with TV6 television station (and, thus, no likely interference) or to reach agreements with TV6 television stations without regard to any contour overlap. The NPRM requests comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, as set forth herein, including but not limited to alternatives that will minimize the burden on LPFM broadcasters, virtually all of whom are small businesses, as well as TV6 broadcasters that are small entities. Retaining some or all of the existing process is also an alternative. There may be unique circumstances these entities may face, and we will consider appropriate action for small broadcasters when preparing a *Report and Order* in this matter.

33. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.* None.

Ex Parte Rules

34. *Permit But Disclose.* The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Procedures

35. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ordering Clauses

36. It is ordered that pursuant to sections 1, 2, 4(i), 301, 303, 307, 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 316, and 403, and sections 1.407 and 1.411–19 of the Commission's rules, 47 CFR 1.407, 1.411–19, the Petition for Rulemaking filed by REC Networks is granted to the extent discussed herein and this Notice of Proposed Rule Making is adopted.

37. It is further ordered that the proceeding in RM No. 11810 is terminated.

38. It is further ordered that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the

Small Business Administration, and shall cause it to be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 73 and 74

Telecommunications, Radio Broadcast Services, Noncommercial Educational FM Broadcast Stations, Low Power FM Broadcast Stations, Experimental Radio, Auxiliary, Special Broadcast, and Other Program Distributional Services, FM Broadcast Translator Stations and FM Broadcast Booster Stations.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.525, revise the introductory text to read as follows:

§ 73.525 TV Channel 6 protection.

The requirements of this section will sunset on July 13, 2021. Until that date, the provision of this section will apply to all applications for construction permits for new or modified facilities for an NCE–FM station on Channels 200–220, unless the application is accompanied by a written agreement between the NCE–FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE–FM facilities.

* * * * *

■ 3. In § 73.807, add paragraph (g)(5) to read as follows:

§ 73.807 Minimum distance separation between stations.

* * * * *

(g) * * *

(5)(i) LPFM stations located within 125 kilometers of the Mexican border are limited to 50 watts (0.05 kW) ERP, a 60 dBu service contour of 8.7 kilometers and a 34 dBu interfering contour of 32 kilometers in the direction of the Mexican border. LPFM stations may operate up to 100 watts in all other directions.

(ii) LPFM stations located between 125 kilometers and 320 kilometers from the Mexican border may operate in excess of 50 watts, up to a maximum ERP of 100 watts. However, in no event shall the location of the 60 dBu contour lie within 116.3 kilometers of the Mexican border.

(iii) Applications for LPFM stations within 320 kilometers of the Canadian border may employ an ERP of up to a maximum of 100 watts. The distance to the 34 dBu interfering contour may not exceed 60 kilometers in any direction.

■ 4. In § 73.810, revise paragraphs (a)(1) introductory text and (a)(1)(iii) to read as follows:

§ 73.810 Interference.

(a) * * *

(1) Such an LPFM station will not be permitted to continue to operate if it causes any actual third-adjacent channel interference to:

* * * * *

(iii) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

* * * * *

■ 5. In § 73.816, revise paragraphs (b), (c), and (d) to read as follows:

§ 73.816 Antennas.

* * * * *

(b) Directional antennas generally will not be authorized and may not be utilized in the LPFM service, except as provided in paragraphs (c) and (d) of this section.

(c) The following may use directional antennas in the LPFM service:

(1) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(2), in connection with the operation of a Travelers' Information Service (TIS).

(2) LPFM permittees and licensees proposing a waiver of the second-adjacent channel spacing requirements of § 73.807 may utilize directional antennas for the sole purpose of justifying such a waiver.

(3) LPFM permittees and licensees proposing operation within 320 kilometers of the Mexican or Canadian border in accordance with § 73.807(g)(5) of this subpart.

(d) Use of directional antennas in the LPFM service is subject to the following standards:

(1) Composite antennas and antenna arrays may be used where the total ERP does not exceed the maximum determined in accordance with § 73.811(a) of this subpart.

(2) Either horizontal, vertical, circular or elliptical polarization may be used provided that the supplemental vertically polarized ERP required for circular or elliptical polarization does not exceed the ERP otherwise authorized. Either clockwise or counterclockwise rotation may be used. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

(3) All applications must comply with § 73.316, paragraphs (d) and (e) of this chapter.

(4) An application that specifies the use of a directional antenna must provide the information identified in § 73.316(c) of this subpart.

■ 6. In § 73.825, add introductory text to read as follows:

§ 73.825 Protection to reception of TV channel 6.

The requirements of this section will sunset on July 13, 2021.

* * * * *

■ 7. In § 73.860, revise paragraph (b) to read as follows:

§ 73.860 Cross-ownership.

* * * * *

(b) A party that is not a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in one LPFM station and no more than two FM translator stations, two FM booster stations, or one FM translator station and one FM booster station provided that the following requirements are met:

(1) The 60 dBu contour of the LPFM station overlaps the 60 dBu contour of the commonly-owned FM translator and booster station(s);

(2) The FM translator and/or booster station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD–1 version of the LPFM station's signal;

(3) The FM translator station receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself. The FM booster station receives the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i);

(4) The transmitting antenna of the FM translator and/or booster station(s) is located within 16.1 kilometers (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 kilometers (20 miles) for LPFM stations outside the top 50 urban markets of

either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license; and

(5) The 60 dBu service contour of the FM booster station(s) must remain entirely within the 60 dBu service contour of the commonly-owned LPFM station.

* * * * *

■ 8. In § 73.870, revise paragraph (a) to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocations not exceeding 5.6 kilometers or where the 60 dBu contour of the authorized facility overlaps the 60 dBu contour of the proposed facility. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872(c) and (e). These distance limitations also do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

(1) Changes in frequency to adjacent or IF frequencies (+/− 1, 2, 3, 53 or 54 channels) or, upon a technical showing of reduced interference, to any frequency; and

(2) Amendments to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

* * * * *

■ 9. In § 73.871, revise paragraph (c)(1), and remove and reserve paragraph (c)(2).

The revision reads as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) * * *

(1) Site relocations of 5.6 kilometers or less, and site relocations that involve overlap between the 60 dBu service contours of the currently authorized and proposed facilities;

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 10. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

■ 11. In § 74.1201, revise paragraph (f) and add paragraph (k) to read as follows:

§ 74.1201 Definitions.

* * * * *

(f) *FM broadcast booster station.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude. Unless specified otherwise, this term includes LPFM boosters as defined in paragraph (k) of this section.

* * * * *

(k) *LPFM booster.* An FM broadcast booster station as defined in paragraph (f) of this section that is commonly-owned by an LPFM station for the purpose of retransmitting the signals of the commonly-owned LPFM station.

■ 12. In § 74.1205, revise the introductory text to read as follows:

§ 74.1205 Protection of channel 6 TV broadcast stations.

The requirements of this section will sunset on July 13, 2021. Until that date, the provisions of this section apply to all applications for construction permits for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201–220, unless the application is accompanied by a written agreement between the NCE–FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with the proposed NCE–FM translator facility.

* * * * *

■ 13. In § 74.1263, revise paragraph (b) to read as follows:

§ 74.1263 Time of operation.

* * * * *

(b) A booster station rebroadcasting the signal of an AM, FM or LPFM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

* * * * *

■ 14. In § 74.1283, revise paragraph (b) to read as follows:

§ 74.1283 Station identification.

* * * * *

(b) The call sign of an FM booster station or LPFM booster will consist of the call sign of the primary station followed by the letters ''FM'' or ''LP'' and the number of the booster station being authorized, *e.g.,* WFCCFM–1 or WFCCLP–1.

* * * * *

§ 74.1290 [Removed and Reserved]

■ 15. Remove and reserve § 74.1290.

[FR Doc. 2019–19744 Filed 9–18–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2018–0248]

Hours of Service of Drivers; Extension of Comment Period

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) extends the comment period for its August 22, 2019 notice of proposed rulemaking (NPRM) to amend its hours-of-service (HOS) rules. FMCSA received requests for an extension to the comment period from the American Trucking Associations, the Commercial Vehicle Safety Alliance, and the International Brotherhood of Teamsters. The Agency believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the NPRM. Therefore, the Agency extends the deadline for the submission of comments until October 21, 2019.

DATES: The comment period for the NPRM published August 22, 2019 at 84 FR 44190, is extended to October 21, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0248 using any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov/*

docket?D=FMCSA-2018-0248. 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, between 9 a.m. and 5 p.m., 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'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–4325, or email at *MCPSD@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–2018–0248), indicate the specific section of the NPRM 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 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 *https://www.regulations.gov/docket?D=FMCSA-2018-0248.* 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.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in the NPRM as being available in the docket, go to *https://www.regulations.gov/docket?D=FMCSA-2018-0248* 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., 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.*

II. Background

The August 2019 NPRM requested comment on five topics. First, it proposed extending the maximum duty period allowed under the short-haul exception available to certain commercial motor vehicle (CMV) drivers from 12 hours to 14 hours. It also proposed extending the maximum radius of the short-haul exception from 100 to 150 air miles. Second, the proposal would extend the maximum driving window under adverse driving conditions by up to 2 hours. Third, the Agency proposed to allow the 30-minute break to be taken while the driver remains on duty and to require the break only after 8 hours of driving (instead of 8 hours after coming on duty) without a 30-minute non-driving period. Fourth, the Agency proposed to allow drivers who use sleeper berths to take their required off-duty time in two periods, one of at least 7 consecutive hours in the berth, and the other (of at least 2 hours) either in or out of the berth. The total of these two periods must be a minimum of 10 hours. Neither time period would count against the maximum 14-hour driving window. Fifth, FMCSA proposed to add a new option allowing one off-duty break of at least 30 minutes, but not more than 3 hours, to extend the 14-hour driving window by the length of the break, provided drivers take at least 10 consecutive hours off duty at the end of the work shift.

The comment period for the NPRM was set to expire on October 7, 2019. FMCSA received the requests to extend the comment period from the American Trucking Associations (ATA), the Commercial Vehicle Safety Alliance (CVSA), and the International Brotherhood of Teamsters (IBT). All 3 requests are available in the docket.[1]

ATA requested a 30-day extension of the comment period, stating that the additional time was needed to coordinate with and gather information from members and provide a more useful response to the detailed questions posed in the NPRM. ATA said that it was holding a relevant meeting on October 5–8.

Both CVSA and IBT requested a 45-day extension of the comment period. CVSA stated that the original 45-day period did not allow enough time to prepare and approve comments on such a complicated and important issue. IBT requested that the docket remain open until November 21, 2019, stating that the additional time was needed to effectively develop responses to the questions that FMCSA asked in the NPRM.

Additionally, FMCSA added to the docket additional details regarding its review of the 2011 Blanco Study concerning the change in safety-critical event reduction based on break type.[2]

Issued under authority delegated in 49 CFR 1.87.

Dated: September 13, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–20225 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] ATA: *https://www.regulations.gov/document?D=FMCSA-2018-0248-5949,* CVSA: *https://www.regulations.gov/document?D=FMCSA-2018-0248-5511,* and IBT: *https://www.regulations.gov/document?D=FMCSA-2018-0248-6155.*

[2] *https://www.regulations.gov/document?D=FMCSA-2018-0248-6556.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 190829–0020]

RIN 0648–BH95

Endangered and Threatened Wildlife and Plants; Proposed Rulemaking To Revise Critical Habitat for the Southern Resident Killer Whale Distinct Population Segment

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to revise the critical habitat designation for the Southern Resident killer whale (*Orcinus orca*) distinct population segment (DPS) under the Endangered Species Act (ESA) by designating six new areas along the U.S. West Coast. Specific new areas proposed along the U.S. West Coast include 15,626.6 square miles (mi^2) (40,472.7 square kilometers (km^2)) of marine waters between the 6.1-meter (m) (20 feet (ft)) depth contour and the 200-m (656.2 ft) depth contour from the U.S. international border with Canada south to Point Sur, California. We solicit comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed revision to the critical habitat designation.

DATES: Comments on this proposed rule and supporting documents must be received by December 18, 2019. Any scheduled public hearings will be announced in a separate notice. Requests for additional public hearings must be made in writing by November 4, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0041, and on the supporting documents, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0041,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Seattle Branch Chief, Protected Resources Division, West Coast Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115, Attn: SRKW Critical Habitat Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

The draft Biological Report, draft Economic Report, draft ESA Section 4(b)(2) Report, and complete list of all references cited in this proposed rule are available on our website *www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/critical_habitat.html* and at the Federal e-Rulemaking Portal *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0041.*

FOR FURTHER INFORMATION CONTACT: Nancy Young, NMFS West Coast Region, (206) 526–6550; or Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

NMFS listed the Southern Resident killer whale DPS as endangered under the ESA in 2005 (70 FR 69903; November 18, 2005). In 2006, NMFS designated critical habitat for the Southern Resident killer whale DPS in inland waters of Washington State (71 FR 69054; November 29, 2006). The designated critical habitat consists of three areas: (1) The Summer Core Area in Haro Strait and waters around the San Juan Islands, (2) Puget Sound Area, and (3) the Strait of Juan de Fuca Area. Together, these areas comprise approximately 2,560 mi^2 (6,630 km^2 of marine habitat.

The final rule designating critical habitat identified three habitat features essential to the conservation of the DPS: (1) Water quality to support growth and development; (2) prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) passage conditions to allow for migration, resting, and foraging.

On January 21, 2014, we received a petition from the Center for Biological Diversity (CBD) requesting revisions to the critical habitat designation for the Southern Resident killer whale DPS. The CBD requested we revise critical habitat to include ''inhabited marine waters along the West Coast of the United States that constitute essential foraging and wintering areas,'' specifically the region between Cape Flattery, Washington and Point Reyes, California extending from the coast to a distance of 76 km (47.2 mi) offshore. In addition, the CBD requested we adopt a fourth essential habitat feature in both current and expanded critical habitat ''providing for in-water sound levels that: (1) Do not exceed thresholds that inhibit communication or foraging activities, (2) do not result in temporary or permanent hearing loss to whales, and (3) do not result in the abandonment of critical habitat areas.''

On April 25, 2014, we announced in our 90-day finding that the petition presented substantial scientific information indicating that a revision to the current critical habitat designation may be warranted and requested public comments (79 FR 22933). Due to new information available regarding habitat use by Southern Resident killer whales, a revision to critical habitat was warranted, and we announced our intention to proceed toward a proposed rule in the 12 month finding (80 FR 9682; February 24, 2015). The 12-month finding listed the following steps to develop a proposed rule for public comment: (1) Complete data collection and analysis to refine our understanding of the whales' habitat use and needs; (2) identify areas meeting the definition of critical habitat; and (3) conduct economic, national security, and other required analyses to inform consideration of areas for exclusion under section 4(b)(2) of the ESA.

The CBD filed a complaint in August 2018 with the U. S. District Court for the Western District of Washington at Seattle seeking an order from the Court establishing deadlines for NMFS to issue proposed and final rules to revise the Southern Resident killer whale critical habitat designation. A court-approved settlement agreement was filed on April 17, 2019, (*Center for Biological Diversity* v. *National Marine Fisheries Service,* 2:18–cv–01201–RSM (W.D. Wash.)). The settlement agreement stipulates that NMFS must submit the proposed rule to the Office of the Federal Register by September 6, 2019.

This proposed rule describes our proposed revision to the Southern Resident killer whale critical habitat designation, including supporting information on Southern Resident killer whale biology, distribution, and habitat use, and the methods used to develop the proposed revision to the designation.

Southern Resident Killer Whale Natural History and Ecology

The Southern Resident killer whale DPS was listed as endangered under the ESA in 2005 (70 FR 69903; November 18, 2005). A Recovery Plan was completed in 2008 and provides detailed information on the life history, biology, and threats to the whales and identifies actions needed to recover the DPS (NMFS 2008). The limiting factors described in the recovery plan include reduced prey availability and quality, high levels of contaminants from pollution, and disturbance from vessels and other sources of anthropogenic sound (*e.g.,* dredging, drilling, construction, seismic testing, sonar). There is considerable uncertainty about which threats may be responsible for the decline in the Southern Resident killer whale population, or which is the most important to address for recovery. The Recovery Plan lays out an adaptive management approach and a recovery strategy that addresses each of the potential threats based on the best available science. The recovery action outlined within the Recovery Plan identifies numerous management actions necessary to recover Southern Resident killer whales, such as salmon restoration efforts (habitat, harvest, and hatchery management), actions to clean up contaminated sites and sediments, minimization of continuing inputs of contaminants into the environment, an evaluation of the need for vessel traffic restrictions, minimization of the risk of oil spills, stranding response, and education and outreach (NMFS 2008). The recovery action outline links management actions to an active research program to fill data gaps and a monitoring program to assess effectiveness. Feedback from research and monitoring will provide the information necessary to refine ongoing actions and develop and prioritize new actions.

NMFS works closely with Canada, the State of Washington, tribes, and interest groups to conduct research to fill critical information gaps, implement recovery actions, and develop partnerships to conserve Southern Resident killer whales. We and partners have been implementing actions identified in the recovery plan for many years. A comprehensive review of killer whale research and regulatory actions conducted to recover the population following the listing can be found in NMFS' report, ''Southern Resident Killer Whales—10 Years of Research and Conservation'' (NMFS 2014).

A five-year status review under the ESA completed in December 2016 provides an evaluation of the current status of the population and progress toward meeting recovery goals, and concluded that the Southern Resident killer whales should remain listed as endangered (NMFS 2016b). The 2018 annual census from the Center for Whale Research counted 75 whales remaining in the population as of July 1, 2018. Following the census, as of July 1, 2019, four whales died or were presumed dead and two calves were born. Although the Southern Resident killer whale population size has varied over time, this is a decline from the highest census count of 98 measured in 1995, and NMFS projects a downward trend in population growth over the next 50 years (NMFS 2016).

Below we summarize several aspects of natural history of Southern Resident killer whales and threats as they relate to the habitat needs of the species. More detailed information can be found in the draft Biological Report that supports this proposed rule (NMFS 2019a).

Distribution

Killer whales live in highly stable social groupings, or pods, led by females. The three pods of the Southern Resident DPS, identified as J, K, and L pods, reside for part of the year in the inland waterways of Washington State and British Columbia known as the Salish Sea (Strait of Georgia, Strait of Juan de Fuca, and Puget Sound), principally during the late spring, summer, and fall (Ford *et al.* 2000, Krahn *et al.* 2002). The whales also visit coastal waters off Washington and Vancouver Island, especially in the area between Grays Harbor and the Columbia River (Ford *et al.* 2000, Hanson *et al.* 2017), but travel as far south as central California and as far north as Southeast Alaska. Although less is known about the whales' movements in coastal waters, satellite tagging, opportunistic sighting, and acoustic recording data suggest that Southern Resident killer whales spend nearly all of their time on the continental shelf, within 34 km (21.1 mi) of shore in water less than 200 m (656.2 ft) deep (Hanson *et al.* 2017).

Southern Resident killer whales are large mammals requiring abundant food sources to sustain metabolic processes throughout the year. Prey availability changes seasonally, and Southern Resident killer whales appear to depend on different prey species and habitats throughout the year. The seasonal timing of salmon returns to different river systems likely influences their movements. Whales may travel significant distances to locate prey aggregations sufficient to support their numbers.

Foraging and Prey

Based on fish scales and tissue remains collected from predation events, fecal sampling, and stomach contents studies, Southern Resident killer whales are known to consume a variety of fish species (22) and one species of squid (Ford *et al.* 1998, Ford *et al.* 2000, Ford & Ellis 2006, Hanson *et al.* 2010, Ford *et al.* 2016). These studies suggest an overall preference for Chinook salmon (*Oncorhynchus tshawytscha*), despite the much lower abundance of Chinook in some areas and during certain time periods compared to other salmonids. Chum (*O. keta*), coho (*O. kisutch*), and steelhead (*O. mykiss*) may also be important in the Southern Resident killer whale diet at particular times and in specific locations. Factors that might influence this preference include Chinook's large size, high fat and energy content, and year-round occurrence in the whales' geographic range. Chinook salmon have the highest value of total energy content compared to other salmonids because of their larger body size and higher energy density (O'Neill *et al.* 2014). Research suggests that killer whales are capable of detecting, localizing, and recognizing Chinook salmon through their ability to distinguish Chinook echo structure as different from other salmon (Au *et al.* 2010).

Fewer predation events have been observed and fecal samples collected from Southern Resident killer whales off the Pacific coast than in inland waters, but recent data indicate that salmon, and Chinook salmon in particular, remains an important dietary component when the whales are in outer coastal waters (Hanson *et al.* In prep). Quantitative analyses of diet from fecal samples also indicate a high proportion of Chinook in the diet of whales feeding in waters off the coast but a greater diversity of species, of which more tha (*Ophiodon elongatus*) and steelhead also comprised a substantial portion of the diet (Ford *et al.* 2016, Hanson *et al.* In prep). Foraging on skate and halibut (*Hippoglossus stenolepis*) was also detected (Hanson *et al.* In prep). Most of the Chinook prey samples obtained while the whales were in outer coastal waters were determined to have

originated from the Columbia River basin, including Lower Columbia Springs, Middle Columbia Tule, Upper Columbia Summer/Fall. However, the Chinook stocks included fish from as far north at the Taku River and as far south as the Central Valley California (Hanson *et al.* In prep). In both inland and outer coastal waters, Southern Resident killer whales generally consumed salmon that were younger than those consumed by Northern Resident killer whales (Ford & Ellis 2006, Hanson *et al.* In prep).

Noren (2011) estimated the daily prey energy requirements for Southern Resident killer whales, which vary by age class and sex. Noren (2011) estimated that immature whales between 1 and 6 years of age require 41,376 to 130,246 kilocalories (kcal) per day, while juveniles from 7 to 12 years of age need 118,019 to 174,380 kcal per day. Females older than 12 years require 149,972 to 217,775 kcal per day, while males over 12 years require 155,885 to 269,458 kcal per day (Noren 2011). Southern Resident killer whales' preferred prey, Chinook salmon, is larger and has a higher total energy content (average of 13,409 kcal per fish; O'Neill *et al.* 2014) when compared to other salmon species found in the region. It would take roughly 2.7 coho, 3.1 chum, 3.1 sockeye, or 6.4 pink salmon to obtain the same amount of energy as can be found in one Chinook salmon (O'Neill *et al.* 2014). However, the total energy varies significantly among Chinook salmon populations due to variation in body size and lipid content. For example, mature Puget Sound Chinook has relatively low mean total energy values (8,941 kcal per fish), whereas Chinook returning to the Sacramento River has a mean total energy above 15,000 kcal per fish (O'Neill *et al.* 2014).

Scarcity of prey is one of the three main threats to Southern Resident killer whales' survival (NMFS 2008). Salmon have declined because of land alteration throughout the Pacific Northwest associated with agriculture, timber harvest practices, the construction of dams, urbanization, fishery harvest practices, and hatchery operations. Many of the salmon populations that were once abundant historically have declined to the point where they have been listed as endangered or threatened with extinction.

Hearing and Vocalizations

Like all dolphins, killer whales produce numerous types of vocalizations that are useful in navigation, communication, and foraging (Dahlheim & Awbrey 1982, Ford 1989, Barrett-Lennard *et al.* 1996, Ford *et al.* 2000, Miller 2002, Miller *et al.* 2004, Saulitis *et al.* 2005). Most calls consist of both low- and high-frequency components (Bain & Dahlheim 1994). Killer whales produce three categories of sounds: Echolocation clicks, tonal whistles, and pulsed calls (Ford 1989). Clicks are brief pulses of ultrasonic sound given singly or more often in series known as click trains. They are used primarily for navigation and discriminating prey and other objects in the surrounding environment, but are also commonly heard during social interactions and may have a communicative function (Barrett-Lennard *et al.* 1996). Barrett-Lennard *et al.* (1996). Southern Residents produce whistles for both long-range communication (*e.g.,* during foraging and slow traveling) and social interactions (Riesch *et al.* 2006). Pulsed calls are the most common type of vocalization in killer whales and resemble squeaks, screams, and squawks to the human ear. Three categories of pulsed calls are distinguishable: Discrete, variable, and aberrant (Ford 1989). Discrete calls are the predominant sound type during foraging and traveling, and are used for maintaining acoustic contact with other group members, especially those out of visual range (Ford 1989, Ford *et al.* 2000, Miller 2002). Variable and aberrant calls are given more frequently after animals join together and interact socially.

Killer whales hear sounds through the lower jaw and other portions of the head, which transmit the sound signals to receptor cells in the middle and inner ears (Møhl *et al.* 1999, Au 2002). Killer whales are considered mid-frequency cetaceans (NMFS 2018). Their hearing ability extends from approximately 600 hertz (Hz) to 114 kilohertz (kHz), but is most sensitive in the range of 5–81 kHz (Branstetter *et al.* 2017).

Health and Contaminants

Persistent organic pollutants (POP), such as polychlorinated biphenyls (PCB), polybrominated diphenyl ethers (PBDE), and dichlorodiphenyltrichloroethane (DDT), are of particular concern to Southern Resident killer whales. Whales become exposed to POPs through their prey as well as through nursing, when adult females offload the contaminants stored in their blubber as it is metabolized to produce milk, which then carries those contaminants to the offspring. High contaminant levels exacerbate the effects of reduced prey abundance as the contaminants become mobilized in the blood stream when stored fat is metabolized in the absence of food. High concentrations of POPs have been linked to endocrine, metabolic, and immune disruption, cancer, decreased reproduction, and increased calf mortality (Reijnders 1986, de Swart *et al.* 1996, Schwacke *et al.* 2002, Ylitalo *et al.* 2005, Buckman *et al.* 2011, Gockel & Mongillo 2013, Lundin *et al.* 2016, Mongillo *et al.* 2016, Hall *et al.* 2018).

Exposure to petroleum hydrocarbons released into the marine environment via oil spills and other discharge sources represents a serious potential health risk for Southern Resident killer whales. Polycyclic aromatic hydrocarbons, a component of oil (crude and refined) and motor exhaust, are a group of compounds known to be carcinogenic and mutagenic (Pashin & Bakhitova 1979). While marine mammals are generally able to metabolize and excrete limited amounts of hydrocarbons, acute or chronic exposure poses greater toxicological risks (Grant & Ross 2002). Oil spills are also potentially destructive to prey populations and therefore may adversely affect Southern Resident killer whales by reducing food availability.

Statutory and Regulatory Background for Critical Habitat Designations

The ESA defines critical habitat under section 3(5)(A) as the (1) specific areas within the geographical area occupied by the species at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of Commerce that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (16 U.S.C. 1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Our regulations provide that critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

Section 4(a)(3)(B) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense

(DOD) or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of Commerce determines in writing that such plan provides a benefit to the species, and its habitat, for which critical habitat is proposed for designation.

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. Pursuant to this section, the Secretary of Commerce (Secretary) may exclude any area from critical habitat upon determining that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. The decision to exclude is discretionary; in no circumstances is an exclusion of any particular area required by the ESA (50 CFR 424.19; 81 FR 7226, February 11, 2016). However, the Secretary may not exclude areas if this will result in the extinction of the species.

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. Critical habitat requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency. However, designating critical habitat can help focus the efforts of other conservation partners (*e.g.,* State and local governments, individuals, and non-governmental organizations).

Methods and Criteria Used To Identify Specific Areas Eligible for Critical Habitat

In the following sections, we describe the relevant definitions and requirements in the ESA and our implementing regulations and the key information and criteria used to prepare this proposed revision to the Southern Resident killer whale critical habitat designation. In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12), this proposed designation is based on the best scientific information available concerning the species' present and historical range, habitat, and biology, as well as threats to its habitat. The information gathered to create this proposed rule has been collated and analyzed in three supporting documents: A draft Biological Report (NMFS 2019a); a draft Economic Report (IEc 2018); and a draft ESA Section 4(b)(2) Report (NMFS 2019b). We used the information and analyses in these reports to inform our proposal to designate specific areas within the whales' coastal range as critical habitat.

We followed a five-step process in order to identify the specific areas eligible for critical habitat designation: (1) Determine the geographical area occupied by the species at the time of listing, (2) identify physical or biological habitat features essential to the conservation of the species, (3) delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features, (4) determine whether the feature(s) in a specific area may require special management considerations or protections, and (5) determine whether any unoccupied areas are essential for conservation. Our evaluation and determinations are described in detail in the draft Biological Report (NMFS 2019a) and are summarized below.

Beyond the identification and description of the areas, the critical habitat designation process also include additional steps: Identify whether any area may be precluded from designation because the area is subject to an INRMP that we have determined provides a benefit to the species; and consider the economic, national security, or any other impacts of designating critical habitat and determine whether to exercise our discretion to exclude any particular areas. These steps are described in the draft ESA Section 4(b)(2) Report (NMFS 2019b) and the draft Economic Report (IEc 2019) and are summarized in later sections of this proposed rule.

Geographical Area Occupied by the Species

The term ''geographical area occupied by the species'' is defined as an area that may generally be delineated around a species' occurrences as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02).

Southern Resident killer whale summer inland habitat use was previously described in the 2006 critical habitat designation (71 FR 69054, November 29, 2006). At that time, few data were available on Southern Resident distribution and habitat use of coastal and offshore areas in the Pacific Ocean. While it was known that the whales occupied these waters for a portion of the year, only 28 sightings of Southern Resident killer whales were available to describe their coastal range (Krahn *et al.* 2004, NMFS 2006). In the 2006 designation, these coastal areas were included in the identified geographical area occupied by the species, but the lack of data precluded the agency from designating specific areas within the coastal range as critical habitat.

Since the 2006 designation, considerable effort has been made to better understand the range and movements of Southern Resident killer whales once they leave inland waters. Land- and vessel-based opportunistic and survey-based visual sightings, satellite tracking, and passive acoustic research conducted since 2006 have provided an updated estimate of the whales' coastal range that extends from the Monterey Bay area in California, north to Chatham Straight in southeast Alaska. In addition, these data have provided a better understanding of the whales' use of these waters, allowing us to identify areas that meet the definition of critical habitat under the ESA.

While the range of Southern Resident killer whales includes coastal and inland waters of British Columbia, Canada, we cannot designate critical habitat in areas outside of U.S. jurisdiction (50 CFR 424.12(h)). The Government of Canada has designated critical habitat for Northern and Southern Resident killer whales in Canadian waters under its Species at Risk Act. In its 2008 recovery strategy and 2011 amended recovery strategy, the Government of Canada identified the Canadian side of Haro and Juan de Fuca Straits, as well as Boundary Pass and adjoining areas in the Strait of Georgia as critical habitat for Southern Resident killer whales (Fisheries and Oceans Canada 2011). The Government of Canada recently designated a new critical habitat area for Northern and Southern Resident killer whales in ocean waters on the continental shelf off southwestern Vancouver Island,

including Swiftsure and La Pérouse Banks (Fisheries and Oceans Canada 2018). Additional areas are identified as critical habitat for Northern Resident killer whales only.

Some Alaskan waters are considered to be within the geographic area occupied by Southern Resident killer whales, but we are not considering expanding critical habitat there at this time because there is insufficient information about the whales' distribution, behavior, and habitat use in these areas. For example, there is only one sighting of Southern Resident killer whales in southeast Alaska, in Chatham Strait in 2007. While we can infer that some of the essential habitat features, such as prey, must be present to support the whales there, we do not have sufficient data to describe them adequately and identify specific areas with those features.

Physical and Biological Features Essential to Conservation

The ESA does not specifically define physical or biological features. However, court decisions and joint NMFS and U.S. Fish and Wildlife Service (U.S. FWS) regulations at 50 CFR 424.02 (81 FR 7413; February 11, 2016) provide guidance on how physical or biological features are expressed. Physical and biological features support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Based on the best available scientific information regarding natural history and habitat needs, the following features were identified in the 2006 critical habitat designation as essential to the conservation of the species within inland waters of Washington: (1) Water quality to support growth and development; (2) prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth; and (3) passage conditions to allow for migration, resting, and foraging. We identified the same three biological and physical features as essential for the conservation of Southern Resident killer whales within their coastal range, as described below.

(1) *Water quality to support growth and development.* Water quality supports Southern Resident killer whales' ability to forage, grow, and reproduce free from disease and impairment. Southern Resident killer whales are highly susceptible to biomagnification of pollutants, such that chemical pollution is considered one of the prime impediments to their recovery (NMFS 2008). Water quality is essential to the whales' conservation, given the whales' present contamination levels, small population numbers, increased extinction risk caused by any additional mortalities, and geographic range (and range of their primary prey) that includes highly populated and industrialized areas. Water quality is especially important in high-use areas where foraging behaviors occur and contaminants can enter the food chain. The absence of contaminants or other agents of a type and/or amount that would inhibit reproduction, impair immune function, result in mortalities, or otherwise impede the growth and recovery of the Southern Resident population is a habitat feature essential for the species' recovery. Exposure to oil spills also poses additional direct threats as well as longer-term population level impacts. Therefore, the absence of these chemicals is of the utmost importance to Southern Resident conservation and survival.

(2) *Prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth.* Southern Resident killer whales need to maintain their energy balance all year long to support daily activities (foraging, traveling, resting, socializing) as well as gestation, lactation, and growth. Maintaining their energy balance and body condition is also important because when stored fat is metabolized, lipophilic contaminants may become more mobilized in the blood stream, with potentially harmful health effect (Mongillo *et al.* 2016). Southern Resident killer whales are top predators that show a strong preference for salmonids in inland waters, particularly larger, older age class Chinook (age class of 3 years or older) (Ford & Ellis 2006, Hanson *et al.* 2010). Samples collected during observed feeding activities, as well as the timing and locations of killer whales' high-use areas that coincide with Chinook fish runs, suggest the whales' preference for Chinook extends to outer coastal habitat use as well (Hanson *et al.* 2017, Shelton *et al.* 2018, Hanson *et al.* In prep). The diets of whales in outer coastal areas are more varied than those of inland habitats, which suggests there may not be sufficient quantity of Chinook along the coast to sustain them. Habitat conditions should support the successful growth, recruitment, and sustainability of abundant prey to support the individual growth, reproduction, and development of Southern Resident killer whales.

Age, size, and caloric content all affect the quality of prey, as do contaminants and pollution. The availability of key prey is also essential to the whales' conservation. Availability of prey along the coast is likely limited at particular times of year due to the small run sizes of some important Chinook stocks, as well as the distribution of preferred adult Chinook that may be relatively spread out prior to their aggregation when returning to their natal rivers. Availability of Chinook to the whales may also be impacted by sound from vessels or other sounds sources if they raise average background noise within the animal's critical bandwidth to a level that is expected to chronically or regularly reduce echolocation space (Joy *et al.,* 2019, Veirs *et al.* 2016), and by competition from other predators including other resident killer whales, pinnipeds, and fisheries (Chasco *et al.* 2017).

(3) *Passage conditions to allow for migration, resting, and foraging.* Southern Resident killer whales are highly mobile, can cover large distances, and range over a variety of habitats, including inland waters and open ocean coastal areas from the Monterey Bay area in California north to Southeast Alaska. The whales' habitat utilization is dynamic. Noren and Hauser (2016) evaluated Southern Resident killer whales' behavior and fine-scale habitat use within the inland critical habitat Summer Core Area in Haro Strait and waters around the San Juan Islands and found that the whales engaged in most activity states (travel, forage, rest, and social behavior) throughout the area, but that foraging and resting predominantly occurred in some localized regions. Similar data collection and analysis has not been conducted to identify geographic variability or hotspots in the whales' activity or behavioral states in waters along the outer coast. However, analysis of Southern Resident killer whales' movement patterns on the outer coast from satellite tag data has revealed preferred depth bands and distances from shore that suggest potential travel corridors, and variations in travel speed or duration of occurrence that may indicate different behavioral states (Hanson *et al.* 2017).

Southern Resident killer whales require open waterways that are free from obstruction (*e.g.,* physical, acoustic) to move within and migrate between important habitat areas throughout their range, find prey, and fulfill other life history requirements. As an example of an ''acoustic obstruction,'' killer whale occurrence in the Broughton Archipelago, Canada declined significantly when acoustic harassment devices were in use at a salmon farm, and returned to baseline levels once the devices were no longer used (Morton & Symonds 2002), indicating the introduction of this chronic noise source into the environment acted as an acoustic barrier to the whales' use of the area. The passage feature may be less likely to be impacted in coastal ocean waters compared to the more geographically constricted inland waters because the whales may be able to more easily navigate around potential obstructions in the open ocean, but these passage conditions are still a feature essential to the whales' conservation and which may require special management or protection.

We also considered whether to identify sound as a fourth essential feature. Southern Resident killer whales produce and detect sounds for communication, navigation, and foraging. An acoustic environment, or soundscape, in which the whales can detect and interpret sounds is critical for carrying out these basic life functions. In recognition of this, we previously considered identifying sound as a potential essential feature (69 FR 76673; December 22, 2004), but ultimately concluded that we lacked sufficient information to do so. CBD petitioned us to again consider identifying in-water sound as an essential feature of the currently designated critical habitat and any new designation.

Under the ESA, we separately consider effects of anthropogenic sound on individual whales (which is scaled up to the listed species unit) and habitat-related impacts (which is scaled up to the critical habitat designation). For the former, NMFS has an established framework and thresholds for considering impacts to marine mammals' hearing (specifically temporary or permanent hearing loss), as outlined in our ''Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing'' (NMFS 2018), and NMFS is also working to refine our guidance on the effects of anthropogenic sound on marine mammal behavior. We will continue to evaluate and manage direct and indirect effects of anthropogenic sound on individual animals and the population relative to the jeopardy standard in ESA section 7 analyses and through MMPA incidental take authorizations.

Adverse habitat-related effects may stem from the introduction of a chronic noise source that degrades the value of habitat by interfering with the sound-reliant animal's ability to gain benefits from that habitat (*i.e.,* altering the conservation value of the habitat). NMFS does not currently have a quantifiable methodology to establish thresholds for determining when chronic noise reaches a level such that it alters the conservation value in this way. However, we can, and do, consider these effects qualitatively. For example, NMFS identified sound-related essential features in the critical habitat designations for the Cook Inlet beluga whale DPS and Main Hawaiian Islands (MHI) insular false killer whale DPS. Although sound is identified as an essential feature for Cook Inlet beluga whale critical habitat and as a characteristic of an essential feature for MHI insular false killer whale critical habitat in a non-quantitative manner, the descriptions of both essential features inform the qualitative assessment of habitat-related impacts from anthropogenic sound. NMFS has not identified a sound-related essential feature for other marine mammal critical habitat designations.

In our experience evaluating effects to Southern resident killer whale critical habitat in inland waters, we are already able to assess adverse habitat-related effects of anthropogenic sound by evaluating impacts to the prey and passage essential features of current critical habitat for Southern Resident killer whales, and thus we do not consider it necessary to identify sound as a separate essential feature. For example, we evaluate whether chronic anthropogenic sound might alter the conservation value of habitat by reducing the availability of the whales' prey in a particular foraging area by reducing the effective echolocation space for the whales to forage, or creating a barrier that restricts movements through or within an area necessary for migration, resting, or foraging. We consider the protections resulting from these analyses to be consistent with those resulting from the evaluation of sound-related essential features in the Cook Inlet beluga whale and MHI insular false killer whale designations. If critical habitat is finalized consistent with this proposed rule, we would use the same approach for evaluating these effects in coastal critical habitat, consistent with our existing practice in inland waters critical habitat.

Specific Areas Within the Geographical Area Occupied by the Species

The three specific areas within the geographic area (range) occupied by the species identified in the 2006 critical habitat designation are carried forward unchanged by the proposed critical habitat revision. We refer to them here as Inland Waters Areas 1–3 to differentiate them from the six newly identified specific coastal areas proposed for designation (Coastal Areas 1–6). In the 2006 designation, a lack of data precluded us from determining whether any specific areas within the coastal range met the definition of critical habitat. Research and data collected since then have allowed us to better characterize the whales' habitat use (NMFS 2019a). These data are now sufficient to identify specific areas within the whales' coastal range.

The CBD requested that we identify critical habitat in areas of the Pacific Ocean between Cape Flattery, Washington, and Point Reyes, California, extending approximately 47 mi (76 km) offshore. This requested area was based mainly on the extent of the whales' movements from NMFS' satellite tag data: Tagged animals traveled as far south as Point Reyes and as far offshore as 47 mi. However, the petition stated that because NMFS was continuing to analyze data describing the Southern Resident killer whales' use of coastal and offshore waters, the petition requested we ''refine this proposal, as necessary, to include additional inhabited zones or to focus specifically on areas of concentrated use'' (CBD 2014). To delineate specific areas, we relied on the satellite tag data but also incorporated information on sightings, acoustic data, and prey sampling. As a result, our proposed specific areas differ in their boundaries from the petitioner's request. For example, there are documented sightings of Southern Resident killer whales south of Point Reyes, so the boundary of the proposed critical habitat is farther south than the petitioners requested.

We identified six specific areas off the U.S. West Coast, delineated based on their habitat features and use by Southern Resident killer whales. They encompass most of the whales' U.S. coastal range, and they vary in size. The ESA and regulations provide the agency discretion to determine the scale at which specific areas are identified (50 CFR 424.12; 81 FR 7413, February 11, 2016). We selected the boundaries

between areas to reflect the spatial scale of the whales' movements and behavioral changes (*e.g.,* where tagged whales were primarily traveling versus observed foraging), as well as to align with some existing fishery management boundaries (*e.g.,* Pigeon Point and Point Sur are geographic points used by the Pacific Fishery Management Council in salmon management; PFMC 2016). Each area contains all three essential features, although the primary feature of each area is noted below. More information about each area, including descriptions of the whales' use of the area based on sighting, satellite tagging, and acoustic detection data, can be found in the draft Biological Report (NMFS 2019a). Although we consider it to be informative for future section 7 consultations to identify six specific areas of coastal critical habitat given the differences in the whales' use of the areas, we are soliciting public comment on whether the areas should be combined into a single continuous unit (see Public Comments Solicited section below).

Beginning at the westernmost extent of the currently designated Strait of Juan de Fuca critical habitat area (Inland Waters Area 3), the new coastal areas span the U.S. West Coast from the U.S. international border with Canada south to Point Sur, California, which is just south of the southernmost sightings of Southern Resident killer whales in Monterey Bay. On January 27, 2008, Southern Resident killer whales were sighted off Cypress Point, Carmel Bay, just south of Monterey Bay, traveling south (N. Black, Monterey Bay Whale Watch, Orca Network sightings archives). Given uncertainty in the exact extent of the whales' southward movements, we elected to delineate the southern boundary of the specific area just south of the last sighting (by approximately 20 mi (32.2 km)) and align the boundary with the existing salmon management area boundary at Point Sur, California (PFMC 2016).

The inshore (eastern) boundary of the areas is delineated by a continuous line along the coast at 20-ft (6.1-m) depth relative to mean high water. This continuous line crosses river mouths and entrances to semi-enclosed bays and estuaries. This is consistent with the inshore boundary of the 2006 critical habitat designation in inland waters (although the inshore boundary of the coastal critical habitat is delineated relative to the mean high water line instead of extreme high water, the inshore boundary in inland waters). We do not have data indicating that the whales frequently occur in waters shallower than 6.1 m. For example, based on data from four satellite-tagged Southern Resident killer whales, less than 1 percent of the whales' outer coastal locations were in depths less than 6 m (NWFSC unpubl. data). In addition, there are no data from sightings or satellite tags to indicate that Southern Resident killer whales enter river mouths or semi-enclosed bays and estuaries along the coast, although data indicate the whales do use the open embayment of Monterey Bay in California. Thus, based on the available data, we defined the shoreward boundary of the specific areas as a line along the coast at 6.1 m in depth relative to the mean high water line.

The offshore (western) boundary of the areas is the 200-m (656.2-ft) depth contour, or isobath. This was selected because movement data from satellite-tagged Southern Resident killer whales indicate that most coastal locations were in water depths of 200 m or less (96.5 percent) and within 34 km (21.1 mi) from shore (95 percent) (Hanson *et al.* 2017). Additionally, the limited information available on the distribution of salmon in offshore waters indicates Southern Resident killer whale prey (an essential feature of the habitat) is present in waters of 200 m or less. The two areas off the coast of Washington share the same northern and southern boundaries but are separated longitudinally at the 50-m (164.0-ft) isobath, such that Coastal Area 1 ranges from 6.1–50 m depth while Coastal Area 2 ranges from 50–200 m depth. The 50-m isobath was selected to distinguish the areas because the majority (42 of 52, or 76.4 percent) of prey samples from observed Southern Resident killer whale predation events in these two areas were collected in water depths of 50 m or less, and just over half of the satellite tag locations in these two areas (54 percent) were in water depths of 50 m or less (NWFSC unpubl. data; Hanson *et al.* In prep).

The latitudinal boundaries between the specific coastal areas were initially selected to coincide with some of the coastal salmon management area boundaries as defined in the Pacific Salmon Fishery Management Plan (FMP) and used for the management of salmon harvest (Chinook and Coho specifically) (PFMC 2016). Although the areas of highest Southern Resident killer whale occurrence, as indicated by a duration-of-occurrence model from satellite tag data (Hanson *et al.* 2017), did not precisely match the salmon management areas, they generally align with the available information on salmonid and other fish species that may be prey to Southern Resident killer whales. For example, the whales' highest use areas occurred in the North of Falcon fishery management area between Cape Falcon, Oregon and the Canadian border, and relatively high use occurred within the Klamath Management Zone. Similar to inland waters, we assume that Southern Resident killer whales respond to regional and seasonal abundance of salmon, particularly Chinook runs. We then adjusted some of the boundaries to better reflect what we know about the whales' use of the areas (*e.g.,* areas where foraging has been observed and/or prey samples collected, versus areas where whales are considered mainly to be traveling through). We selected Cape Meares, Oregon as the southern boundary of Areas 1 and 2 instead of Cape Falcon just to the north, because the Cape Meares boundary encompassed all but one of the observed predation events and prey sample locations off the Washington and Oregon coasts. We selected Cape Mendocino, California as the boundary between Areas 4 and 5 instead of Horse Mountain just to the south because the three predation events observed in California occurred off the Eel River just north of Cape Mendocino, and that boundary better demarcated the southern extent of a higher-use area based on the duration-of-occurrence model of satellite-tagged whale movements (NMFS 2019a).

The six specific coastal areas are:

Coastal Area 1—Coastal Washington/Northern Oregon Inshore Area: U.S. marine waters west of a line connecting Cape Flattery, Washington (48°23′10″ N/124°43′32″ W), Tatoosh Island, Washington (48°23′30″ N/124°44′12″ W), and Bonilla Point, British Columbia (48°35′30″ N/124°43′00″ W), from the U.S. international border with Canada south to Cape Meares (45°29′12″ N), between the 6.1-m and 50-m isobath contours. This area covers 1,441.9 mi^2 (3,734.6 km^2) and includes waters off Clallam, Jefferson, Grays Harbor, and Pacific counties in Washington and Clatsop and Tillamook counties in Oregon. The primary essential feature of this area is prey.

Coastal Area 2—Coastal Washington/Northern Oregon Offshore Area: U.S. marine waters west of a line connecting Cape Flattery, Washington (48°23′10″ N/124°43′32″ W), Tatoosh Island, Washington (48°23′30″ N/124°44′12″ W), and Bonilla Point, British Columbia (48°35′30″ N/124°43′00″ W), from the U.S. international border with Canada south to Cape Meares (45°29′12″ N), between the 50-m and 200-m isobath contours. This area covers 4,617.2 mi^2 (11,958.6 km^2), and as with Area 1, includes waters off Clallam, Jefferson, Grays Harbor, and Pacific counties in

Washington and Clatsop and Tillamook counties in Oregon. The primary essential feature of this area is prey.

Coastal Area 3—Central/Southern Oregon Coast Area: U.S. marine waters from Cape Meares (45°29′12″ N) south to the OR/CA border (42°00′00″ N), between the 6.1-m and 200-m isobath contours. This area covers 4,962.6 mi² (12,853.1 km²) and includes waters off Tillamook, Lincoln, Lane, Douglas, Coos, and Curry counties in Oregon. The primary essential feature of this area is passage.

Coastal Area 4—Northern California Coast Area: U.S. marine waters from the OR/CA border (42°00′00″ N) south to Cape Mendocino, CA (40°26′19″ N), between the 6.1-m and 200-m isobath contours. This area covers 1,606.8 mi² (4,161.5 km²) and includes waters off Del Norte and Humboldt counties in California. The primary essential feature of this area is prey.

Coastal Specific Area 5—North Central California Coast Area: U.S. marine waters from Cape Mendocino, CA (40°26′19″ N) south to Pigeon Point, CA (37°11′00″ N), between the 6.1-m and 200-m isobath contours. This area covers 3,976.2 mi² (10,298.4 km²) and includes waters off Humboldt, Mendocino, Sonoma, Marin, San Francisco, and San Mateo counties in California. The primary essential feature of this area is passage.

Coastal Specific Area 6—Monterey Bay Area: U.S. marine waters from Pigeon Point, CA (37°11′00″ N) south to Point Sur, CA (36°18′00″ N), between the 6.1-m and 200-m isobath contours. This area covers 710.1 mi² (1,839.2 km²) and includes waters off San Mateo, Santa Cruz, and Monterey counties in California. The primary essential feature of this area is prey.

Need for Special Management Considerations or Protection

Joint NMFS and U.S. FWS regulations at 50 CFR 424.02 define special management considerations or protection to mean methods or procedures useful in protecting physical and biological features essential to the conservation of listed species.

Human activities managed under a variety of legal mandates have the potential to affect the habitat features essential to the conservation of Southern Resident killer whales, including those that could increase water contamination and/or chemical exposure, decrease the quantity or quality of prey, or could inhibit safe, unrestricted passage between important habitat areas to find prey and fulfill other life history requirements. Examples of these types of activities include (but are not limited to): (1) Salmon fisheries and fisheries that take salmon as bycatch; (2) salmon hatcheries; (3) offshore aquaculture/mariculture; (4) alternative energy development; (5) oil spills and response; (6) military activities; (7) vessel traffic; (8) dredging and dredge material disposal; (9) oil and gas exploration and production; (10) mineral mining (including sand and gravel mining); (11) geologic surveys (including seismic surveys); and (12) upstream activities (including activities contributing to point-source water pollution, power plant operations, liquefied natural gas terminals, desalinization plants). We identified these activities based on our ESA section 7 consultation history since 2006 for existing Southern Resident killer whale critical habitat, along with additional information that has become available since the original designation. This is not an exhaustive or complete list of potential activities; rather, these activities are of primary concern because of their potential effects that we are aware of at this time and that should be considered in accordance with section 7 of the ESA when Federal agencies authorize, fund, or carry out these activities. The ESA section 7 requirement that Federal agencies ensure their actions are not likely to adversely modify critical habitat applies not only to actions occurring within designated critical habitat, but also to actions occurring outside of designated areas which can impact the features of the critical habitat. For example, consultation could be required on activities that occur in waters shallower than 20 ft (6.1 m) or in upstream freshwater locations if those actions are likely to adversely affect essential habitat features in designated critical habitat.

Table 1 lists the activities that may affect the essential features in each of the six specific coastal areas such that the essential features may require special management or consideration. The draft Biological Report (NMFS 2019a) and draft Economic Report (IEc 2019) provide a more detailed description of the potential effects of these activities on the essential features.

TABLE 1—SUMMARY OF SPECIFIC AREAS ALONG THE U.S. WEST COAST

Specific area	Size (mi²)	Activities
1—Coastal Washington/Northern Oregon Inshore Area	1,441.9	FISH, HAT, SPILL, MIL, VESS, DR, POLL, PP.
2—Coastal Washington/Northern Oregon Offshore Area	4,617.2	FISH, HAT, SPILL, MIL, VESS, DR, POLL, PP.
3—Central/Southern Oregon Coast Area	4,962.6	FISH, HAT, EN, SPILL, MIL, VESS, DR, GEO, POLL, PP, LNG.
4—Northern California Coast Area	1,606.8	FISH, HAT, SPILL, MIL, VESS, DR, POLL, PP.
5—North Central California Coast Area	3,976.2	FISH, HAT, SPILL, MIL, VESS, DR, MIN, POLL, PP.
6—Monterey Bay Area	710.1	FISH, HAT, SPILL, VESS, DR, POLL, PP, DESAL.

Note: The size of the area, essential features present, and activities that may affect the essential features and necessitate the need for special management considerations or protection within each area are listed. Some activities occur upstream but may affect features in the specific area. Activities: FISH = fisheries, HAT = hatcheries, EN = alternative energy projects, SPILL = oil spills and response, MIL = military activities, VES = vessel traffic, DR = dredging and dredge material disposal, MIN = mineral mining, GEO = geologic surveys, POLL = point-source water pollution, PP = power plants, LNG = LNG terminals, DESAL = desalinization plants.

Unoccupied Areas

The ESA section 3(5)(A)(ii) definition of critical habitat includes unoccupied areas, which are defined as specific areas outside the geographical area occupied by the species at the time it is listed if such areas are determined to be essential to the conservation of the species. At the present time, we have not identified additional specific areas outside the geographic area occupied by Southern Resident killer whales that may be essential for the conservation of the species. We considered potential future impacts that climate change might have on the geographical area occupied by the whales, particularly with respect to shifts in distribution of their salmon prey. In accordance with NMFS guidance on the treatment of climate change in NMFS ESA decisions (NMFS 2016a), we determined that there is insufficient evidence to identify unoccupied areas based on potential impacts from climate change.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of Commerce determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation.

DOD (Army, Navy, and Air Force) helped us identify military lands that may overlap with areas under consideration for critical habitat. The Navy identified two military installations adjacent to these areas, both of which have INRMPs in place for land-based installation activities: Pacific Beach Annex, Naval Station Everett, Washington, and Naval Support Activity (NSA) Monterey, California. Based on our review of these plans, these two shore-based military areas covered by INRMPs do not overlap the critical habitat areas, and thus the critical habitat areas are not ''subject to'' INRMPs or ineligible for designation (see section III.F of the draft ESA Section 4(b)(2) Report, NMFS 2019b).

Application of ESA Section 4(b)(2)

The foregoing discussion describes those areas that are eligible for designation as critical habitat. Specific areas eligible for designation are not automatically designated as critical habitat. As described previously, section 4(b)(2) of the ESA requires that the Secretary consider the economic impact, impact on national security, and any other relevant impact. The Secretary may exclude an area from designation if he determines the benefits of exclusion outweigh the benefits of designation based on the best available scientific and commercial information. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is wholly discretionary, exclusion is not required for any areas (50 CFR 424.19; 81 FR 7226; February 11, 2016).

The first step in conducting an ESA section 4(b)(2) analysis is to identify the ''particular areas'' to be analyzed. Section 3(5)(A) of the ESA defines critical habitat as ''specific areas,'' while section 4(b)(2) of the ESA requires the agency to consider certain factors before designating any ''particular area.'' The ESA and regulations provide the agency discretion to determine the scale at which specific areas (50 CFR 424.12) and particular areas (50 CFR 424.19) are identified. For this proposed revision to the designation of Southern Resident killer whale critical habitat, we identified six ''specific'' areas off the coasts of Washington, Oregon, and California, as described above. For our economic impact analysis, we defined the ''particular areas'' to be equivalent to the ''specific areas.'' This approach and scale allowed us to most effectively consider the conservation value of the different areas when balancing conservation benefit of designation against economic benefits of exclusion. Where we considered impacts on national security or impacts on tribes, we based the ''particular areas'' on land ownership or control (*e.g.,* land controlled by the DOD within which national security impacts may exist, or Indian lands). This approach and scale allowed us to consider impacts and benefits associated with management by the military or land ownership and management by Indian tribes.

Identify and Determine Impacts of Designation

The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies insure that their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the associated requirement that Federal agencies must also insure their actions are not likely to jeopardize the species' (in this case the DPS') continued existence. The true impact of this designation is the extent to which Federal agencies modify their actions to ensure their actions are not likely to destroy or adversely modify the critical habitat of the DPS, beyond any modifications they would make because of the DPS' listing and the jeopardy provision, and the associated increase in consultation costs. Additional impacts of designation include state and local protections that may be triggered as a result of the designation.

In determining the impacts of designation, consistent with our regulations (50 CFR 424.19) and policy (81 FR 7226; February 11, 2016), we focused on identifying the incremental impacts. We examined what the state of the world would be with and without the designation of coastal critical habitat for Southern Resident killer whales. The ''without critical habitat'' scenario represents the baseline for the analysis. It includes process requirements and habitat protections already afforded Southern Resident killer whales under their Federal listing or under other Federal, state, and local regulations. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of coastal critical habitat for Southern Resident killer whales. The primary potential impacts of critical habitat designation we identified were: (1) The economic costs associated with additional administrative effort of including a coastal critical habitat analysis in section 7 consultations for Southern Resident killer whales, (2) impacts to national security, and (3) the possible harm to our working relationship with Indian tribes.

Economic Impacts

The draft Economic Report prepared by Industrial Economics, Incorporated (IEc) sought to determine the impacts on economic activities due to the designation of critical habitat, above and beyond—or incremental to—those ''baseline'' impacts due to existing required or voluntary conservation efforts being undertaken due to other Federal, State, and local regulations or guidelines (IEc 2019). Incremental impacts may include the direct costs associated with additional effort for section 7 consultations (including consultations that otherwise would have been limited to jeopardy issues, reinitiated consultations, or new consultations occurring specifically because of the designation) as well as the direct costs associated with conservation efforts or project modifications that would not have been required under the jeopardy standard. Additionally, incremental impacts may include indirect impacts resulting from reaction to the potential designation of critical habitat and triggering of additional requirements under State or local laws intended to protect sensitive habitat.

To quantify the economic impact of designation, IEc (2019) employed the following steps:

(1) Identify the baseline of economic activity and the statutes and regulations that constrain that activity in the absence of the critical habitat designation in the additional areas being proposed;

(2) Identify the types of activities that are likely to be affected by critical habitat designation;

(3) Project the projects and activities identified in Step 2 over space and time based on the best available information on planned projects, permitting schedules, or average annual levels of activity;

(4) Estimate the costs of administrative effort and, where applicable, conservation efforts or project modifications recommended for

the activity to comply with the ESA's critical habitat provisions;

(5) Apply well-accepted discounting methods to calculate the present value cost in each year of the analysis and sum over time to calculate the total present value and annualized impacts; and

(6) Aggregate the costs at the particular area level. (Impacts are reported at the particular area level; particular areas for the analysis match the six specific areas.)

The first step in the analysis was to identify the baseline level of protection already afforded Southern Resident killer whales in the additional areas being proposed as critical habitat. The baseline for this analysis is the existing state of regulation prior to the revision of critical habitat, including the listing of the species under the ESA (and protections under ESA sections 7, 9, and 10); ESA protections for listed salmon given that salmon are included as part of the prey essential feature of critical habitat for the whales; protections from other co-occurring ESA listings and critical habitat designations, such as those for the Southern DPS of North American green sturgeon (50 CFR 226.219) and the leatherback sea turtle (50 CFR 226.207); and other Federal, state and local laws and guidelines, such as the Marine Mammal Protection Act, Clean Water Act, and state environmental quality laws (IEc 2019).

In step 2, the NMFS West Coast Region's record of section 7 consultations and NMFS' experience and professional judgment in conducting section 7 consultations were used to identify Federal activities that occur within the areas being considered for Southern Resident killer whale critical habitat and that may affect the critical habitat features. Activities occurring adjacent to or upstream of those areas that may affect the water quality and prey availability essential features within the critical habitat areas were also identified. These activities included salmon fisheries and other fisheries that have incidental bycatch of salmon, salmon hatcheries, offshore aquaculture/mariculture, alternative energy development, oil spills and response, military activities, vessel traffic, dredging and dredge material disposal, oil and gas exploration and production, geologic surveys (including seismic surveys), activities contributing to point-source water pollution, power plant operations, liquefied natural gas terminals, and desalinization plants. The draft Economic Report assumes that future occurrences of these activities within or affecting critical habitat for the whales will result in consultation. The identification of these activities and the associated threats are further discussed in the draft Biological Report (NMFS 2019a) and the draft Economic Report (IEc 2019).

In steps 3 and 4, the incremental administrative costs of including analysis of Southern Resident killer whale coastal critical habitat in future section 7 consultations were estimated. The occurrence of the projects and activities identified in step 2 and the estimated number and type of consultations were projected over space and time using the best available information on planned projects, permitting schedules, or average annual level of activities from NMFS' consultation history for 2006–2016 and other information sources (*e.g.,* U.S. Army Corps of Engineers permit and project data, and interviews with Federal action agencies). The administrative costs of a given consultation vary depending on the type (*i.e.,* informal, formal, programmatic) and specifics of the project, and it may not be possible to predict the level of effort required for each future consultation. The analysis accordingly employed estimated average incremental administrative costs per consultation, which were based on the expected amount of time spent considering adverse modification as part of future section 7 consultations.

As described in Chapter 2 of the draft Economic Report (IEc 2019), there are no particular projects or activities for which NMFS considers it likely that section 7 consultation on coastal critical habitat for the killer whales would result in different conservation recommendations than section 7 consultation without coastal critical habitat. We regularly consult on the types of activities relevant to this analysis to consider the potential for jeopardy to the listed killer whales, their listed prey, and other listed species with overlapping ranges, as well as to consider the potential for adverse modification to the critical habitat of other listed species—some of which may have similar essential features (*e.g.,* Southern DPS of North American green sturgeon, for which the essential features within nearshore coastal marine critical habitat include, among others, a migratory corridor within marine habitat and water quality with acceptably low levels of contaminants)—and we make conservation recommendations accordingly. We anticipate that it is most likely that these baseline conservation recommendations would involve measures that would avoid adverse modification of Southern Resident killer whale critical habitat because they directly or indirectly address impacts to the essential features of the whales' critical habitat (water quality, prey, and passage).

In steps 5 and 6, well-accepted discounting methods were used to calculate the present value cost in each year of the analysis, summed over time to calculate the total present value and annualized impact, and then aggregated at the particular area level. As noted above, for the economic analysis, ''particular areas'' were defined to be equivalent to the six ''specific areas'' occupied by Southern Resident killer whales off the coasts of Washington, Oregon, and California. However, due to the difficulty in determining precise locations of future consultations occurring in Areas 1 and 2 off the coast of Washington (because assignment of the consultation to Area 1 or 2 would require specific information about the activity such as its latitude/longitude or depth), the draft Economic Report presents economic impacts collectively for these two areas.

Additionally, administrative costs of consultations on upstream activities were not assigned to a particular critical habitat area as there is no information available to inform the connection between the particular locations of upstream activities with the downstream effects on particular critical habitat areas. Accordingly, the incremental economic impacts associated with consultations on upstream activities do not reflect the economic impact of designating any given area, but rather the expanded critical habitat as a whole.

The draft Economic Report (IEc 2019) estimates the total present value of the quantified incremental impacts to be approximately $600,000 over the next 10 years, assuming a seven percent discount rate. Total annualized impacts are estimated to be $68,000. The evaluation of costs associated with each particular area is complicated by the fact that many activities and consultations span more than one area, and because costs to Areas 1 and 2 could not be estimated separately. However, annualized impacts from projects occurring in only one area (or two in the case of Areas 1 and 2) ranged from $8,800 for Areas 1/2 to $1,100 for Area 6. Over 40 percent of estimated impacts occur upstream of critical habitat areas. The greatest impacts are associated with dredging and in-water construction and ''other'' activities (see IEc 2019 for more details).

National Security Impacts

During preparations for the proposed revision to Southern Resident killer whale critical habitat, we provided DOD (Navy, Army, and Air Force) with information regarding the areas under consideration for Southern Resident killer whale critical habitat, and requested they identify areas they own or control which may overlap with the areas under consideration. We also asked them to identify any impacts to national security that might arise from the proposed designation of critical habitat. In addition, we considered information regarding potential national security impacts provided by the U.S. Coast Guard (USCG; Department of Homeland Security) in their response to our 90-day finding on the petition to revise critical habitat.

The Army did not provide a response. The Air Force stated that it had not identified any significant concerns with the proposed revision of Southern Resident killer whale critical habitat to include coastal waters along the U.S. West Coast. The Navy stated that they conduct training and testing activities, collectively referred to as ''military readiness activities,'' within the coastal areas being considered for designation as critical habitat. Specifically, military readiness activities occur in the offshore Pacific Northwest Ocean Surface/Subsurface Operating Area (OPAREA), Warning Area 237 (W–237), and the Olympic A and B Military Operation Areas (MOA), which are all considered at-sea components of the Northwest Training Range Complex (NWTRC), as well as in the Quinault Range Site (QRS), which is a component of the Keyport Range Complex. The Navy refers to all the at-sea areas used for training and testing as the Northwest Training and Testing (NWTT) study area. The Navy believes there would be national security impacts where specific coastal areas 1 and 2 proposed for designation overlap with the QRS. The Navy requested exclusion of the QRS (including its associated surf zone off the coast of Pacific Beach, Washington) from the proposed critical habitat based on national security impacts arising from additional mitigation requirements that have the potential to impact the effectiveness of ongoing and future testing activities (NMFS 2019b). During the pre-publication inter-agency review process for this proposed rule, the Navy also requested exclusion of a 10-km (6.2 mi) buffer around the QRS. The Navy stated that they used site-specific oceanographic conditions and the best available science establishing fish injury thresholds (Popper *et al.* 2014) to determine that sound and energy levels from the largest explosives that could be used in the QRS may cause injuries to fish (*i.e.,* prey species) out to 10 km beyond the boundary of the QRS. If the QRS alone were excluded (without the buffer), the largest explosives in the QRS may affect the prey feature within proposed critical habitat (in the buffer area). The Navy argued that there would be national security impacts if NMFS required additional mitigation that resulted in the Navy having to halt, reduce in scope, or geographically/seasonally constrain testing activities to prevent adverse effects or adverse modification of critical habitat.

The USCG also provided information on potential impacts to national security and maritime safety. The USCG stated that expanded critical habitat might impair their ability to safely conduct defense readiness and additional missions if the designation results in restrictions to the ability of USCG maritime assets to transit, deploy, train, and/or conduct gunnery exercises within the critical habitat areas. These additional missions include emergency response, search and rescue, law enforcement, conservation activities, and training operations. With respect to gunnery exercises, they noted that USCG Section/Station/Maritime Force Protection Unit boats are limited to going a maximum of 10 to 50 mi (16–80.5 km) offshore depending on vessel type, and requiring them to go over 50 mi would be unsafe and provide unrealistic training/gunnery scenarios to effectively become proficient with meeting mission objectives. In general, USCG Sector/Station assets conduct gunnery exercises with small arms and ammunition, pistols, and up to .50 caliber machine guns. Major afloat cutters conduct exercises with small arms and ammunition, in addition to more sophisticated systems (*i.e.,* 25 millimeter (mm), 57 mm, and 76 mm guns, close-in weapon systems), but rarely conduct exercises in the areas under consideration for critical habitat, with the exception of the NWTRC.

Although we have not conducted a section 7 analysis on a particular proposed action and we are not predetermining any future ESA conclusions now, as a general matter, and based on the information currently available, we consider it unlikely that the USCG's routine operations in support of emergency response, homeland security, law enforcement, and conservation affect the essential features of Southern Resident killer whale critical habitat, and as such, we do not expect designation of critical habitat will have a national security impact on these activities. Separately, we consider the USCG's concerns regarding potential national security impacts to their defense readiness activities to be generally overlapping with those of the Navy, given the similarities in some of the USCG's activities (*i.e.,* gunnery exercises involving small- and large-caliber projectiles, similar to the Navy's surface-to-surface gunnery exercises) and area of operations (*i.e.,* generally the NWTRC). At this time, the Navy has only been able to express concerns about national security impacts to testing activities conducted in the QRS, including underwater explosions associated with mine countermeasure and neutralization testing activities. Pending discussions between the Navy and NMFS will help the Navy determine if there are other national security impacts from the proposed critical habitat designation. The USCG does not use these types of explosives in their defense readiness activities, and thus we consider it unlikely that the USCG would have national security concerns beyond those conveyed by the Navy.

As documented in our draft ESA Section 4(b)(2) Report (NMFS 2019b), we assessed several factors to evaluate the potential impacts of designating critical habitat within the QRS and a 10-km buffer around it, such as the size and percentage of the QRS and buffer that would be designated; the importance of the area to the Navy mission and military readiness; the likelihood that Navy activities would destroy or adversely modify critical habitat and that NMFS would require project modification to avoid adverse effects or modification of critical habitat, thus potentially negatively impacting the effectiveness of the Navy's training and testing activities); the level of protection provided to one or more essential features by existing DOD safeguards (*e.g.,* management or protection already in place); and the likelihood that other Federal actions may occur in the site that would no longer be subject to the critical habitat provision if the particular area were excluded from the designation.

Other Relevant Impacts—Impacts to Tribal Sovereignty and Self-Governance

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from other entities that interact with, or are affected by, the Federal government. This relationship has given rise to a

special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian tribes or have been set aside for tribal use. These lands are managed by Indian tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order (E.O.) 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

There is a broad array of activities on Indian lands that may trigger ESA section 7 consultations. Indian lands are those defined in the Secretarial Order American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997), including: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) land held in trust by the United States for any Indian tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians.

In developing this proposed rule, we reviewed maps and did not identify any areas under consideration as coastal critical habitat that overlap with Indian lands, because the shoreward extent of the areas under consideration for designation is 6.1 m (20 ft) water depth. Based on this, we preliminarily found that there were no Indian lands subject to consideration for possible exclusion. However, our preliminary assessment indicated that the following federally-recognized tribes (83 FR 4235; January 30, 2018) have lands that may be in close proximity to areas under consideration for designation as critical habitat for Southern Resident killer whales, have usual and accustomed (U&A) fishing areas that overlap with critical habitat areas, or may otherwise be affected: Confederated Tribes of the Chehalis Reservation, Hoh Indian Tribe, Makah Indian Tribe, Quileute Tribe, Quinault Indian Nation, and Shoalwater Bay Indian Tribe in Washington; Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, Confederated Tribes of the Siletz Indians, and Coquille Indian Tribe in Oregon; and Cher-Ae Heights Indian Community of the Trinidad Rancheria, Hoopa Valley Tribe, Karuk Tribe, Big Valley Band of Pomo Indians, Tolowa Dee-Ni' Nation, Wiyot Tribe, and Yurok Tribe in California. We also identified the non-federally recognized Wintu Tribe of Northern California.

We contacted each of these tribes to solicit comments regarding Indian lands that may overlap and may warrant exclusion from critical habitat for Southern Resident killer whales. We also sought information from these tribes concerning other tribal activities that may be affected in areas other than tribal lands (*e.g.,* tribal fisheries in usual and accustomed coastal marine areas).

We received responses from two tribes in Washington and California. The tribes were primarily concerned with the potential impact of the critical habitat designation on tribal fisheries, particularly within U&A fishing areas located in coastal marine waters. As described in the draft Economic Report, while it is possible that the critical habitat designation could result in recommendations for changes in fishery management, we consider this unlikely, given the existing consideration of fisheries' impacts on Southern Resident killer whales and their prey (including ESA-listed salmon) in ESA section 7 consultations in the jeopardy analysis and the implementation of management strategies and actions for the conservation and recovery of these species (IEc 2019). However, we will continue to coordinate and consult with potentially affected tribes as we move forward with the rulemaking process.

Exclusion of Areas Under Section 4(b)(2) of the ESA

As stated previously, the Secretary may exclude an area from designation if he determines the benefits of exclusion outweigh the benefits of designation based on the best available scientific and commercial information. This discretion is limited, however, in that the Secretary may not exclude an area from designation if exclusion will result in the extinction of the species (ESA section 4(b)(2)).

We decided to exercise the discretion delegated to us by the Secretary to conduct an exclusion analysis and balance the benefits of designation against the benefits of exclusion. Benefits of critical habitat designation are those conservation benefits to the species, while benefits of exclusion result from avoiding the impacts of designation identified above. Below we describe the benefits of designation, then further consider and weigh the benefits of designation and exclusion based on economic and national security impacts. (As discussed above, we preliminarily found that there were no Indian lands subject to consideration for possible exclusion). We have broad discretion as to what factors to consider as benefits of designation and benefits of exclusion, and what weight to assign to each factor—nothing in the ESA, its implementing regulations, or our Policy Regarding Implementation of Section 4(b)(2) of the ESA (''4(b)(2) Policy'') limits this discretion (50 CFR 424.19; 81 FR 7226, February 11, 2016). We also relied on a qualitative cost-benefit analysis, as described in OMB Circular A–4.

Benefits of Designation

The primary benefit of designation is the protection afforded under section 7 of the ESA, requiring all Federal agencies to ensure their actions are not likely to destroy or adversely modify designated critical habitat. This is in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the continued existence of the species. The revision to the critical habitat designation is also expected to provide benefits by informing the entities engaged in section 7 consultations and the general public about the status of Southern Resident killer whales, including the coastal areas and features (or habitat) important to whales' conservation.

Other forms of benefits that may be attributed to the conservation and recovery of Southern Resident killer whales (although not specifically attributed to the designation of critical habitat), include use benefits (*e.g.,* for wildlife viewing), non-use or passive use benefits (*e.g.,* existence, option, and bequest values), and ancillary ecosystem service benefits (*e.g.,* water quality improvements and enhanced habitat conditions for other marine and coastal species). Some species, including Southern Resident killer whales, also have significant spiritual and cultural value to particular communities, such as tribes. Such values are generally not expressed in monetary terms.

These benefits are not directly comparable to the costs of designation for purposes of conducting the section 4(b)(2) analysis. Ideally, benefits and costs should be compared on equal terms in the same units. However, there is insufficient information regarding the extent of the benefits and the associated values to monetize all of these benefits. Because we could not quantify or monetize all of the benefits of revising the critical habitat designation for Southern Resident killer whale discussed above, we qualitatively described the conservation value of the areas to the DPS.

As discussed in Appendix B of the draft ESA Section 4(b)(2) Report (NMFS

2019b), we considered categories of information to characterize Southern Resident killer whales' relative use of the particular areas and the importance of physical and biological features in the areas. However, gaps in or limitations of existing data made an evaluation across all of the areas using any sort of quantitative scoring system challenging. For example, the proportion of prey samples collected from each area might be used to characterize the areas' relative importance for foraging, where a higher proportion of samples might indicate greater foraging or prey resources. However, nearly all (93 percent) of the prey samples were collected during field efforts directed by the locations of satellite-tagged whales, and satellite-tagged whales did not go into Area 6, so this metric would underestimate the conservation value of Area 6. (Predation has been observed but not sampled in Area 6; Black *et al.* 2001). Any spatial bias in NMFS' and partners' ability to conduct on-water response in particular locations to collect prey samples would also limit the usefulness of this factor for comparing relative importance of the critical habitat areas. Another potential metric we considered was the proportion of confirmed opportunistic sightings of Southern Resident killer whales observed in the area, or number of sightings per unit area. However, while opportunistic sightings data provide information on when and where whales occur along the coast, they are less useful for informing a relative ranking of the whales' use of the specific areas due to their spatial bias (*e.g.,* sightings may be influenced by locations of population centers or whale watching operations). Therefore, we determined that the most appropriate approach was to qualitatively assess the conservation value of each area using the available data, mindful of the spatial and temporal gaps and potential biases.

Based on the available information on the whales' use of the areas (and considering gaps in information), and the physical and biological features essential to the whales' conservation, we considered the conservation value of each coastal area to be high. However, we considered the value of Areas 1 and 2 to be very high relative to the other coastal areas, given the whales' particularly high use of portions of the areas, as indicated by models of satellite tag data (they are the only coastal critical habitat areas with usage in some locations that is more than two and three standard deviations above the mean), acoustic data indicating higher rates of detections than would be expected based on monitoring effort (Hanson *et al.* 2013), the documented use by all three pods, year-round use of the areas, and observations of foraging with a substantial number of prey samples collected in portions of the areas.

Weighing Economic Impacts

The draft Economic Report (IEc 2019) concluded that costs attributed to the revision of the Southern Resident killer whale critical habitat designation are largely administrative in nature and that a majority of those costs are borne by Federal agencies. Only a small cost of consultation (total annualized impacts of $7,800, discounted at seven percent) are estimated to be borne by a small number (1–8) of non-Federal small entities (businesses or governments).

In accordance with section 4(b)(2) of the ESA, its implementing regulations (50 CFR 424.19) and the 4(b)(2) Policy (81 FR 7226; February 11, 2016), in evaluating the exclusion of areas based on probable economic impacts, we considered the nature of those impacts and not a particular threshold level. Additionally, we considered the following factors:

(1) Section 2 of the ESA provides that a purpose of the act is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.

(2) In listing Southern Resident killer whales under the ESA, we concluded that the current and threatened destruction or adverse modification of the species' habitat is likely contributing to fluctuations in abundance and exacerbating the risk of extinction naturally faced by a small population (70 FR 69903, November 18, 2005). We identified contaminants, vessel traffic, and changes in prey availability as factors that have modified the whales' habitat and considered them to be threats to the species.

(3) As described above, the six particular areas under consideration for critical habitat designation are all of high or very high conservation value.

(4) The economic impacts to Federal agencies and non-Federal entities of designating each of the six particular areas are small (the largest annualized impacts are $8,800 in Areas 1 and 2 combined), as is the annualized economic impact of designating the entire area ($68,000). The potential economic impacts borne by non-federal entities of designating all six areas are even smaller (total annualized impacts of $7,800 over the next ten years, discounted at 7 percent), with one to eight non-federal entities expected to be affected. This reflects approximately six consultations per year that may involve non-federal entities, for example, businesses engaged coastal and in-water construction activities, renewable energy developments, or seismic surveys.

For these reasons, we conclude that the economic benefit of excluding any of the particular areas does not outweigh the conservation benefit of designation. Therefore, none of the areas are proposed for exclusion based on economic impacts.

Weighing Impacts to National Security and Proposed Exclusion

As described above, we consulted with the DOD regarding the activities taking place at sites managed by DOD and the potential impact of designating critical habitat at these sites. A reply from the Air Force stated: ''At this time the AF has not identified any significant concerns with the proposed addition of Southern Resident killer whale critical habitat to coastal waters along the U.S. West Coast as depicted on the provided map.'' The Navy stated that they believe there would be national security impacts where critical habitat coastal areas 1 and 2 overlap the QRS, including its associated surf zone off the coast of Pacific Beach, Washington, and a 10-km buffer around it, and requested exclusion of this particular area from critical habitat. The Navy provided information on testing activities proposed in the QRS beyond 2020 and into the foreseeable future, and identified national security concerns regarding potential impacts to their national mission and ongoing and future Navy testing activities if critical habitat were designated there or within a 10-km buffer around the QRS.

We weighed the conservation benefits of designation to Southern Resident killer whales against the benefits of exclusion, initially for the Navy's QRS, and later during the pre-publication inter-agency review period, the combined area of the QRS and a 10-km buffer around it. We considered various factors relevant to assessing the benefits of exclusion including:

(1) The size of the DOD site, the percentage of the DOD site that would be designated (because only a portion of the DOD site is within critical habitat), and the percentage of the proposed specific area(s) that overlaps with the DOD site (because the DOD site overlaps with only a portion of the critical habitat area(s));

(2) The importance of the area to the Navy's national mission (*e.g.,* frequency/intensity of use, complexity of Navy actions within it, and

significance and uniqueness of the site to the overall Navy mission);

(3) The likelihood of a consultation with the DOD in this site;

(4) The likelihood that DOD activities would destroy or adversely modify critical habitat; based on the DOD's activities at the site, and that NMFS would require project modifications to reduce or avoid these impacts;

(5) The level of protection provided to one or more essential feature by existing DOD safeguards (*e.g.,* management or protection already in place); and

(6) The likelihood that other Federal actions may occur in the site that would no longer be subject to the critical habitat provision if the particular area were excluded from the designation.

Dependent on available information, each of these factors may weigh either in favor of exclusion of the area or in favor of designation of the area. We give great weight to the national security and defense missions (81 FR 7226; February 11, 2016). We weighed this information against the benefits of designating the site, which was based on the conservation value rating for the specific area(s) overlapping the DOD site, as well as more specific information regarding Southern Resident killer whale use of the DOD site. As documented in the draft ESA Section 4(b)(2) Report (NMFS 2019b), based on the great weight afforded military impacts, the unique training in support of military readiness that occurs within the QRS, and the potential delay in critical missions in order to complete adverse modification analyses, we found that the national security impacts tip the scale and outweigh the limited impact to conservation values in just over one-fourth of the identified critical habitat Areas 1 and 2 where those areas overlap with the QRS and a 10-km buffer around it. We determined that the benefit to national security of excluding this particular area outweighs the conservation benefit of designation, and exclusion of the area would not result in extinction of the species (DPS). We therefore propose excluding the QRS and a 10-km buffer around it from the critical habitat designation. The total area proposed for exclusion is 1,687.9 mi^2 (4,371.5 km^2) or 9.7 percent of potential coastal critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate approximately 15,626.6 mi^2 (40,472.7 km^2) of marine habitat within the area occupied by Southern Resident killer whales along the coasts of Washington, Oregon, and California. Combined with the currently designated critical habitat in inland waters of Washington (2,560 mi^2 (6,630 km^2)), the total designation would comprise approximately 18,186.5 mi^2 (47,102.7 km^2). In both the currently designated and proposed new critical habitat, areas with water less than 20 ft (6.1 m) deep are not included as critical habitat. As described in the preamble to the final rule designating critical habitat in inland waters (71 FR 69054; November 29, 2006), due to a lack of bathymetry data, we were not able to subtract the shallow areas from the estimate of the inland critical habitat area, so the estimated area of this portion of the critical habitat is an overestimate. However, high-quality shoreline and bathymetry data were available for the outer coastal areas, so we were able to interpolate a 20-ft depth contour as the inshore boundary and include only the areas proposed for designation in the coastal area calculations. However, the coastal shoreline product we used to delineate the coastal areas, NOAA's Continually Updated Shoreline Product, uses mean high water as the vertical datum (the surface of zero elevation to which heights are referenced), so the inshore boundary of coastal critical habitat is 20 ft of water depth relative to mean high water. This is in contrast to the inshore boundary for critical habitat in inland waters, which uses 20 ft water depth relative to extreme high water.

The proposed areas are occupied and contain physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The Navy's QRS and a 10-km buffer around it is not proposed for designation (and is not included in the area calculations above) because we determined the benefits to national security of exclusion (that is, avoiding the impact that would result from designation) outweigh the benefits of designation. We determined that the economic benefits of excluding any of the areas do not outweigh the benefits of designation, and we are therefore not proposing to exclude any areas based on economic impacts. Section 4(b)(2) does not allow the agency to exclude areas if exclusion will result in extinction of the species. We are proposing to exclude only a small percentage of the whales' habitat (9.7 percent of coastal habitat; 8.0 percent of coastal and inland habitat combined) because of impacts to national security. Given this small percentage, we conclude that the exclusion of these areas will not result in extinction of the Southern Resident killer whale DPS. No unoccupied areas are currently proposed for designation.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded or carried out by the agency (agency action) is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. When a species is listed or critical habitat is designated, Federal agencies must consult with us on any agency action that may affect the listed species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issues our finding in a biological opinion. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat. Activities subject to the ESA section 7 consultation process include activities on Federal lands, as well as activities requiring a permit or other authorization from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS), or some other Federal action, including funding (*e.g.,* Federal Highway Administration (FHA) or Federal Emergency Management Agency (FEMA) funding). ESA section 7 consultation would not be required for Federal actions that do

not affect listed species or critical habitat, and would not be required for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

Activities That May Be Affected

ESA section 4(b)(8) requires, to the maximum extent practicable, in any proposed regulation to designate critical habitat, an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect the proposed critical habitat and may be subject to the ESA section 7 consultation processes when carried out, funded, or authorized by a Federal agency. These include: (1) Salmon fisheries and other fisheries that have incidental bycatch of salmon; (2) salmon hatcheries; (3) offshore aquaculture/mariculture; (4) alternative energy development; (5) oil spills and response; (6) military activities; (7) vessel traffic; (8) dredging and dredge material disposal; (9) oil and gas exploration and production; (10) mineral mining (including sand and gravel mining); (11) geologic surveys (including seismic surveys); and (12) upstream activities (including activities contributing to point-source water pollution, power plant operations, liquefied natural gas terminals, desalinization plants).

Private or non-Federal entities may also be affected by the proposed critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify Southern Resident killer whale critical habitat.

Questions regarding whether specific activities would constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). As noted in the Public Comments Solicited section below, NMFS also requests information on the types of non-Federal activities that may be affected by this rulemaking.

Technical Changes to the Southern Resident Killer Whale Critical Habitat Regulations

In addition to proposing the designation of coastal critical habitat, we propose to make three technical changes to the existing Southern Resident killer whale critical habitat regulations in 50 CFR 226.206. First, the introductory paragraph of the existing regulations states that the textual descriptions of critical habitat are the definitive source for determining the critical habitat boundaries and the overview map is provided for general guidance purposes only. In 2012, NMFS and the U.S. FWS revised the ESA implementing regulations to specify that the boundaries of critical habitat as mapped or otherwise described in the regulations will be the official delineation of the designation (77 FR 25611; May 1, 2012). To comply with this revision, we propose to delete the second and third sentences of the introductory paragraph of 50 CFR 226.206, and replace them with the following sentence: ''The maps, clarified by the textual descriptions in this section, are the definitive source for determining the critical habitat boundaries.''

Second, the existing regulations specify primary constituent elements (PCE) essential for conservation of Southern Resident killer whales. In 2016, NMFS and the U.S. FWS revised the ESA implementing regulations to remove the term PCE and replaced it with the statutory term ''physical or biological features'' (81 FR 7226; February 11, 2016). These are also referred to as ''essential features.'' To comply with this revision, we propose to revise 50 CFR 226.206(c) by replacing the term PCE with the term ''essential features.''

Third, we propose to move the map(s) to the end of the section to accommodate the additional text necessary to describe the added, proposed critical habitat areas.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governments and agencies, the scientific community, industry, non-governmental organizations, or any other interested party concerning the proposed designations and exclusions as well as the documents supporting this proposed rulemaking. We are particularly interested in comments and information in the following areas: (1) Specific information describing the distribution and habitat use of Southern Resident killer whales in coastal waters, including southeast Alaska or shallow areas with less than 20 ft (6.1 m) of water; (2) information on the identification, location, and the quality of physical or biological features that may be essential to the conservation of the species, including information on sound as a feature; (3) the boundaries of the specific areas and whether they should be combined into a single unit; (4) information regarding potential benefits of designating any particular area as critical habitat, including information on the types of Federal actions that may affect the area's physical and biological features; (5) information regarding potential impacts of designating any particular area, including the types of Federal actions that may trigger an ESA section 7 consultation and the possible modifications that may be required of those activities; (6) current or planned activities in the areas proposed as critical habitat, including both Federal and non-Federal activities, and costs of potential modifications to those activities due to critical habitat designation; (7) any foreseeable economic, national security, or other relevant impact resulting from the proposed designations; (8) potential for impacts to small businesses and government entities; (9) information pertaining to administrative costs of participating in consultation or, more specifically, related to considering critical habitat as part of section 7 consultations; (10) foreseeable project delays resulting from the proposed designation and the associated costs of delays; (11) any specific impacts to Indian tribes or other relevant tribal issues; (12) whether the data used in the economic analysis needs to be updated; and (13) whether there are additional particular areas that should be considered for exclusion under ESA section 4(b)(2) (*e.g.,* a particular area encompassing the San Francisco Traffic Separation Scheme).

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule and supporting documentation can be found on our website at *www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/critical_habitat.html* or the Federal E-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0041.* In preparing the final rule, we will consider all comments pertaining to the revision to the designations received during the comment period. Accordingly, the final decision may differ from this proposed rule.

Public Hearings

Agency regulations at 50 CFR 424.16(c)(3) require the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Public hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in

a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters. Any scheduled public hearings will be announced in a separate notice. Requests for additional public hearings must be made in writing (see **ADDRESSES**) by November 4, 2019.

References Cited

A complete list of all references cited in this proposed rule can be found on our website at *www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/critical_habitat.html* or the Federal e-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0041,* and is available upon request from the NMFS West Coast Region office in Seattle, Washington (see **ADDRESSES**).

Classification

Executive Order 12630, Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions (*i.e.,* those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designation does not affect landowner actions that do not require Federal funding or permits. This designation would not increase or decrease the current restrictions on private property concerning take of Southern Resident killer whales, nor do we expect the final critical habitat designation to impose substantial additional burdens on land use or substantially affect property values. Additionally, a final critical habitat designation would not preclude the development of Habitat Conservation Plans and issuance of incidental take permits for non-Federal actions. Owners of areas included within the proposed critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of listed Southern Resident killer whales.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

OMB has determined that this proposed rule is significant for purposes of E.O. 12866 review. A draft Economic Report (IEc 2019) and draft ESA Section 4(b)(2) Report (NMFS 2019b) have been prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. To review these documents, see the **ADDRESSES** section above.

We have estimated the costs for this proposed rule. Economic impacts associated with this rule stem from the ESA's requirement that Federal agencies ensure any action authorized, funded, or carried out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. In practice, this requires Federal agencies to consult with NMFS whenever they propose an action that may affect a listed species or its designated critical habitat, and then to modify any action that could jeopardize the species or adversely affect critical habitat. Thus, there are two main categories of costs: Administrative costs associated with completing consultations, and project modification costs. Costs associated with the ESA's requirement to avoid jeopardizing the continued existence of a listed species are not attributable to this rule, as that requirement exists in the absence of the critical habitat designation.

The draft Economic Report (IEc 2019) identifies the total estimated present value of the quantified impacts above current consultation effort to be approximately $600,000 over the next 10 years. Assuming a 7 percent discount rate on an annualized basis, the impacts are estimated to be $68,000 per year. These total impacts include the additional administrative efforts necessary to consider critical habitat in section 7 consultations. Coast-wide, economic impacts are expected to be small and largely associated with the administrative costs borne by Federal agencies. While there are expected beneficial economic impacts of designating critical habitat, there are insufficient data available to monetize those impacts (see Benefits of Designation section).

This proposed rulemaking is expected to be regulatory under E.O. 13771.

Executive Order 12988, Civil Justice Reform

In accordance with E.O. 12988, we have determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are proposing to designate critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the essential features within the designated areas to assist the public in understanding the habitat needs of Southern Resident killer whales.

Executive Order 13132, Federalism

The E.O. on Federalism, Executive Order 13132, requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations in which a regulation may preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. However, in keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we will request information for this proposed rule from the appropriate state resources agencies in Washington, Oregon, and California. The proposed designation may have some benefit to state and local resource agencies in that the proposed rule more clearly defines the physical and biological features essential to the conservation of the species and the coastal areas in which those features are found. While this designation would not alter where and what non-Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Where state and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests only on the Federal agency.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The long-standing and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

There is a broad array of activities on Indian lands that may trigger ESA section 7 consultations. In developing this proposed rule to revise Southern Resident killer whale critical habitat, we reviewed maps and did not identify any areas under consideration for critical habitat along the coast that overlap with Indian lands, because the shoreward extent of the areas under consideration for designation is 6.1 m (20 ft) water depth. Based on this, we preliminarily found that there were no Indian lands subject to consideration for possible exclusion. However, as discussed above, our preliminary assessment indicated that some federally-recognized tribes (83 FR 4235; January 30, 2018) have lands that may be in close proximity to areas under consideration for designation as critical habitat for Southern Resident killer whales, have usual and accustomed fishing areas that overlap with critical habitat areas, or may otherwise be affected. These include: Confederated Tribes of the Chehalis Reservation, Hoh Indian Tribe, Makah Indian Tribe, Quileute Tribe, Quinault Indian Nation, and Shoalwater Bay Indian Tribe in Washington; Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, Confederated Tribes of the Siletz Indians, and Coquille Indian Tribe in Oregon; and Cher-Ae Heights Indian Community of the Trinidad Rancheria, Hoopa Valley Tribe, Karuk Tribe, Big Valley Band of Pomo Indians, Tolowa Dee-Ni' Nation, Wiyot Tribe, and Yurok Tribe in California. We also identified the non-federally recognized Wintu Tribe of Northern California.

As discussed above, we contacted each of these tribes to solicit comments regarding Indian lands that may overlap and may warrant exclusion from critical habitat for Southern Resident killer whales. We also sought information from these tribes concerning other tribal activities that may be affected in areas other than tribal lands (*e.g.,* tribal fisheries in usual and accustomed coastal marine areas). We will continue to consult with affected tribes regarding this proposal to designate critical habitat.

Executive Order 13211, Energy Supply, Distribution, and Use

E.O. 13211 requires agencies to prepare a Statement of Energy Effects when undertaking a ''significant energy action.'' According to Executive Order 13211, ''significant energy action'' means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this action on the supply, distribution, or use of energy and find the revision to the designation of critical habitat will not have impacts that exceed the thresholds identified in OMB's memorandum M–01–27, Guidance for Implementing E.O. 13211 (*See* IEc 2019).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility analysis (IRFA), which is part of the draft Economic Report (IEc 2019). This document is available upon request and online (see **ADDRESSES**). The analysis is summarized below.

NMFS listed the Southern Resident killer whale Distinct Population Segment as endangered under the ESA on November 18, 2005 (70 FR 69903) and on November 29, 2006 issued a final rule designating critical habitat for the whales in inland waters of Washington (71 FR 69054). NMFS is now proposing to expand the critical habitat designating by adding waters along the Pacific Coast between Cape Flattery, Washington and Point Sur, California. The objective of the rule is to utilize the best scientific and commercial information available to expand critical habitat for the Southern Resident killer whale to best meet the conservation needs of the species in order to meet recovery goals. Section 4(a)(3)(A)(ii) of the ESA allows NMFS to revise designations to critical habitat as appropriate and is the legal basis for this rule. This proposed rule will not impose any recordkeeping or reporting requirements on small entities and will not duplicate, overlap, or conflict with any other laws or regulations.

The expansion of critical habitat for the Southern Resident killer whales is expected to have a limited economic impact, on the order of $68,000 annualized over 10 years. The nature of these costs are administrative efforts to consider potential for adverse modification part of future ESA section 7 consultations. Primarily, consultations are between NMFS and Federal action agencies to evaluate the potential for projects and activities to result in adverse modification of critical habitat. Therefore, most incremental impacts are borne by NMFS and other Federal agencies and not by private entities or small governmental jurisdictions. However, some consultations may include third parties (*e.g.,* project proponents or landowners) that may be small entities. These third parties may bear some portion of the administrative consultation costs.

Of the activities for which future consultations are forecast and expected to result in incremental economic impacts due to the expanded critical habitat designation, only a subset involve third parties that may be small entities. Specifically, consultations on renewable energy development, dredging and in-water construction, and seismic surveying may involve small entities, including small businesses or governments. The analysis anticipates approximately six consultations on in-water and coastal construction activities per year, 0.5 consultations on renewable energy development, and 0.1 consultations on seismic surveys. While the activity forecast includes less than one consultation annually on renewable energy development and seismic surveying, the IRFA evaluates the impacts associated with one consultation on each of these activities to reflect a high-end estimate for a single year. Administrative costs of

consultations on fisheries, military activities, and hatchery operations are unlikely to involve third parties beyond NMFS and the Federal action agency.

For the consultations that may involve third parties, it is not known whether the third parties bearing administrative costs are likely to be large or small entities. The analysis therefore conservatively assumes all third parties involved in these consultations are small entities. The number of small entities bearing these incremental administrative costs in a given year is uncertain. To provide information on the range of potential entities affected and the potential costs borne by these entities, the analysis presents two scenarios reflecting the extremes:

(1) Scenario 1 identifies the maximum number of future consultations involving small entities and assumes that each consultation involves one unique small entity. We estimate the maximum number of future consultations, and accordingly number of potentially affected entities, to be eight. This represents the total number of annual consultations that occur across all critical habitat units involved with in-water construction, renewable energy development, and seismic surveying. Scenario 1 accordingly provides a high-end estimate of the number of potentially affected small entities (assuming each consultation involves a unique third party and all third parties are small entities), and a low-end estimate of the potential effect in terms of the economic effects (*i.e.,* percent of annual revenues) for each entity (total third party costs of the consultations are divided across the high-end number of small entities). This scenario may overstate the number of small entities likely to be affected by the rule and may understate the potential impact per entity. Under Scenario 1, we estimate that eight small entities have the potential to bear an impact of $890 to $1,600 per entity.

(2) Scenario 2 assumes all future costs to an industry are borne by a single small entity within that industry. This scenario may understate the number of small entities affected and overstate the per-entity impacts. As such, this scenario arrives at a low-end estimate of potentially affected entities and a high-end estimate of potential economic cost effects. Under this scenario, one small entity in the in-water construction industry would bear costs of $5,200.

Because the analysis assumes a maximum of one consultation on both renewable energy development and seismic surveying in a single year, the cost estimates for these activities are identical under both scenarios ($1,100 for one small entity in the renewable energy development industry and $1,600 for one small entity in the seismic survey industry). However, for in-water construction and dredging, these scenarios reflect a range of potentially affected entities and associated revenue effects. The actual number of small in-water construction entities affected, and the per-entity revenue effects are likely to be somewhere in the middle. In other words, some subset greater than one and less than 6 of the in-water construction small entities may participate in the section 7 consultations and bear the associated impacts.

Under both scenarios, potential costs borne by small entities are expected to be minor. Ultimately, up to eight small entities per year may bear costs associated with participation in consultation regarding the proposed expansion of critical habitat for Southern Resident killer whale. The total annualized administrative costs that may be borne by these small entities (businesses or governments) is $7,800 (discounted at 7 percent). We request public comment on this analysis, including on the number of small entities that may be affected (see the Public Comments Solicited section above).

The RFA, as amended by SBREFA, requires us to consider alternatives to the proposed regulation that will reduce the impacts to small entities. We considered an alternative of not expanding critical habitat for Southern Resident killer whales within their coastal range because it would impose none of the additional economic, national security, or other relevant impacts described in the draft Economic Report or the draft ESA Section 4(b)(2) Report. Under this alternative, Southern Resident killer whales would continue to receive protections provided under the ESA, the existing critical habitat, as well as other Federal, state, and local laws. We rejected this alternative because we determined that the proposed expanded critical habitat is prudent and determinable, and the ESA requires critical habitat designation in that circumstance. We also considered alternatives in which we designated all six of the identified ''specific areas'' (*i.e.,* no area excluded), or designated some subset of the ''specific areas'' (*i.e.,* some ''particular areas'' within the identified ''specific areas'' would be excluded). As described in our draft ESA Section 4(b)(2) report, we considered the economic impacts, impacts to national security, and other relevant impacts that would result from designation, and weighed the benefits of designation against the benefits of exclusion. Ultimately, we selected an alternative in which one particular area was excluded from the designation, the Navy's Quinault Range Site off the coast of Washington and a 10-km buffer around it, because we considered impacts to national security outweighed the benefits of designating critical habitat there.

Coastal Zone Management Act

Under section 307(c)(1)(A) of the Coastal Zone Management Act (CZMA) (16 U.S.C. 1456(c)(1)(A)) and its implementing regulations, each Federal activity within or outside the coastal zone that has reasonably foreseeable effects on any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State coastal management programs. We have determined that this proposed revision of the critical habitat designation for Southern Resident killer whales is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Programs of Washington, Oregon, and California. This determination has been submitted to the responsible agencies in the aforementioned states for review.

Paperwork Reduction Act

The purpose of the Paperwork Reduction Act is to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, and other persons resulting from the collection of information by or for the Federal government. This proposed rule does not contain any new or revised collection of information. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' The designation of critical habitat does not impose an enforceable duty on non-Federal government entities or private

parties. The only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities that receive funding, assistance, or permits from Federal agencies or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, but the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply. Nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(b) Due to the prohibition against take of Southern Resident killer whales both within and outside of the designated areas, we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Information Quality Act and Peer Review

Pursuant to the Information Quality Act (section 515 of Pub. L. 106–554), this information product has undergone a pre-dissemination review by NMFS. The signed Pre-dissemination Review and Documentation Form is on file with the NMFS West Coast Regional Office in Seattle, Washington (see **FOR FURTHER INFORMATION CONTACT**).

On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. Influential scientific information is defined as information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. The draft Biological Report (NMFS 2019a) and draft Economic Report (IEc 2019) supporting this proposed rule are considered influential scientific information and subject to peer review. These two reports were distributed to five independent reviewers for review before the publication date of this proposed rule, and peer review comments were incorporated prior to their dissemination in support of this proposed rulemaking. The peer reviewer comments were compiled into peer review reports that are available at the following website: *https://www.cio.noaa.gov/services_programs/prplans/ID402.html*.

On April 24, 2019, OMB issued memorandum M–19–15 to reinforce, clarify, and interpret agency responsibilities under the Information Quality Act. The memorandum directs agencies to update their agency-specific guidelines within 90 days to be consistent with certain parameters. NOAA has not yet issued revised guidance.

National Environmental Policy Act (NEPA)

NMFS has determined that an environmental analysis as provided for under NEPA is not required for critical habitat designations made pursuant to the ESA. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: September 12, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Revise § 226.206 to read as follows:

§ 226.206 Critical habitat for the Southern Resident killer whale (*Orcinus orca*).

Critical habitat is designated for the Southern Resident killer whale as described in this section. The maps, clarified by the textual descriptions in this section, are the definitive source for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat is designated to include all areas in paragraphs (a)(1) and (2) of this section.

(1) *Inland waters of Washington State.* Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, King, Kitsap, Island, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (ft) (6.1 meters (m)) relative to extreme high water in each of the following areas:

(i) *Summer Core Area:* All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24′25″ N/122°38′35″ W).

(ii) *Puget Sound Area:* All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24′25″ N/122°38′35″ W), and east of a line connecting the Point Wilson Lighthouse (48°8′39″ N/122°45′12″ W) and a point on Whidbey Island located at 48°12′30″ N/122°44′26″ W; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24′25″ N/122°38′35″ W); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8′39″ N/122°45′12″ W) and a point on Whidbey Island located at latitude 48°12′30″ N/122°44′26″ W, and north of the Hood Canal Bridge (Highway 104) (47°51′36″ N/122°37′23″ W); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51′36″ N/122°37′23″ W); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(iii) *Strait of Juan de Fuca Area:* All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23′10″ N/124°43′32″ W), Tatoosh Island, Washington (48°23′30″ N/124°44′12″ W), and Bonilla Point, British Columbia (48°35′30″ N/124°43′00″ W); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24′25″ N/122°38′35″ W), and west of

a line connecting the Point Wilson Lighthouse (48°8′39″ N/122°45′12″ W) and a point on Whidbey Island located at 48°12′30″ N/122°44′26″ W.

(2) *Coastal marine waters along the U.S. West Coast.* Critical habitat includes six specific marine areas along the coasts of Washington, Oregon, and California. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 ft (6.1 m) relative to mean high water in each of the following areas:

(i) *Coastal Washington/Northern Oregon Inshore Area:* U.S. marine waters west of a line connecting Cape Flattery, Washington (48°23′10″ N/124°43′32″ W), Tatoosh Island, Washington (48°23′30″ N/124°44′12″ W), and Bonilla Point, British Columbia (48°35′30″ N/124°43′00″ W), from the U.S. international border with Canada south to Cape Meares, Oregon (45°29′12″ N), between the 6.1-m and 50-m isobath contours. This includes waters off Clallam, Jefferson, Grays Harbor, and Pacific counties in Washington and Clatsop and Tillamook counties in Oregon.

(ii) *Coastal Washington/Northern Oregon Offshore Area:* U.S. marine waters west of a line connecting Cape Flattery, Washington (48°23′10″ N/124°43′32″ W), Tatoosh Island, Washington (48°23′30″ N/124°44′12″ W), and Bonilla Point, British Columbia (48°35′30″ N/124°43′00″ W) south to Cape Meares, Oregon (45°29′12″ N), between the 50-m and 200-m isobath contours. This includes waters off Clallam, Jefferson, Grays Harbor, and Pacific counties in Washington and Clatsop and Tillamook counties in Oregon.

(iii) *Central/Southern Oregon Coast Area:* U.S. marine waters from Cape Meares, Oregon (45°29′12″ N) south to the border between Oregon and California (42°00′00″ N), between the 6.1-m and 200-m isobath contours. This includes waters off Tillamook, Lincoln, Lane, Douglas, Coos, and Curry counties in Oregon.

(iv) *Northern California Coast Area:* U.S. marine waters from the border between Oregon and California (42°00′00″ N) south to Cape Mendocino, California (40°26′19″ N), between the 6.1-m and 200-m isobath contours. This includes waters off Del Norte and Humboldt counties in California

(v) *North Central California Coast Area:* U.S. marine waters from Cape Mendocino, California (40°26′19″ N) south to Pigeon Point, California (37°11′00″ N), between the 6.1-m and 200-m isobath contours. This includes waters off Humboldt, Mendocino, Sonoma, Marin, San Francisco, and San Mateo counties in California.

(vi) *Monterey Bay Area:* U.S. marine waters from Pigeon Point, California (37°11′00″ N) south to Point Sur, California (36°18′00″ N), between the 6.1-m and 200-m isobath contours. This includes waters off San Mateo, Santa Cruz, and Monterey counties in California.

(b) *Essential features.* The essential features for the conservation of Southern Resident killer whales are the following:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and

(3) Passage conditions to allow for migration, resting, and foraging.

(c) *Sites owned or controlled by the Department of Defense.* Critical habitat does not include the following particular areas owned or controlled by the Department of Defense, or designated for its use, in the State of Washington, including shoreline, nearshore areas around structures such as docks and piers, and marine areas where they overlap with the areas described in paragraph (a) of this section:

(1) Naval Undersea Warfare Center, Keyport;

(2) Naval Ordnance Center, Port Hadlock (Indian Island);

(3) Naval Fuel Depot, Manchester;

(4) Naval Air Station, Whidbey Island;

(5) Naval Station, Everett;

(6) Naval Hospital Bremerton;

(7) Fort Lewis (Army);

(8) Pier 23 (Army);

(9) Puget Sound Naval Ship Yard;

(10) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;

(11) Strait of Juan de Fuca and Whidbey Island naval restricted areas;

(12) Admiralty Inlet naval restricted area;

(13) Port Gardner Naval Base restricted area;

(14) Port Orchard Passage naval restricted area;

(15) Sinclair Inlet naval restricted area;

(16) Carr Inlet naval restricted area;

(17) Port Townsend/Indian Island/Walan Point naval restricted area;

(18) Crescent Harbor Explosive Ordnance Units Training Area; and

(19) Quinault Range (including the surf zone at Pacific Beach) and a 10-km buffer around the Quinault Range.

(d) *Maps of Southern Resident killer whale critical habitat.*

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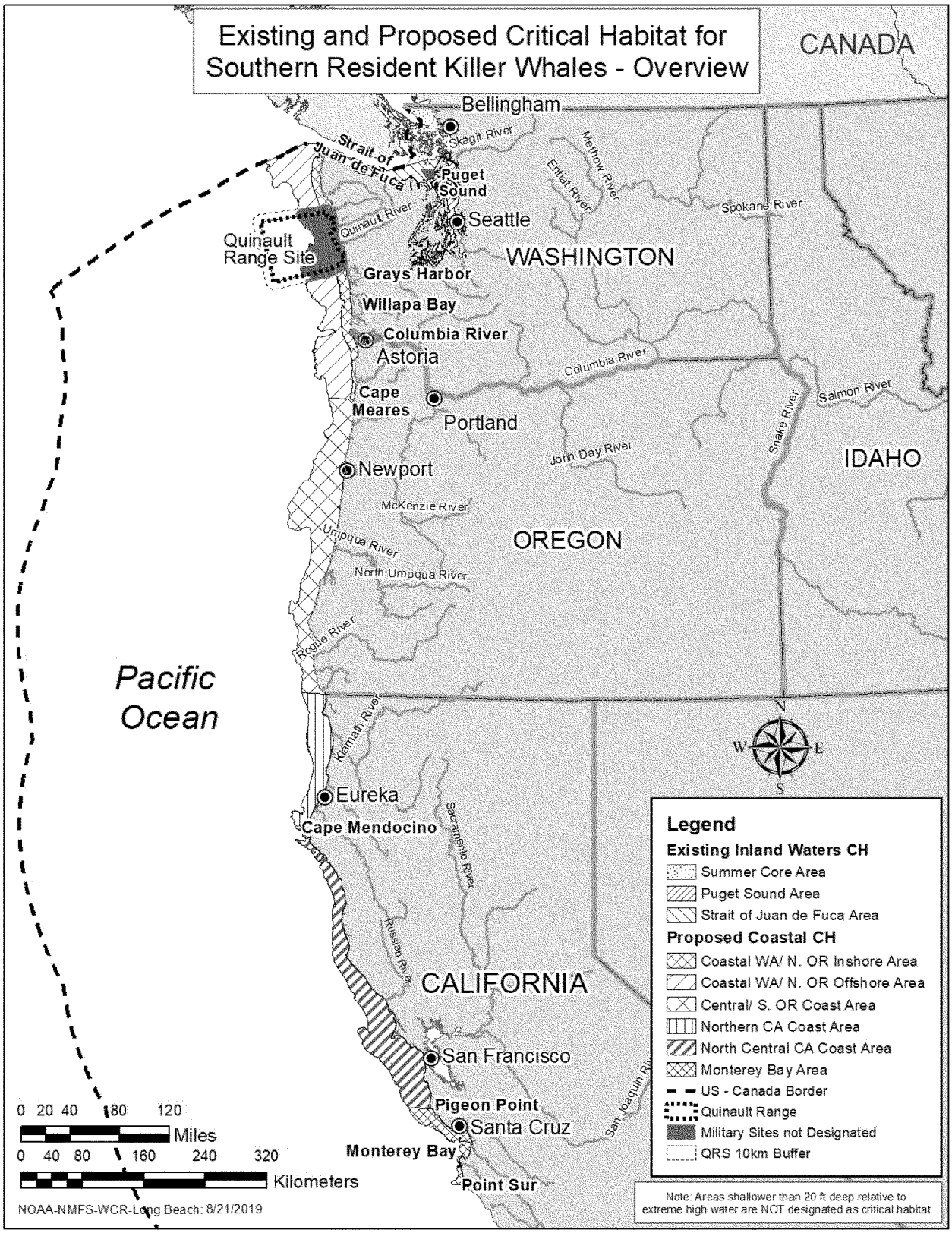
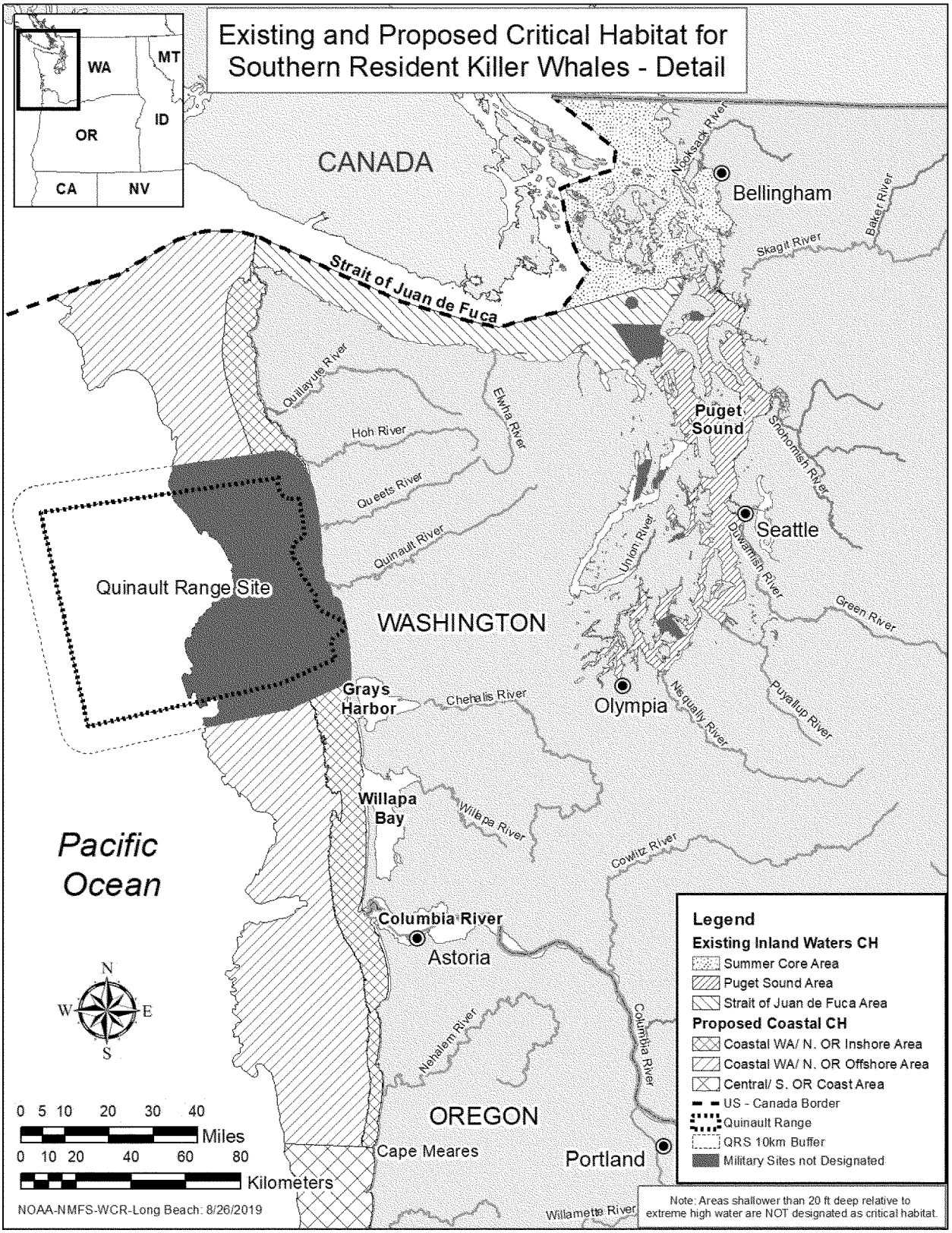

Existing and Proposed Critical Habitat for Southern Resident Killer Whales - Overview
CANADA
Bellingham
Skagit River
Strait of Juan de Fuca
Puget Sound
Methow River
Entiat River
Spokane River
Seattle
Quinault River
Quinault Range Site
WASHINGTON
Grays Harbor
Willapa Bay
Columbia River
Astoria
Columbia River
Cape Meares
Portland
Salmon River
Snake River
John Day River
IDAHO
Newport
McKenzie River
Umpqua River
OREGON
North Umpqua River
Rogue River
Pacific Ocean
Klamath River
N
W
E
S
Eureka
Cape Mendocino
Sacramento River
Russian River
CALIFORNIA
San Francisco
Pigeon Point
Santa Cruz
Monterey Bay
Point Sur
San Joaquin River
0 20 40 80 120
Miles
0 40 80 160 240 320
Kilometers
NOAA-NMFS-WCR-Long Beach: 8/21/2019
Legend
Existing Inland Waters CH
Summer Core Area
Puget Sound Area
Strait of Juan de Fuca Area
Proposed Coastal CH
Coastal WA/ N. OR Inshore Area
Coastal WA/ N. OR Offshore Area
Central/ S. OR Coast Area
Northern CA Coast Area
North Central CA Coast Area
Monterey Bay Area
US - Canada Border
Quinault Range
Military Sites not Designated
QRS 10km Buffer
Note: Areas shallower than 20 ft deep relative to extreme high water are NOT designated as critical habitat.



[FR Doc. 2019–20166 Filed 9–18–19; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 190913–0027]

RIN 0648–XT004

Atlantic Highly Migratory Species; 2020 Atlantic Shark Commercial Fishing Year

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits, and establish opening dates for the 2020 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any overharvests and/or underharvests experienced during the 2019 fishing year. In addition, NMFS proposes opening dates and commercial retention limits based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Written comments must be received by October 10, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0091, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0091,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Guy DuBeck, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Guy DuBeck by phone at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests for the shark fisheries. The FMP also includes adaptive management measures, such as flexible opening dates for the fishing year and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

2020 Proposed Commercial Shark Quotas

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2019 Atlantic commercial shark fishing year based on overharvests and underharvests that occurred during the 2019 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. Shark stocks that are overfished, have overfishing occurring, or have an unknown status, as well as management groups that contain one or more stocks that are overfished, have overfishing occurring, or have an unknown stock status, will not have underharvest carried over in the following year. Stocks or management groups that are not overfished and have no overfishing occurring may have any underharvest carried over in the following year, up to 50 percent of the base annual quota.

Based on 2019 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2020 quotas for certain management groups as shown in Table 1. In the final rule, any adjustments to the quotas will be based on how the quotas are affected by new data from dealer reports received by late October to mid-November 2019. Thus, all of the 2020 proposed quotas for the respective stocks and management groups will be subject to further adjustment after NMFS considers the dealer reports through late October to mid-November. NMFS anticipates that all dealer reports that are received after the late October to mid-November date will be used to adjust 2021 quotas, as appropriate.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2019 fishing year for these management groups may be applied to the respective 2020 quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2019 underharvests cannot be carried over to the 2020 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There also were no overharvests in these management groups. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the final quotas will be based

on current data at the time the final rule is prepared.

The proposed 2020 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below.

TABLE 1—2020 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK MANAGEMENT GROUPS

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of September 13, 2019; final quotas are subject to change based on landings as of late October to mid-November 2019. 1 mt = 2,204.6 lb]

Region or sub-region	Management group	2019 annual quota (A)	Preliminary 2019 landings [1] (B)	Adjustments [2] (C)	2020 base annual quota (D)	2020 proposed annual quota (D + C)	Season opening dates
Western Gulf of Mexico	Blacktip Sharks [3]	250.8 mt dw (552,919 lb dw)[5].	62.2 mt dw (137,118 lb dw).	127.9 mt dw (281,899.8 lb dw).	231 mt dw (510,261 lb dw).	358.9 mt dw (792,161 lb dw).	January 1, 2020.
	Aggregated [4] Large Coastal Sharks.	22.0 mt dw (48,501 lb dw) [5].	11.7 mt dw (25,805 lb dw).		72.0 mt dw (158,724 lb dw).	72.0 mt dw (158,724 lb dw).	
	Hammerhead Sharks	3.9 mt dw (8,598 lb dw) [5].	<0.5 mt dw (<1,300 lb dw).		11.9 mt dw (26,301 lb dw).	11.9 mt dw (26,301 lb dw).	
Eastern Gulf of Mexico	Blacktip Sharks [3]	32.7 mt dw (72,091 lb dw) [5].	7.2 mt dw (15,778 lb dw).	13.9 mt dw (30,627.7 lb dw).	25.1 mt dw (55,439 lb dw).	39.0 mt dw (86,066.7 lb dw).	January 1, 2020.
	Aggregated Large Coastal Sharks.	135.5 mt dw (298,726 lb dw) [5].	61.3 mt dw (135,227 lb dw).		85.5 mt dw (188,593 lb dw).	85.5 mt dw (188,593 lb dw).	
	Hammerhead Sharks	21.4 mt dw (47,178 lb dw) [5].	9.2 mt dw (20,353 lb dw).		13.4 mt dw (29,421 lb dw).	13.4 mt dw (29,421 lb dw).	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	112.6 mt dw (248,215 lb dw).	34.5 mt dw (76,027 lb dw).		112.6 mt dw (248,215 lb dw).	112.6 mt dw (248,215 lb dw).	
	Smoothhound Sharks	504.6 mt dw (1,112,441 lb dw).	<5.0 mt dw (<11,000 lb dw).	168.2 mt dw (370,814 lb dw).	336.4 mt dw (741,627 lb dw).	504.6 mt dw (1,112,441 lb dw).	
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt dw (372,552 lb dw).	34.5 mt dw (76,011 lb dw).		168.9 mt dw (372,552 lb dw).	168.9 mt dw (372,552 lb dw).	January 1, 2020.
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw).	9.3 mt dw (20,479 lb dw).		27.1 mt dw (59,736 lb dw).	27.1 mt dw (59,736 lb dw).	
	Non-Blacknose Small Coastal Sharks.	264.1 mt dw (582,333 lb dw).	83.8 mt dw (184,735 lb dw).		264.1 mt dw (582,333 lb dw).	264.1 mt dw (582,333 lb dw).	
	Blacknose Sharks (South of 34° N lat. only).	17.2 mt dw (37,921 lb dw).	7.9 mt dw 17,431 lb dw.		17.2 mt dw (37,921 lb dw).	17.2 mt dw (37,921 lb dw).	
	Smoothhound Sharks	1,802.6 mt dw (3,973,902 lb dw).	279.6 mt dw (616,326 lb dw).	600.9 mt dw (1,324,634 lb dw).	1,201.7 mt dw (2,649,268 lb dw).	1,802.6 mt dw (3,971,587 lb dw).	
No regional quotas	Non-Sandbar LCS Research.	50.0 mt dw (110,230 lb dw).	10.1 mt dw (22,195 lb dw).		50.0 mt dw (110,230 lb dw).	50.0 mt dw (110,230 lb dw).	January 1, 2020.
	Sandbar Shark Research.	90.7 mt dw (199,943 lb dw).	50.6 mt dw (111,542 lb dw).		90.7 mt dw (199,943 lb dw).	90.7 mt dw (199,943 lb dw).	
	Blue Sharks	273.0 mt dw (601,856 lb dw).	0 mt dw (0 lb dw)		273.0 mt dw (601,856 lb dw).	273.0 mt dw (601,856 lb dw).	
	Porbeagle Sharks	1.7 mt dw (3,748 lb dw).	<0.5 mt dw (<1,000 lb dw).		1.7 mt dw (3,748 lb dw).	1.7 mt dw (3,748 lb dw).	
	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt dw (1,075,856 lb dw).	28.6 mt dw (63,006 lb dw).		488.0 mt dw (1,075,856 lb dw).	488.0 mt dw (1,075,856 lb dw).	

[1] Landings are from January 1, 2019, through September 13, 2019, and are subject to change.

[2] Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the base annual quota.

[3] This adjustment accounts for underharvest in 2019. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 141.8 mt dw (281,899.8 lb dw). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota would be increased by 127 mt dw, or 90.2 percent of the underharvest, while the eastern Gulf of Mexico blacktip shark quota would be increased by 13.9 mt dw, or 9.8 percent of the underharvest.

[4] While the western Gulf of Mexico Aggregated LCS quota was still under the limit when the 2019 final rule was released, the quota was exceeded by the end of the year. However, current landings are at 11 percent of the available 2019 quota and current catch rates do not indicate the quota will be fully landed. This underharvest (62.3 mt dw) is much greater than the 2018 overharvest (8.0 mt dw; 17,548 lb dw lb dw). Therefore, NMFS is proposing that the 2019 quota be adjusted to account for the 2018 overharvest, and the 2020 quota be equal to the annual base quota without adjustment.

[5] NMFS transferred 5 mt dw of the blacktip shark quota, 50 mt dw of the aggregated LCS quota, and 8 mt dw of the hammerhead shark quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region on September 12, 2019.

1. Proposed 2020 Quotas for the Gulf of Mexico Region Shark Management Groups

In a recent action, NMFS transferred 5 mt dw of the blacktip shark quota, 50 mt dw of the aggregated LCS quota, and 8 mt dw of the hammerhead shark quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region on September 12, 2019. This quota transfer would not impact the proposed actions in this rulemaking. The 2020 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 358.9 mt dw (792,161lb dw) and the eastern Gulf of Mexico sub-region is 39.0 mt dw (86,066.7 lb dw; Table 1). As of September 13, 2019, preliminary reported landings for blacktip sharks in the western Gulf of Mexico sub-region were at 25 percent (62.2 mt dw) of their 2019 quota levels (250.8 mt dw), and blacktip sharks in the eastern Gulf of Mexico sub-region were at 22 percent (7.2 mt dw) of their 2019 quota levels (32.7 mt dw). Reported landings in both sub-regions have not exceeded the 2019 quota to date, and blacktip shark landings in both sub-regions are lower than usual. Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for blacktip sharks within the Gulf of Mexico region therefore may be applied to the 2019 quotas, up to 50 percent of the base annual quota. Additionally, any underharvest would be divided between the two sub-regions, based on the percentages that are allocated to each sub-region, which are set forth in § 635.27(b)(1)(ii)(C). To date, the overall Gulf of Mexico blacktip shark management group is underharvested by 214.1 mt dw (472,114 lb dw). Accordingly, NMFS proposed to increase the western Gulf of Mexico blacktip shark quota by 127.9 mt dw or 90.2 percent of the underharvest, while the eastern Gulf of Mexico blacktip shark sub-regional quota would increase by 13.9 mt dw, or 9.8 percent of the underharvest (Table 1). Thus, the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 358.9 mt dw (792,161 lb dw), and the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 39.0 mt dw (86,066.7 lb dw).

The 2020 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (141,176 lb dw), and the eastern Gulf of

Mexico sub-region is 85.5 mt dw (188,593 lb dw; Table 1). As of September 13, 2019, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were at 53 percent (11.7 mt dw) of the 2019 quota (22.0 mt dw), while the aggregated LCS in the eastern Gulf of Mexico sub-region were at 45 percent (61.3 mt dw) of their 2019 quota levels (135.5 mt dw). NMFS is proposing to adjust the 2019 aggregated LCS quota in the western Gulf of Mexico sub-region to account for an 8 mt dw overharvest that occurred in 2018. While the quota was still under the limit when the 2019 Atlantic Shark Commercial Fishing Year final rule was released (83 FR 60777; November 27, 2018), the quota was exceeded by the end of the 2019 calendar year, as later revealed by updated data received in 2019. Although NMFS generally accounts for later-reported overages in the subsequent year (here, 2020), NMFS has, under certain circumstances, re-adjusted the subject year quota if appropriate. Given that 2019 landings are low, current catch rates indicate that the 2019 quota will not be fully landed, and that there is time to further adjust this approach, if needed, in the final rule in response to any updated landings information. NMFS is proposing that the 2019 sub-regional quota be adjusted to account for the 2018 overharvest, and is proposing that the 2020 quota for the aggregated LCS in the western Gulf of Mexico be equal to the annual base quota without adjustment. NMFS proposes to re-adjust the western Gulf of Mexico sub-regional quota by 8 mt dw (17,548 lb dw) from the 2019 quota. If catch rates do increase, and the revised 2019 sub-regional quota is exceeded, then NMFS would, in the final rule, reduce the 2020 quota by that overharvest. Based on preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quota for aggregated LCS in the eastern Gulf of Mexico sub-region be equal to the annual base quota without adjustment, because the overall regional quota has not been overharvested and because underharvests cannot be carried over due to stock status.

The 2020 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region and western Gulf of Mexico sub-region are 11.9 mt dw (26,301 lb dw) and 13.4 mt dw (29,421 lb dw), respectively (Table 1). As of September 13, 2019, preliminary reported landings for hammerhead sharks in the western Gulf of Mexico sub-region were less than 12 percent (<0.5 mt dw) of their 2019 quota levels (3.9 mt dw), while landings of hammerhead sharks in the eastern Gulf of Mexico sub-region were at 43 percent (9.2 mt dw) of their 2019 quota levels (21.4 mt dw). Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2019 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Therefore, based on both preliminary estimates and catch rates from previous years and the fact that the 2019 overall hammerhead shark quota has not been overharvested to date, and consistent with the current regulations at § 635.27(b)(2)(ii), NMFS proposes that the 2020 quotas for hammerhead sharks in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment.

The 2020 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). As of September 13, 2019, preliminary reported landings of non-blacknose SCS were at 31 percent (34.5 mt dw) of their 2019 quota level (112.6 mt dw) in the Gulf of Mexico region. Reported landings have not exceeded the 2019 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico non-blacknose SCS management group, underharvests cannot be carried forward, pursuant to § 635.27(b)(2)(ii). Under current regulations at § 635.27(b)(2), underharvests cannot be carried over due to stock status. Based on both preliminary estimates and catch rates from previous years, and because there have not been any overharvests, NMFS proposes that the 2020 quota for non-blacknose SCS in the Gulf of Mexico region be equal to the annual base quota without adjustment. There is no allowable harvest of blacknose sharks in the Gulf of Mexico region.

The 2020 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw). As of September 13, 2019, preliminary reported landings of smoothhound sharks were less than 5 percent (<4.9 mt dw) in the Gulf of Mexico region. Gulf of Mexico smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Gulf of Mexico region therefore could be applied to the 2020 quotas up to 50 percent of the base annual quota. Accordingly, NMFS proposes to increase the 2020 Gulf of Mexico smoothhound shark quota to adjust for anticipated underharvests in 2019 as allowed. The proposed 2020 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw) annual base quota + 168.2 mt dw 2019 underharvest = 504.6 mt dw 2020 adjusted annual quota).

2. Proposed 2020 Quotas for the Atlantic Region Shark Management Groups

The 2020 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of September 13, 2019, the aggregated LCS fishery in the Atlantic region is still open, and preliminary landings indicate that only 20 percent of the quota, or 34.5 mt dw, has been harvested. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quota for aggregated LCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests, and underharvests cannot be carried over due to stock status.ey End:?≤

The 2020 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). Currently, the hammerhead shark fishery in the Atlantic region is still open and preliminary landings as of September 13, 2019, indicate that 34 percent of the Atlantic regional quota, or 9.3 mt dw, has been harvested. Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2019 overall hammerhead quota to date. Given the overfished status of hammerhead sharks, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quota for hammerhead sharks in the Atlantic region be equal to the annual base quota without adjustment, because the overall hammerhead shark quota has not been overharvested, and because underharvests cannot be carried over due to stock status.

The 2020 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of September 13, 2019, preliminary reported landings of non-blacknose SCS

were at 32 percent (83.8 mt dw) of their 2019 quota level in the Atlantic region. Reported landings have not exceeded the 2019 quota to date. Given the unknown status of bonnethead sharks within the Atlantic non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates of catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quota for non-blacknose SCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests, and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N latitude. North of 34° N latitude, retention, landing, or sale of blacknose sharks is prohibited. As of September 13, 2019, preliminary reported landings of blacknose sharks were at 46 percent (7.9 mt dw) of their 2019 quota levels in the Atlantic region. Reported landings have not exceeded the 2019 quota to date. Pursuant to § 635.27(b)(2), because blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region, NMFS could not carry forward the remaining underharvest. Therefore, NMFS proposes that the 2020 Atlantic blacknose shark quota be equal to the annual base quota without adjustment.

The 2020 proposed commercial quota for smoothhound sharks in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of September 13, 2019, preliminary reported landings of smoothhound sharks were at 16 percent (279.6 mt dw) of their 2019 quota levels in the Atlantic region. Atlantic smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Atlantic region therefore could be applied to the 2020 quotas up to 50 percent of the base annual quota. Accordingly, NMFS proposes to increase the 2020 Atlantic smoothhound shark quota to adjust for anticipated underharvests in 2019 as allowed. The proposed 2020 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2019 underharvest = 1,802.6 mt dw 2020 adjusted annual quota).

3. Proposed 2020 Quotas for Shark Management Groups With No Regional Quotas

The 2020 proposed commercial quotas within the shark research fishery are 50 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of September 13, 2019, preliminary reported landings of research LCS were at 20 percent (10.1 mt dw) of their 2019 quota levels, and sandbar shark reported landings were at 56 percent (50.6 mt dw) of their 2019 quota levels. Reported landings have not exceeded the 2019 quotas to date. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either not overfished or overfishing is not occurring, underharvests for these management groups cannot be carried forward to the 2020 quotas. Therefore, based on preliminary estimates, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quota in the shark research fishery be equal to the annual base quota without adjustment because there have not been any overharvests, and because underharvests cannot be carried over due to stock status.

The 2020 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. As of September 13, 2019, there were no preliminary reported landings of blue sharks, porbeagle shark reported landings were at <33 percent (<0.5 mt dw) of their 2019 quota levels, and landings of pelagic sharks (other than porbeagle and blue sharks) were at 6 percent (28.6 mt dw) of their 2019 quota level (488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2020 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

4. Proposed Opening Dates and Retention Limits for the 2020 Atlantic Commercial Shark Fishing Year

For each fishery, NMFS considered the seven ''Opening Commercial Fishing Season Criteria'' listed at § 635.27(b)(3). The criteria includes factors such as the available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishery participation in past years, impacts to accomplishing objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments, temporal variation in behavior or biology of target species (*e.g.,* seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed openings.

NMFS applied the Opening Commercial Fishing Season Criteria by examining the overharvests and underharvests of the different management groups in the 2019 fishing year to determine the likely effects of the proposed commercial quotas for 2020 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examined the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities be provided to fishermen in all areas. Lastly, NMFS examined the seasonal variation of the different species/management groups and the effects on fishing opportunities.

NMFS also considered the six ''inseason trip limit adjustment criteria'' listed at § 635.24(a)(8) for directed shark limited access permit holders intending to land LCS other than sandbar sharks. Those criteria are: The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes, to date, based on dealer reports; the estimated date of fishery closure based on when the landings are projected to reach 80-percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the season of a quota-linked management group is closed; effects of the adjustment on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or effects of catch rates in one part of a region precluding vessels in another part of that region from having a

reasonable opportunity to harvest a portion of the relevant quota.

After considering all these criteria, NMFS is proposing to open the 2020 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, on or about January 1, 2020, after the publication of the final rule for this action (Table 2). NMFS is also proposing to start the 2020 commercial shark fishing season with the commercial retention limit of 45 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 25 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). NMFS will consider public comments received during the current year and catch rates from this year. Any retention limits that are proposed could change as a result of public comments as well as catch rates and landings information based on updated data available when drafting the final rule.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages	Season opening dates	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are possible)
Western Gulf of Mexico.	Blacktip Sharks	Not Linked	January 1, 2020	45 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Eastern Gulf of Mexico.	Blacktip Sharks	Not Linked	January 1, 2020	45 LCS other than sandbar sharks per vessel per trip. [1]
	Aggregated Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2020	N/A.
	Smoothhound Sharks	Not Linked	January 1, 2020	N/A.
Atlantic	Aggregated Large Coastal Sharks.	Linked	January 1, 2020	25 LCS other than sandbar sharks per vessel per trip.
	Hammerhead Sharks			If quota is landed quickly (*e.g.,* if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates an inseason reduction (*e.g.,* to 3 or fewer LCS other than sandbar sharks per vessel per trip), then an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2020. [2]
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34° N lat. only).	January 1, 2020	N/A.
	Blacknose Sharks (South of 34° N lat. only).			8 Blacknose sharks per vessel per trip (applies to directed and incidental permit holders).
	Smoothhound Sharks	Not Linked	January 1, 2020	N/A.
No regional quotas	Non-Sandbar LCS Research.	Linked	January 1, 2020	N/A.
	Sandbar Shark Research.			
	Blue Sharks	Not Linked	January 1, 2020	N/A.
	Porbeagle Sharks.			
	Pelagic Sharks Other Than Porbeagle or Blue.			

[1] NMFS may consider a higher starting retention limit for the entire region of 55 sharks per trip to increase the harvest level and ensure the management group can maximize its quota. NMFS is asking for comments specifically on this potential increase in retention limits.

[2] NMFS is proposing changing the percent of quota harvested at which it considers adjusting the retention limit. Rather than 20 percent, NMFS would consider adjustment at a higher percentage to allow fishermen in the Atlantic region to more fully utilize the quota. NMFS is asking for comment specifically on this potential change in the benchmark (percent of quota harvested) at which NMFS considers an inseason adjustment. Additionally, NMFS is also considering an increase from the initial 25 sharks per trip in the beginning of the fishing year to a higher number of landings per trip, within the 55 sharks per trip limit. NMFS is specifically asking for comments on these potential changes.

In the Gulf of Mexico region, NMFS proposes opening the fishing season on or about January 1, 2020, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups with the commercial retention limits of 45 LCS other than sandbar sharks per vessel per trip for directed shark permit holders in the eastern and western sub-region. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. This opening date takes into account all the season opening criteria listed in § 635.27(b)(3), and particularly the criteria that requires NMFS to consider the length of the season for the different species and/or management group in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(v)). The proposed

commercial retention limits take into account the criteria listed in § 635.24(a)(8), and particularly the criterion that requires NMFS to consider the catch rates of the relevant shark species/complexes based on dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). For both the eastern and western Gulf of Mexico sub-regions combined, dealer reports received through September 13, 2019, indicate that 24 percent (69.4 mt dw), 46 percent (73.0 mt dw), and less than 40 percent (<10.0 mt dw) of the available blacktip, aggregated LCS, and hammerhead shark quotas, respectively, has been harvested. Therefore, for 2020, NMFS is considering opening the both the western and eastern Gulf of Mexico sub-regions at 45 sharks per trip, but may also consider a higher starting retention limit for the entire region of 55 sharks per trip to increase the harvest level and ensure the management group can maximize its quota. NMFS is asking for comments specifically on this potential increase in retention limits.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on or about January 1, 2020. This opening date is the same date that these management groups opened in 2019. As described below, this opening date also takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2019 data indicates that an opening date of January 1, coupled with inseason adjustments to the retention limit, provided a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)) while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). In 2019, when the aggregated LCS quota was harvested too quickly, NMFS reduced the retention limit to three sharks per trip (April 2, 2019; 84 FR 12524) to allow fishermen in the North Atlantic an opportunity to fish later in the year when sharks are available in the North Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). NMFS then increased the retention limit to 36 sharks per trip on June 25, 2019 (84 FR 29808), to increase fishing opportunities for all fishermen across the Atlantic region. Because the quotas we propose for 2020 are the same as the quotas in 2019, NMFS proposes that the season lengths and therefore the participation of various fishermen throughout the region, would be similar in 2020 (§ 635.27(b)(3)(ii) and (iii)). Based on the recent performance of the fishery, the January 1 opening date appears to meet the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments (§ 635.27(b)(3)(vi)). However, after reviewing landings data from 2016 to the present, NMFS has seen a decrease in landings over time in the aggregated LCS management group. Because of the decrease in landings, NMFS is also proposing changing the percent of quotas harvested at which it considers adjusting the retention limit. Rather than 20 percent, NMFS would consider adjustments at a higher percentage to allow fishermen in the Atlantic region to more fully utilize the quota. While this is not a regulatory provision, it is a management benchmark NMFS has used (and announced as part of the rulemaking process) in previous seasons to help determine at which point it will consider an inseason action to adjust the retention limits. NMFS is asking for comment specifically on this potential change in the benchmark (percent of quota harvested) at which NMFS considers an inseason adjustment.

In addition, for the aggregated LCS and hammerhead shark management groups in the Atlantic region, NMFS proposes opening the fishing year with the commercial retention limit for directed shark limited access permit holders of 25 LCS other than sandbar sharks per vessel per trip. This retention limit should allow fishermen to harvest some of the 2020 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). As was done in 2019, if it appears that the quota is being harvested too quickly to allow directed fishermen throughout the entire region an opportunity to fish and ensure enough quota remains until later in the year, NMFS would reduce the commercial retention limits to incidental levels (3 LCS other than sandbar sharks per vessel per trip) or another level calculated to reduce the harvest of LCS taking into account § 635.27(b)(3) and the inseason trip limit adjustment criteria listed in § 635.24(a)(8). If the quota continues to be harvested quickly, NMFS could reduce the retention limit to 0 LCS other than sandbar sharks per vessel per trip to ensure enough quota remains until later in the year. If either situation occurs, NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit to an appropriate limit of sharks per trip. NMFS will consider increasing the commercial retention limits per trip at a later date, if necessary, to provide fishermen in the northern portion of the Atlantic region an opportunity to retain aggregated LCS and hammerhead sharks after considering the appropriate inseason adjustment criteria. Similarly, at some point later in the year, NMFS may consider increasing the retention limit to 36 LCS other than sandbar sharks per vessel per trip or another amount, as deemed appropriate, after considering the inseason trip limit adjustment criteria. If the quota is being harvested too quickly or too slowly, NMFS could adjust the retention limit appropriately to ensure the fishery remains open most of the rest of the year. However, as stated above, NMFS has noticed a decrease in annual landings from 2016 to present. As such, in addition to the proposed change to the percent of quota harvested, NMFS is also considering an increase from the initial 25 sharks per trip in the beginning of the fishing year to a higher number of landings per trip, within the 55 sharks per trip limit. Changes to either the percent of quota harvested or the initial retention limit (or both) could allow fishermen in the Atlantic region to more fully utilize the quota. NMFS is specifically asking for comments on these potential changes.

All of the shark management groups would remain open until December 31, 2020, or until NMFS determines that the landings for any shark management group have reached, or are projected to reach, 80-percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. If NMFS determines that a non-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.,* eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark

management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing (83 FR 31677; July 9, 2018). For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach, or are expected to reach, 80-percent of the available overall, regional, and/or sub-regional quota, after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

If NMFS determines that a linked shark species or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas and the Final Rule to Revise Atlantic Highly Migratory Species Shark Fishery Closure Regulations (83 FR 31677; July 9, 2018), NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than four days from date of filing. In that event, from the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups will be closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34° N latitude.

Request for Comments

Comments on this proposed rule may be submitted via *www.regulations.gov* or by mail. NMFS solicits comments on this proposed rule by October 10, 2019 (see **DATES** and **ADDRESSES**). As noted above, NMFS is specifically asking for comments on three distinct issues—the initial LCS retention limit in the Gulf of Mexico region, the level of landings at which NMFS considers adjusting the retention limit for the Atlantic region, and the initial LCS retention limit in the Atlantic region.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated Atlantic HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated Atlantic HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated Atlantic HMS FMP (80 FR 73128; November 24, 2015) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea as required under the Coastal Zone Management Act. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise NMFS of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2020 fishing year for the Atlantic commercial shark fisheries does not change the framework previously consulted upon. Therefore, no additional consultation is required.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA analysis follows.

Section 603(b)(1) of the RFA requires agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated Atlantic HMS FMP and its amendments, is being proposed to establish the 2020 commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2019, and would not open until another action was taken. This proposed rule would be implemented according to the regulations implementing the 2006 Consolidated Atlantic HMS FMP and its amendments. Thus, NMFS proposes few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated Atlantic HMS FMP and its amendments, based on the quota adjustments.

Section 603(b)(2) of the RFA requires agencies to explain the rule's objectives. The objectives of this rule are to: Adjust the base quotas for all shark management groups based on any overharvests and/or underharvests from the previous fishing year(s); establish the opening dates of the various management groups; and establish the retention limits for the blacktip shark, aggregated large coastal shark, and hammerhead shark management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management regions and/or sub-regions while also considering the ecological needs of the different shark species.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit

holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As of September 2019, the proposed rule would apply to the approximately 219 directed commercial shark permit holders, 262 incidental commercial shark permit holders, 162 smoothhound shark permit holders, and 106 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 481 directed and incidental commercial shark permit holders, only 12 permit holders landed sharks in the Gulf of Mexico region and only 69 landed sharks in the Atlantic region. Of the 154 smoothhound shark permit holders, only 61 permit holders landed smoothhound sharks in the Atlantic region and none landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements as domestically implemented, domestic laws, and FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule, which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities, because all of the entities affected are considered small entities. In addition, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated Atlantic HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006 Consolidated Atlantic HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2018 ex-vessel price (Table 3), fully harvesting the unadjusted 2020 Atlantic shark commercial base quotas could result in total fleet revenues of $8,775,599. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to increase the base sub-regional quotas due to the underharvests in 2019. The increase for the western Gulf of Mexico blacktip shark management group could result in a $232,674 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a $41,513 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to the underharvest in 2019. This would cause a potential gain in revenue of $262,788 for the fleet in the Gulf of Mexico region and a potential gain in revenue of $1,057,482 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated Atlantic HMS FMP and its amendments. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated Atlantic HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for underharvests and overharvests at that time.

TABLE 3—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2018

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Western Gulf of Mexico	Blacktip Shark	$0.53	$10.94
	Aggregated LCS	0.67	11.61
	Hammerhead Shark	0.51	11.12
Eastern Gulf of Mexico	Blacktip Shark	1.06	9.54
	Aggregated LCS	0.59	11.93
	Hammerhead Shark	0.40	13.20
Gulf of Mexico	Non-Blacknose SCS	0.54	7.00
	Smoothhound Shark	0.65	.....
Atlantic	Aggregated LCS	0.98	11.06
	Hammerhead Shark	0.42	6.66
	Non-Blacknose SCS	0.99	7.67

TABLE 3—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2018—Continued

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
No Region	Blacknose Shark	1.21	.....
	Smoothhound Shark	0.74	1.62
	Shark Research Fishery (Aggregated LCS)	0.81	11.61
	Shark Research Fishery (Sandbar only)	0.61	11.00
	Blue shark	0.45	3.01
	Porbeagle shark	1.18	3.01
	Other Pelagic sharks	1.46	3.01

For this rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The opening dates of the fishing season(s) could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2020 fishing year, NMFS is proposing to open all of the shark management groups on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis because NMFS is not proposing to change the opening dates of these fisheries from the status quo.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 16, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019–20249 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 182

Thursday, September 19, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 4:20 p.m. CDT at the Hotel Downtown Marriott in Des Moines Iowa. The meeting will be livestreamed and accessible at *http://www.aplu.org/projects-and-initiatives/international-programs/bifad/bifad-meetings.html.*

A morning session on *Agriculture and Food Security in Conflict-Affected and Fragile Context* will be held from 8:30 a.m. to 12:30 p.m. CDT, with a public comment period from 12:00 to 12:25 p.m. CDT.

There is an urgent need to understand the unique challenges of improving the agricultural sector and food security in conflict-affected and fragile contexts—including those in which large populations are displaced—in order to strengthen investments in evidence-based food and agriculture programming tailored for these contexts. This BIFAD public meeting begins to address this need by bringing stakeholders and sector experts together for a timely discussion on the subject.

The morning session will specifically address the following questions: What is the state of knowledge on the relationship between conflict, fragility and food systems? What are the implications of this relationship for food security? How can food security and agricultural investments be most effective in preventing conflict or accelerating recovery in post-conflict settings? What are the unique needs of affected populations?

From 2:30 p.m. to 3:30 p.m. CDT, a new BIFAD-commissioned study, *How the United States Benefits from Agricultural and Food Security Investments in Developing Countries,* will be launched, with a public comment period from 3:15 p.m. to 3:30 p.m. CDT.

From 3:45 to 4:20, the BIFAD Awards for Scientific Excellence in a Feed the Future Innovation Lab will be announced and presented to award recipients.

BIFAD is a seven-member, presidentially appointed advisory board to USAID established in 1975 under Title XII of the Foreign Assistance Act, as amended. The provisions of Title XII concern bringing assets of U.S. universities to bear on development challenges in agriculture and food security, and the BIFAD's role is to help carry out this function.

For questions about registration, please contact Devin Furguson at *dferguson@aplu.org* or (202) 478–6030. For questions about BIFAD, please contact Clara Cohen, Designated Federal Officer for BIFAD in the Bureau for Food Security at USAID. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW, Washington, DC 20523–2110, email her at *ccohen@usaid.gov,* or telephone her at (202) 712–0119.

Clara Cohen,

Designated Federal Officer, BIFAD.

[FR Doc. 2019–20311 Filed 9–18–19; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Trade Finance Advisory Council; Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Department of Commerce Trade Finance Advisory Council (TFAC or Council) will hold a meeting on Thursday, October 3, 2019 at the Milken Institute, in Santa Monica, CA. The meeting is open to the public with registration instructions provided below.

DATES: Thursday, October 3, 2019 from approximately 9:00 a.m. to 12:00 noon Pacific Standard Time (PST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Standard Time on September 23, 2019. Registration, comments, and any auxiliary aid requests should be submitted via email to *TFAC@trade.gov.*

ADDRESSES: Milken Institute, 1250 4th Street, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: Ericka Ukrow, Designated Federal Officer, Office of Finance and Insurance Industries (OFII), International Trade Administration, U.S. Department of Commerce at (202) 482–0405; email: *Ericka.Ukrow@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background

The TFAC was established on August 11, 2016, pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App., and re-chartered for a second two-year term on August 9, 2018.

The TFAC serves as the principal advisory body to the Secretary of Commerce on policy matters relating to access to trade finance for U.S. exporters, including small- and medium-sized enterprises, and their foreign buyers. The TFAC is the mechanism by which the Department of Commerce (the Department) convenes private sector stakeholders to identify and develop consensus-based solutions to trade finance challenges. The Council is comprised of a diverse group of stakeholders from the trade finance industry and the U.S. exporting community, as well as experts from academia and public policy organizations.

On October 3, 2019, the TFAC will hold the third meeting of its 2018–2020 charter term. During the meeting, TFAC subcommittee members will present recommendations on policies and programs that can increase awareness of, and expand access to, private export financing resources for U.S. exporters, for discussion with the broader TFAC and officials from the Department and other agencies. Meeting minutes will be available within 90 days of the meeting

upon request or on the TFAC's website at *www.trade.gov/tfac.*

Public Participation

The meeting will be open to the public and there will be limited time permitted for public comments.

In order to be considered at the meeting, comments from members of the public must be submitted by the deadline identified under the **DATES** caption. Requests from members of the public to participate in the meeting, and for auxiliary aids, must be received by the same date submitted. Request should be submitted electronically to *TFAC@trade.gov.* Last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit written comments concerning TFAC affairs at any time before or after a meeting. Comments may be submitted to Ericka Ukrow, at the contact information indicated above. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Ericka Ukrow,

Senior International Trade Specialist, Designated Federal Officer Trade Finance Advisory Council, Office of Finance and Insurance Industries, Industry & Analysis.

[FR Doc. 2019–20304 Filed 9–18–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to determine that none of the companies under review have demonstrated eligibility for a separate rate during the period of review (POR) July 1, 2017 through June 30, 2018.

DATES: Applicable September 19, 2019.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2019, Commerce published its *Preliminary Results* of the administrative review of the antidumping duty order on circular welded carbon quality steel pipe from the People's Republic of China (China) for 122 companies covering the July 1, 2017 through June 30, 2018 POR.[1] Although invited to do so, interested parties did not comment on our *Preliminary Results.*

Scope of the Order

The merchandise subject to the order is certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.,* black, galvanized, or painted), end finish (*e.g.,* plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

The pipe products that are the subject of the order are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.[2]

Analysis

As noted above, no parties commented on the *Preliminary Results.* Therefore, we are adopting the decisions in the Preliminary Decision Memorandum for these final results of review. In the *Preliminary Results,* Commerce determined that all 122 companies under review did not establish their eligibility for a separate rate and are part of the China-wide entity.[3] For these final results of review, we have continued to treat the 122 companies under review as part of the China-wide entity. Because no party requested a review of the China-wide entity, we are not conducting a review of the China-wide entity,[4] and thus, there is no change to its antidumping duty rate. The existing antidumping duty rate for the China-wide entity is 85.55 percent.[5]

For additional details, *see* the Preliminary Decision Memorandum, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Assessment Rates

Pursuant to section 751(a)(2)(C) Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to instruct CBP to liquidate entries of subject merchandise during this POR from the 122 companies under review at the China-wide rate. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this

[1] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2017–2018,* 84 FR 22817 (May 20, 2019) (*Preliminary Results*).

[2] For a complete description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,'' dated May 13, 2019 (Preliminary Decision Memorandum).

[3] *See Preliminary Results,* 84 FR at 22817.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[5] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 84 FR 15584 (April 16, 2019) (*Second Sunset*).

administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed China and non-China exporters which are not under review in this segment of the proceeding but which received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 85.55 percent;[6] and (3) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

[6] *See Second Sunset,* 84 FR at 15584.

Dated: September 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–20233 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Friday, October 4, 2019, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Daylight Time (EDT) on Monday, September 30, 2019.

ADDRESSES: The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *devin.horne@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–0775; Fax: 202–482–5665; email: *devin.horne@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the Friday, October 4, 2019, CINTAC meeting is as follows: Discussion of activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Members of the public wishing to attend the meeting must notify Mr. Devin Horne at the contact information above by 5:00 p.m. EDT on Monday, September 30, 2019 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Horne and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Monday, September 30, 2019. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Monday, September 30, 2019. Comments received after that date will

be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: September 9, 2019.

Devin Horne,

Designated Federal Officer, Office of Energy and Environmental Industries.

[FR Doc. 2019–20305 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session Monday, November 4, 2019 through Friday, November 8, 2019, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The purpose of this meeting is to review recommendations from site visits and recommend 2019 Malcolm Baldrige National Quality Award (Award) recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held Monday, November 4, 2019 through Friday, November 8, 2019, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone number (301) 975–2361, email *robert.fangmeyer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel will meet on Monday, November 4, 2019 through Friday, November 8, 2019, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, with balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. Members are selected for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The purpose of this meeting is to review recommendations from site visits and recommend 2019 Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

The Chief Financial Officer/Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Employment, Litigation, and Information, formally determined on July 1, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4), because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; and 5 U.S.C. 552b(c)(9)(B) because the meeting is likely to disclose information the premature disclosure of which would, in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–20301 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Legal Processes

ACTION: Proposed collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of the existing information collection: 0651–0046 (Legal Processes).

DATES: Written comments must be submitted on or before November 18, 2019.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0046 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kyu Lee, Office of General Law, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kyu Lee, Office of General Law, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–3000; or by email at *Kyu.Lee@uspto.gov* with ''0651–0046 inquiry'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection covers information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. This collection is necessary so that respondents or their representatives can serve a summons or complaint on the USPTO, demand employee testimony and documents related to a legal proceeding, or file a claim under the Federal Tort Claims Act. Respondents may also petition the USPTO to waive or suspend these rules for legal processes. This collection is also

necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. The USPTO covers current employees as respondents under this information collection even though their responses do not require approval under the Paperwork Reduction Act. In those instances where both current and former employees may respond to the USPTO, the agency estimates that the number of respondents will be small.

There are no forms provided by the USPTO for this collection. For filing claims under the Federal Tort Claims Act, the public may use Standard Form 95 ''Claim for Damage, Injury, or Death,'' which is provided by the Department of Justice and approved by the Office of Management and Budget (OMB) under OMB Control Number 1105–0008.

II. Method of Collection

By mail or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0046.

Form Number(s): None.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 299 responses per year. The USPTO estimates that approximately 10% of these responses will be from small entities.

Estimated Time per Response: The USPTO estimates that it will take the public from 5 minutes (0.08 hours) to 6 hours to prepare a single item in this collection, including gathering the necessary information, preparing the appropriate documents, and submitting the information required for this collection.

Estimated Total Annual Hour Burden: 130 hours.

Estimated Total Annual Cost Burden (Hourly): $56,712.27. The USPTO estimates that the information in this collection will be prepared by attorneys and former employees at an hourly rate of $438, except for the requests for employee indemnification, which generally come from professional and supervisory staff at an hourly rate of $79.78. The attorney rates are found in the 2017 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). Since the majority of the former employees affected by this collection are attorneys, the estimated attorney hourly rate will be used for former employees as well. Using these hourly rates, the USPTO estimates that the total respondent cost burden for this collection will be approximately $56,712.27 per year.

TABLE 1—RESPONDENT HOURLY COST BURDEN

IC No.	Item	Estimated response time (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b) = (c)	Rate ($/hr) (d)	Total cost ($/yr) (c) × (d) = (e)
1	Petition to Waive Rules	30 minutes	5	2.50	$438.00	$1,095.00
2	Service of Process	5 minutes	243	20.17	438.00	8,834.02
3	Forwarding Service	10 minutes	7	1.12	438.00	490.56
4	Employee Testimony and Production of Documents in Legal Proceedings.	2 hours	33	66.00	438.00	28,908.00
5	Forwarding Demands	10 minutes	10	1.60	438.00	700.80
6	Report of Unauthorized Testimony	30 minutes	1	0.50	438.00	219.00
7	Report of Possible Indemnification Cases.	30 minutes	3	1.50	438.00	657.00
8	Employee Indemnification	30 minutes	1	0.50	79.78	39.89
9	Tort Claims	6 hours	6	36.00	438.00	15,768.00
Totals			309	130		56,712.27

Estimated Total Annual Non-hour Respondent Cost Burden: $6,928. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

Filing Fees

This collection has filing fees associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3. The USPTO estimates that approximately 5 petitions will be filed per year with a fee of $130, for a total fee cost of $650. There are no other fees associated with this information collection.

Postage Costs

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage for a mailed submission, other than a Service of Process, will be $1.45 and that up to 56 of these submissions will be mailed to the USPTO per year, for a postage cost of $82.64. The USPTO estimates that the average postage for a Service of Process will be mailed Priority Express at a cost of $25.50 and that up to 243 of these submissions will be mailed to the USPTO per year, for a postage cost of $6,197. The total estimated postage cost for this collection is approximately $6,279 per year.

Therefore, the total annual (non-hour) respondent cost burden for this collection, in the form of filing fees ($650.00) and postage costs ($6,279), is estimated to be approximately $6,928 per year.

IV. Request for Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Marcie Lovett,

Records Management Division Director, OCIO, United States Patent and Trademark Office.

[FR Doc. 2019–20266 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the new 12-month cap on duty- and quota-free benefits.

DATES: *Applicable:* October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Rebecca Geiger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3117.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Public Law 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109–432, and section 1 of The African Growth and Opportunity Amendments (Pub. L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and Title I, Section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Pub. L. 114–27, June 29, 2015. Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2019 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2019, and extending through September 30, 2020, the aggregate quantity of imports eligible for preferential treatment under these provisions is 2,146,573,294 square meters equivalent. Of this amount, 1,073,286,647 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Lloyd Wood,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2019–20302 Filed 9–18–19; 8:45 am]

BILLING CODE 3510–DR–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights, Issue 19 (Summer 2019)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory highlights.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its nineteenth edition of its Supervisory Highlights. In this issue of Supervisory Highlights, we report examination findings in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination that were generally completed between December 2018 and March 2019 (unless otherwise stated). The report does not impose any new or different legal requirements, and all violations described in the report are based only on those specific facts and circumstances noted during those examinations.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Attorney-Advisor, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

The Consumer Financial Protection Bureau is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination that were generally completed between December 2018 and March 2019 (unless otherwise stated).

It is important to keep in mind that institutions are subject only to the requirements of relevant laws and regulations. The information contained in Supervisory Highlights is disseminated to help institutions better understand how the Bureau examines institutions for compliance with those requirements. This document does not impose any new or different legal requirements. In addition, the legal violations described in this and previous issues of Supervisory Highlights are based on the particular facts and circumstances reviewed by the Bureau as part of its examinations. A conclusion that a legal violation exists on the facts and circumstances described here may not lead to such a finding under different facts and circumstances.

We invite readers with questions or comments about the findings and legal analysis reported in Supervisory Highlights to contact us at *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

2.1 Automobile Loan Origination

The Bureau continues to examine auto loan origination activities, including assessing whether originators have engaged in any unfair, deceptive, or abusive acts or practices prohibited by the Consumer Financial Protection Act of 2010 (CFPA).

2.1.1 Abusive Act or Practice When Selling Add-On GAP Products

Under the prohibition against abusive acts or practices in sections 1031 and 1036 of the CFPA,[1] an act or practice is abusive if, among other things, it takes unreasonable advantage of a consumer's lack of understanding of the material risks, costs, or conditions of the product or service.[2]

Some auto lenders may sell consumers a guaranteed asset protection (GAP) product to cover the difference, or ''gap,'' between the amount the consumer owes on the auto loan and the amount received from the auto insurer in the event a vehicle is stolen, damaged, or totaled. Such a gap is more likely to occur in an auto loan with a high loan-to-value (LTV) ratio than one with a low LTV, because in a loan with a low LTV, the insurance payout for a totaled vehicle may cover the outstanding debt.

One or more examinations completed in 2018[3] found instances in which auto lenders sold a GAP product to consumers under circumstances that led to an abusive practice. Specifically, examiners observed that lenders sold a GAP product to consumers whose low LTV meant that they would not benefit from the product. By purchasing a product they would not benefit from, consumers demonstrated that they lacked an understanding of a material aspect of the product. The lenders had sufficient information to know that these consumers would not benefit from the product. These sales show that the lenders took unreasonable advantage of the consumers' lack of understanding of the material risks, costs, or conditions of the product. In response to these examination findings, the lenders have undertaken remedial and corrective actions, including reimbursing consumers for the cost of the product and establishing an LTV minimum for GAP product sales.

2.2 Credit Card Account Management

The Bureau continues to examine the credit card account management operations of one or more supervised entities. These examinations may focus on all aspects of credit card origination and account servicing for compliance with various Federal consumer financial laws including the Truth in Lending Act and its implementing regulation, Regulation Z. Selected recent findings are below.

2.2.1 Triggered Disclosures for Online Credit Card Advertisements

Regulation Z, 12 CFR 1026.16(b), requires credit card issuers in credit card advertisements to clearly and conspicuously provide certain disclosures if the advertisements contain certain pricing terms (''triggering terms'').

In one or more examinations completed in 2018,[4] examiners found that entities failed to clearly and conspicuously provide disclosures required by triggering terms in online advertisements. In some instances, the triggered disclosures were available to consumers via a hyperlink that was not labeled in a way that referred to the triggered disclosures. Consumers would have to click on the insufficiently clear or conspicuous hyperlink, and then navigate through an online application before arriving at triggered disclosures. In other instances, consumers had to click on multiple hyperlinks and could only view the triggered disclosures after completing an eight-page application. Issuers have undertaken corrective actions in these cases in response to examination findings.

2.2.2 Offset of Credit Card Debt

Regulation Z, 12 CFR 1026.12(d), prohibits credit card issuers from offsetting credit card debt with funds the consumer has on deposit with the issuer. However, subsection 1026.12(d)(2) expressly permits issuers to obtain or enforce a consensual security interest in such funds, so long as certain requirements specified in the Staff Commentary are met. Such security interests must be affirmatively agreed to by the consumer and must be disclosed in the account-opening disclosures. A security interest may not simply be the functional equivalent of offset, however. Thus, routinely including a provision in a cardholder agreement indicating that consumers are giving a security interest in any deposit accounts maintained with the issuers would not qualify for the exception under subsection 1026.12(d)(2). Instead, for a security interest to qualify, the consumer must be aware that granting a security interest is a condition for the credit card (or for more favorable account terms) and must specifically intend to grant a security interest in the deposit account. Indicators of the consumers' awareness and intent include at least one of the following (or a substantially similar procedure):

- Separate signature or initials on the agreement indicating that a security interest is being given;
- Placement of the security agreement on a separate page, or otherwise separate security interest provisions from other contract and disclosure provisions; or
- Reference to a specific amount of deposited funds or to a specific deposit account number.

One or more examinations completed in 2018[5] found that issuers violated Regulation Z, 12 CFR 1026.12(d)(1), by offsetting consumers' credit card debt against funds that the consumers had on deposit with the issuers without sufficient indication of the consumer's awareness of, and intent to grant, a security interest in those funds. The issuers' policies or procedures required the issuers to have obtained a signed authorization form from consumers

[1] 12 U.S.C. 5531 and 12 U.S.C. 5536.

[2] 12 U.S.C. 5531(d)(2)(A).

[3] This examination work was completed prior to the review period for this report.

[4] This examination work was completed prior to the review period for this report.

[5] This examination work was completed prior to the review period for this report.

before attempting to enforce the security interest. However, in some instances, the issuers enforced the security interest against the funds on deposit where such forms had not been signed by the consumer or could not be located. In response to examination findings, issuers have implemented corrective action to ensure compliance with the regulatory requirements.

2.2.3 Deceptive Threats of Repossession or Foreclosure in Credit Card Collections

Under the prohibition against deceptive acts or practices in sections 1031 and 1036 of the CFPA,[6] an act or practice is deceptive when: (1) It misleads or is likely to mislead the consumer; (2) the consumer's interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material. In one or more examinations completed in 2018,[7] examiners found that one or more credit card issuer(s) misled or were likely to mislead consumer credit card holders by sending collection letters that suggested that the issuer(s) could repossess consumers' automobiles, or foreclose on homes, securing loans or mortgages owned by the issuer(s). In fact, the issuer(s) did not repossess any vehicles or foreclose on any mortgages in connection with delinquent credit card accounts, and it was against the policies of the issuer(s) to do so. The representations by the issuer(s) were likely to mislead consumers into believing that they might be subject to repossession or foreclosure for delinquent credit card accounts if they had an automobile loan or mortgage with the issuer(s). The consumers' beliefs were reasonable given the representations made in the collection letters. The misrepresentations were material since they were likely to induce cardholders to change their conduct with respect to their delinquent credit card accounts. In response to these examiner findings, the issuers discontinued the use of the collection letters.

2.2.4 Deceptive Marketing Regarding Secured Credit Card Accounts

Under the prohibition against deceptive acts or practices in sections 1031 and 1036 of the CFPA,[8] a practice is deceptive when: (1) It misleads or is likely to mislead the consumer; (2) the consumer's interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material. In one or more examinations, examiners found that credit card issuers misled or were likely to mislead consumers by orally representing that secured credit card accounts would automatically graduate (or be upgraded) to unsecured credit card accounts on a specific timeframe, such as six or twelve months after origination, so long as cardholders maintained their accounts in good standing. In fact, the issuers did not upgrade secured card accounts on any preset timeframe, and upgrade or graduation was conditioned on additional factors, as some subsequent disclosures and online and print solicitations suggested. The oral representations misled or were likely to mislead consumers about both the timing and likelihood of upgrade or graduation, and subsequent written disclosures were inadequate to cure the oral representations. The consumers' interpretation of the preset graduation or upgrade was reasonable based on the oral representations. The representations were also material to the consumers' decisions to apply for a secured card account with the issuers.

In one or more examinations, examiners found that credit card issuers misled or were likely to mislead consumers by representing in prescreened offers of credit that secured credit card accounts subject to an annual fee would be ''periodically'' reviewed for graduation (or upgrade). In fact, the issuers did not review such accounts for a year or more but did not provide additional disclosures to accountholders or modify their marketing materials. Such representations were likely to mislead consumers about the timing for a potential upgrade. Consumers' interpretations of such representations were reasonable under the circumstances. The issuers' misrepresentations were material to consumers' decisions to apply for a secured card account and to existing cardholders' decisions to maintain their secured card accounts.

In all the above cases, the issuers have developed action plans to identify and compensate impacted consumers, and updated their policies and procedures to prevent future violations.

2.3 Debt Collection

Supervision continues to examine consumer debt collection for compliance with various Federal consumer financial laws, including the Fair Debt Collection Practices Act (FDCPA). Below are findings resulting from these supervisory activities.

2.3.1 False Representation of the Amount and Legal Status of Debt

Section 807 of the FDCPA prohibits the use of any false, deceptive, or misleading representation or means in the collection of any debt. Specifically, section 807(2)(A) of the FDCPA prohibits the false representation of the character, amount, or legal status of any debt. Examiners found that one or more debt collectors claimed and collected from consumers, interest not authorized by the underlying contracts between the debt collectors and the creditors. In doing so, one or more debt collectors falsely represented to consumers the amount due and authorized in violation of section 807(2)(A) of the FDCPA. In response to these examination findings, one or more debt collectors conducted or are conducting a full accounting of these charges and providing remediation for affected consumer accounts, including accounts in which consumers paid in full, settled in full, or made partial payments.

2.4 Furnishing

Entities that furnish information relating to consumers to consumer reporting companies for inclusion in consumer reports (furnishers) play a vital role in the consumer reporting process. They are subject to several requirements under the Fair Credit Reporting Act (FCRA)[9] and its implementing regulation, Regulation V,[10] including accuracy and dispute handling requirements.

In one or more recent furnishing reviews, examiners found deficiencies in furnisher compliance with FCRA accuracy and dispute investigation requirements.

2.4.1 Duty To Timely Complete Dispute Investigations

The FCRA requires that when a furnisher receives notice of a dispute from a credit reporting company (CRC) pursuant to FCRA section 623(b)(1),[11] the furnisher must complete its investigation of disputes ''before the expiration of the period under section 611(a)(1) . . .'' within which the CRC must complete its own dispute investigation.[12] This period of time is normally 30 days from the date the CRC receives a dispute and can be extended to 45 days in certain limited circumstances.[13] Examiners found that one or more furnishers failed to complete dispute investigations within

[6] 12 U.S.C. 5531 and 12 U.S.C. 5536.

[7] This examination work was completed prior to the review period for this report.

[8] 12 U.S.C. 5531 and 12 U.S.C. 5536.

[9] 15 U.S.C. 1681s–2(a)–(e).

[10] 12 CFR 1022.40–43.

[11] 15 U.S.C. 1681s–2(b)(1).

[12] 15 U.S.C. 1681s–2(b)(2).

[13] 15 U.S.C. 1681i(a)(1)(B).

the required time period. At one or more furnishers, examiners found certain disputes of which the furnisher(s) received notice from the CRC but failed to conduct an investigation or respond to the CRC. In response to these findings, one or more furnishers are establishing and implementing enhanced monitoring activities, and policies and procedures regarding compliance with furnisher-specific requirements of the FCRA.

2.4.2 Duty To Provide Results of Dispute Investigations to CRCs

The FCRA requires that if a furnisher's dispute investigation finds that disputed information is incomplete or inaccurate, the furnisher must report the results not only to the CRC that sent the dispute to the furnisher but also to all nationwide CRCs to which the furnisher provided the information.[14] Examiners found that one or more furnishers failed to report updates or corrections to information found to be incomplete or inaccurate following a dispute investigation to all applicable CRCs. At one or more furnishers, examiners found the systematic failure of reporting dispute investigation results to a particular CRC. In response to these findings, one or more furnishers are establishing and implementing enhanced monitoring activities, as well as policies and procedures regarding compliance with furnisher-specific requirements of the FCRA, and providing validation of corrective action.

2.4.3 Duty To Promptly Correct and Update Previously Furnished Information

The FCRA requires that if a furnisher determines that previously furnished information is not complete or accurate, the furnisher must promptly notify the CRC of that determination and provide the CRC with any corrections to that information, or any additional information, that is necessary to make the information complete and accurate.[15] In addition, a furnisher cannot thereafter furnish to the CRC any of the information that remains incomplete or inaccurate.[16]

Examiners found that one or more furnishers failed to promptly send corrections or updates to all applicable CRCs after making a determination, as reflected in the relevant system of record, that previously furnished information about certain accounts was no longer accurate. As a result, one or more furnishers are establishing and implementing enhanced monitoring activities, as well as policies and procedures regarding compliance with furnisher-specific requirements of the FCRA, and providing validation of corrective action.

Examiners found that one or more furnishers of deposit account information failed to furnish updated information regarding accounts that were paid-in-full or settled-in-full. When one or more furnishers removed their company identification from account number fields at the request of a nationwide specialty CRC, and the removal of the identification changed the search key that the furnishers used for matching when making account updates, the furnishers discovered that almost two thousand accounts were not corrected to reflect the paid-in-full or settled-in-full status. Examiners observed that one or more furnishers did not promptly notify the nationwide specialty CRC after having determined that the accounts were not corrected and updated, in violation of the FCRA. In light of these findings, one or more furnishers have taken action to update and correct information that it previously furnished when they determined that the information was not complete or accurate.

2.4.4 Duty To Provide Notice of Dispute

The FCRA prohibits furnishers from furnishing information to any CRC without notice that such information is disputed if the completeness or accuracy of the information furnished is disputed by a consumer.[17] Examiners found that one or more furnishers of deposit account information received consumer disputes and then continued furnishing information about the disputed accounts for several months without notifying a nationwide specialty CRC that the information furnished was disputed, in violation of the FCRA. As a result of these examination findings, one or more furnishers have taken action to provide timely notice to CRCs upon receipt of a direct dispute from a consumer who has disputed information previously furnished.

2.4.5 Regulation V Duty To Establish and Implement Policies and Procedures

Regulation V requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a CRC.[18] Examiners found that one or more furnishers of deposit account information failed to implement reasonable written policies and procedures regarding the accuracy and integrity of deposit account information it furnished to nationwide specialty CRCs. Such policies and procedures were also not appropriate to the nature, size, complexity, and scope of the furnishing activities. For example, there were no written policies and procedures for handling disputes regarding account information from certain files. The existing policies also did not address compliance with FCRA dispute requirements, such as the duty to conduct a reasonable investigation. There were also no policies and procedures for training, monitoring, or conducting internal audits regarding a business unit's responsibilities to forward disputes of furnished information. Finally, one or more furnishers failed to have policies and procedures for one business unit to conduct investigations of consumer disputes alleging account abuse caused by fraud. As a result of these observations, one or more furnishers have taken action to comply with the Regulation V requirements to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information furnished to nationwide CRCs.

Regulation V requires furnishers to consider and incorporate, as appropriate, the guidelines in appendix E of Regulation V.[19] Examiners found that one or more furnishers of deposit account information failed to consider the guidelines in appendix E of Regulation V. For example, such guidance states that a furnisher's policies and procedures should consider and incorporate, as appropriate, conducting ''reasonable investigations of consumer disputes and take appropriate action based on the outcome of such investigations.'' However, the policies of one or more furnishers did not consider and incorporate such guidance. Based on examiner findings, one or more furnishers have taken action to consider and incorporate, as appropriate, the guidance in appendix E of Regulation V.

2.5 Mortgage Origination

Supervision continues to examine both forward and reverse mortgage origination activities for compliance with various Federal consumer financial laws, including the Truth in Lending

[14] 15 U.S.C. 1681s–2(b)(1)(D).

[15] 15 U.S.C. 1681s–2(a)(2)(B).

[16] 15 U.S.C. 1681s–2(a)(2)(B).

[17] 15 U.S.C. 1682s–2(a)(3).

[18] 12 CFR 1022.42(a).

[19] 12 CFR 1022.42(b), appendix E.

Act and its implementing regulation, Regulation Z.

2.5.1 Inaccurate APR and TALC Disclosures in Reverse Mortgage Transactions

Regulation Z requires creditors to disclose the annual percentage rate (APR) in accordance with either the actuarial method or the U.S. Rule method.[20] The explanations, equations, and instructions for determining the APR in accordance with the actuarial method are set forth in appendix J to 12 CFR part 1026.[21]

Appendix J provides that the unit-period for a single advance, single payment transaction, for the purposes of determining the APR, shall be the term of the transaction, but shall not exceed one year.[22] In all other transactions, the unit-period shall be the common period that occurs most frequently in the transaction unless an exception applies.[23]

Generally, by its terms, a closed-end reverse mortgage is a single advance, single payment transaction because it includes a single lump-sum advance at origination and a single payment due at the end of the loan term. Thus, per appendix J and Regulation Z, the unit-period for the purposes of determining the APR for such a closed-end reverse mortgage, with a term greater than a year, is one year.

In addition to a single lump-sum advance at origination, some closed-end reverse mortgages may have multiple advances throughout the loan term. For example, a closed-end reverse mortgage with a life-expectancy set-aside (LESA) typically has a set number of semiannual advances for the payment of property taxes, and flood and hazard insurance premiums. Thus, per appendix J and Regulation Z, the unit-period for the purposes of determining the APR for such a loan would be six months because that would be the common period that occurs most frequently in the transaction.

In addition, Regulation Z states that the APR shall be considered accurate for a regular transaction if it is not more than ⅛ of one percentage point above or below the APR determined in accordance with section 1026.22(a)(1).[24] Likewise, the APR shall be considered accurate for an irregular transaction if it is not more than ¼ of one percentage point above or below the APR determined in accordance with section 1026.22(a)(1).[25]

In one or more examinations, examiners observed that creditors were disclosing inaccurate APRs for closed-end reverse mortgages. Specifically, while conducting loan file reviews, examiners observed creditors using a unit-period of one month instead of one year to calculate the APR, leading to inaccurate calculations outside of Regulation Z's permissible tolerances.[26] In response to this finding, the creditors have revised their calculation methodology to reflect the correct unit-period and provided affected consumers with reimbursements.

Examiners also found creditors disclosing inaccurate APRs for closed-end reverse mortgages with a LESA. While conducting loan file reviews, examiners observed creditors using a unit-period of one month instead of six months to calculate the APR, leading to inaccurate calculations outside of Regulation Z's permissible tolerances.[27] In response to this finding, the creditors have revised their calculation methodologies to reflect the correct unit-period.

Examiners observed similar issues in relation to the calculation of the total annual loan cost (TALC). Regulation Z requires that, in a reverse mortgage transaction, the creditor provide a good-faith projection of the total cost of credit, determined in accordance with paragraph (c) of this section and expressed as a table of ''total annual loan cost rates,'' in accordance with appendix K of 12 CFR part 1026.[28]

Per appendix K, the unit-period for a single advance, single payment transaction, for the purposes of determining the TALC rate, shall be the term of the transaction, but shall not exceed one year.[29] Both a closed-end reverse mortgage and an open-end reverse mortgage with a line of credit are single advance, single payment transactions, even though the latter may have multiple advances over the loan term.[30] Accordingly, the appropriate unit-period for such transactions when determining the TALC rate and the future value of all advances, a variable of the TALC equation, is one year. While conducting loan file reviews, examiners observed creditors using a unit-period of one month instead of one year to calculate the TALC rate and the future value of all advances, leading to inaccurate TALC disclosures. In response to these findings, the creditors have revised their calculation methodologies to reflect the correct unit-period.

3. Supervision Program Developments

3.1 Recent Bureau Rules and Guidance

3.1.1 Small Entity Compliance Guide

On June 28, 2019, the Bureau updated the small entity compliance guide summarizing the Payday Lending Rule's payment-related requirements. The guide has been updated to incorporate the changes that the Delay Final Rule made to the 2017 Payday Lending Rule.[31]

3.1.2 Memorandum of Understanding With the Federal Trade Commission

On February 26, 2019, the CFPB and the Federal Trade Commission (FTC) announced a new memorandum of understanding (MOU) between the agencies that went into effect on February 25, 2019.[32] The MOU, which facilitates cooperation and coordination on supervision, enforcement and consumer response activities, renews a previous MOU between the agencies, and is required by the CFPA.[33]

3.1.3 Amendment to the Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)

On August 10, 2018, the CFPB published a final rule to implement a December 2015 statutory amendment to the Gramm-Leach-Bliley Act.[34] The rule provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. To qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions. In addition, the rule requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice it sent. As part of its implementation, the Bureau is also amending Regulation P to provide timing requirements for

[20] 12 CFR 1026.22(a)(1).

[21] *Id.*

[22] 12 CFR part 1026, app. J(b)(4)(ii).

[23] 12 CFR part 1026, app. J(b)(4)(i).

[24] 12 CFR 1026.22(a)(2).

[25] 12 CFR 1026.22(a)(3).

[26] 12 CFR 1026.22(a)(2) and (3).

[27] *Id.*

[28] 12 CFR 1026.33(b)(2).

[29] 12 CFR part 1026, app. K(b)(4)(ii).

[30] 12 CFR part 1026, app. K(b)(9) (Regulation Z treats such open-end reverse mortgages with a line of credit as single advance, single payment transactions for purposes of calculating the TALC).

[31] There is currently a stay on the compliance date for the 2017 Payday Lending Rule.

[32] The MOU can be found here: *https://www.consumerfinance.gov/documents/7302/cfpb_ftc_memo-of-understanding_2019-02.pdf.*

[33] 12 U.S.C. 5514(c)(3)(A).

[34] The final rule can be found here: *https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendment-annual-privacy-notice-requirement-under-gramm-leach-bliley-act/.*

delivery of annual privacy notices in the event that a financial institution that qualified for this annual notice exception later changes its policies or practices in such a way that it no longer qualifies for the exception. The Bureau is also removing the Regulation P provision that allows for use of the alternative delivery method for annual privacy notices because the Bureau believes the alternative delivery method will no longer be used in light of the annual notice exception. The final rule went into effect on September 17, 2018.

4. Conclusion

The Bureau will continue to publish Supervisory Highlights to aid Bureau-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily accessible resource for information on the Bureau's guidance documents.

5. Regulatory Requirements

This Supervisory Highlights summarizes existing requirements under the law, summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority, and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Supervisory Highlights does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: September 12, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–20215 Filed 9–18–19; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, September 24, 2019, 2:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Briefing Matter: Fiscal Year 2020 Operating Plan.

A live webcast of the Meeting can be viewed at *https://www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Alberta Mills, Office of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–6833.

Dated: September 17, 2019.

Alberta E. Mills,

Secretary.

[FR Doc. 2019–20426 Filed 9–17–19; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, September 24, 2019; 10:00 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

STATUS: Commission Decisional Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Final Rule To Revise Current Fireworks Regulation.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

A live webcast of the Meeting can be viewed at *https://www.cpsc.gov/live.*

Dated: September 17, 2019.

Alberta E. Mills,

Secretary.

[FR Doc. 2019–20427 Filed 9–17–19; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0108]

Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project in the Technical Center of the U.S. Army Space and Missile Defense Command (USASMDC)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), DoD.

ACTION: Notice of proposal to adopt and modify an existing personnel management demonstration project.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the proposed adoption of an existing STRL Personnel Management Demonstration Project by the Technical Center, U.S. Army Space and Missile Defense Command (USASMDC). The Technical Center proposes to adopt, with some modifications, the STRL Personnel Demonstration Project implemented at the U.S. Army Combat Capabilities Development Command (CCDC) Aviation and Missile Center (AvMC) (previously designated as the Aviation and Missile Research, Development, and Engineering Center).

DATES: The Technical Center's demonstration project proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final FRN published. To be considered, written comments must be submitted on or before October 21, 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:

- *Technical Center, U.S. Army Space and Missile Defense Command*

(USASMDC): Mr. Chad Marshall, 5220 Martin Road, Redstone Arsenal, AL 35898–5000, (256) 955–5697, *chad.j.marshall.civ@mail.mil.*

• *DoD:* Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372, *jagadeesh.pamulapati.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law 103–337, as amended by section 1109 of the NDAA for FY 2000, Public Law 106–65; section 1114 of the NDAA for FY 2001, Public Law 106–398; and section 211 of the NDAA for FY 2017, Public Law 114.328, authorizes the Secretary of Defense (SECDEF), through the USD(R&E) to conduct personnel demonstration projects at DoD laboratories designated as science and technology reinvention laboratories (STRLs). All STRLs authorized by section 1105 of the NDAA for FY 2010, Public Law 111–84, as well as any newly designated STRLs authorized by SECDEF or future legislation, may use the provisions described in this FRN. STRLs implementing this flexibility must have an approved personnel management demonstration project plan published in an FRN and will fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) to provide additional guidance on implementation of the FRN.

1. Background

Many studies conducted since 1966 on the quality of the laboratories and personnel have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects have been approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology ''generally similar in nature'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

2. Overview

The Technical Center will adopt, with some modifications, the STRL Personnel Demonstration Project published in 62 FR 34876, June 27, 1997 and implemented in the CCDC AvMC, Redstone Arsenal, Alabama. Section 1105(b) of the FY10 NDAA, as amended by section 1103 of the FY15 NDAA, Public Law 113–291, authorizes the Technical Center, USASMDC to implement an STRL Personnel Demonstration Project.

Adoption of CCDC AvMC's STRL Personnel Demonstration Project, with modifications, will enable the Technical Center to achieve the best workforce for their mission, adjust the workforce for change, improve workforce quality, and allow the Technical Center to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers. The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system. Implementation of a STRL Personnel Demonstration Project in the Technical Center is essential for competitive hiring and retention of a highly qualified workforce.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FRN will be available for use by the STRLs enumerated in section 1105 of the NDAA for FY 2010, Public Law 111–84 as amended, if they wish to adopt them in accordance with DoD Instruction 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/140037p.pdf*) (and its successor instructions) and after the fulfillment of any collective bargaining obligations.

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I. Executive Summary

The Technical Center is a subordinate organization of the USASMDC. The Technical Center provides technologies to meet today's requirements and future needs in directed energy, space, cyberspace, hypersonics, and integrated air and missile defense by executing Science and Technology (S&T) and Research and Development (R&D) programs within core competencies; managing and conducting test programs; managing and operating the Reagan Test Site; and conducting space operations and space surveillance. To deliver technologies and solutions to enable warfighter dominance, the Technical Center must be able to balance customer requirements for near-term technical and scientific products and information with the evolving capabilities of the workforce. These missions will be significantly enhanced by personnel management changes or flexibilities, to include funded education programs for degrees related to mission areas; modified term appointment authorities such as contingent employee, flexible length and renewable term authorities; and establishment of Senior Scientific Technical Manager (SSTM) positions.

This project adopts, with some modifications, the STRL personnel demonstration project designed by the CCDC AvMC, with participation and review by the Department of the Army (DA) and DoD. The foundations of this project are based on the concept of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and the Union; and delegating classification and other authorities to line managers. Additionally, the intellectual capital of the Technical Center workforce will be revitalized through the use of expanded opportunities for employee development. These opportunities will reinvigorate the creative intellect of the research and development community.

The Director of the Technical Center at USASMDC will execute and manage the project. Project oversight within the DA will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director, Civilian Personnel. Oversight external to the Army will be provided by DoD.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. This perceived deterioration of quality is due, in substantial part, to the erosion of control, which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems With the Present System

The Technical Center's technology programs/products contribute to the readiness of U.S. forces and to the stability of the American economy. To complete its mission, the Technical Center must acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers. The Technical Center must be able to compete with the private sector and other government agencies for the best talent and be able to make job offers in a timely manner with the attendant monetary compensation and incentives to attract high quality employees. The Technical Center must compete for high quality scientists and engineers with (1) the CCDC AvMC, an STRL established in 1997, (2) the Missile Defense Agency (MDA), and (3) the private sector within the second largest Research Park in the United States. Today, industry laboratories can make an offer of employment to a promising new hire before the Technical Center can prepare the paperwork necessary to begin the recruitment process.

The current personnel system does not enhance the Technical Center Director's capability to achieve the full flexibility of a DoD STRL. The DoD STRL Laboratory Personnel Demonstration Project provides more authority and flexibilities needed by the Technical Center. The DoD STRL's strategic objectives are supported by recent legislative initiatives and published FRNs. These tenets include changing procedures involving personnel management, research related contracting, and facilities refurbishment; and enhancing the STRL director's management authority. Managers must be given local control of positions and classifications to enable movement of positions to other lines of the business activity within the STRL to match supported customers' needs, including needs stemming from weapon system life cycles. In addition, Technical Center managers must be provided with additional tools to timely reward and motivate employees.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and needs of the Technical Center will result in: (a) Increased timeliness of key personnel processes; (b) increased retention rates of high quality employees and separation rates of poor quality employees; and (c) increased customer satisfaction with the Technical Center and its products by all customers it serves. The primary benefit expected from this demonstration project is greater organizational effectiveness.

The Technical Center will adopt, with some modifications, the demonstration project designed and implemented by the CCDC AvMC. The CCDC AvMC demonstration program was based on successful features of the China Lake demonstration project and the National Institute of Standards and Technology (NIST) project. The CCDC AvMC payband structure is modified, however to improve personnel recruitment and retention and preserve the same pay structure for clerical and administrative employees across the entire USASMDC. The Engineers & Scientists Occupational Family (DB) is modified slightly for payband III to extend the cap to $10,000 above the GS–13, step 10 salary.

The STRL demonstration projects have produced impressive statistics for on-the-job satisfaction for their employees versus that for the federal workforce in general. The Technical Center's success is dependent on its total workforce. The new authorities will provide additional management tools that will enable the Technical Center to attract and retain the best and brightest employees. Therefore, in addition to expected benefits mentioned above, the Technical Center demonstration project expects to find increased employee satisfaction due to many aspects of the project, including pay equity, timely classification decisions, and enhanced career development opportunities. A full range of measures will be collected during the project evaluation described in Section VII.

D. Participating Organization

The Technical Center is comprised of employees located mainly at Redstone Arsenal, Alabama, with the remaining employees located at sites at Albuquerque and White Sands Missile Range, New Mexico; Washington, DC; and U.S. Army Kwajalein Atoll, Republic of Marshall Islands. The SMDC Technical Center's successor organizations, if any, will continue to be covered by this demonstration project.

E. Participating Employees

The demonstration project includes civilian appropriated fund employees in the competitive and excepted service, and will cover approximately 150 Technical Center civilian employees, unless otherwise excluded. Senior Executive Service (SES) members, Senior Leader/Scientific and Professional (SL/ST) employees, Federal Wage Grade (FWS) employees, and Defense Civilian Intelligence Personnel System (DCIPS) positions will not be covered in the demonstration project. Additionally, DA interns will not be converted to the demonstration project until completion of the intern program. Personnel added to the Technical Center after implementation, in like positions covered by the demonstration (through appointment, promotion, reassignment, realignment, change to a lower grade, or where their functions and positions have been transferred into the Technical Center) will be converted to the demonstration project in accordance with this FRN, Section V. Conversion. Successor organizations will continue coverage in the demonstration project.

F. Labor Participation

The Technical Center began negotiations with American Federation of Government Employees (AFGE) Local 1858 Union officials in the second quarter, FY 2016, concerning this demonstration project's development. AFGE Local 1858 represents professional and non-professional bargaining unit employees in the Technical Center. Negotiations with AFGE Local 1858 influenced this demonstration project's design in areas of significant concern to bargaining unit employees. The Technical Center will

continue to fulfill its obligations to consult and/or negotiate with AFGE, in accordance with 5 U.S.C. 4703(f) and 7117, and applicable Executive Orders, in implementing the demonstration project. The Union is an integral part of this STRL personnel demonstration project, and will be a full partner in its implementation.

G. Project Design

The Technical Center engaged the Deputy Chief of Staff for Personnel (G1), Deputy Chief of Staff for Resource Management (G8), Office of Command Counsel and Staff Judge Advocate, AFGE Local 1858, and senior managers in the USASMDC to consider the attributes developed by and currently in use at the CCDC AvMC STRL personnel demonstration project. An Integrated Process Team approach was used to review these attributes. The team was led by management, and the team members were managers and associates from the Technical Center, AFGE Local 1858, other major functional organizations within the command and the CCDC AvMC.

This personnel system design was subject to critical reviews at the executive level within the command. The Technical Center reviewed broadbanding systems currently practiced in the Federal sector. Technical Center management conferred with AFGE Local 1858 to obtain agreement for a partnership to pursue a demonstration project like the CCDC AvMC's. Initial concept designs for this demonstration project received critical reviews by headquarters elements of DA and DoD. AFGE Local 1858 endorsed a partnership in pursuit of a STRL demonstration project, as long as it is similar in nature to the demonstration project currently implemented in the CCDC AvMC.

H. Personnel Policy Board

The Technical Center intends to establish an appropriate balance between the personnel management authority of supervisors and the demonstration project oversight responsibilities of a Personnel Policy Board (PPB). The Technical Center Director will delegate the demonstration project's management and oversight to a PPB whose members, Chairperson, and Staff (other than union representatives) will be appointed by the Director. The Union will have permanent membership in the PPB and will select its representatives. The Union will only participate in matters impacting bargaining unit employees. The PPB's establishment will not affect the authority of any management official in the exercise of the management rights set forth in 5 U.S.C. 7106. The PPB will be tasked with the following:

1. Overseeing the civilian pay budget.
2. Determining the composition of the pay-for-performance pay pools in accordance with the guidelines of this FRN and internal procedures.
3. Allocating funds to pay pool managers.
4. Reviewing operation of the Technical Center pay pools.
5. Reviewing hiring and promotion compensation, to include exceptions to pay-for-performance salary increases.
6. Providing guidance to pay pool managers.
7. Monitoring award pool distribution.
8. Selecting participants for the Expanded Developmental Opportunity Program, long term training, and any special developmental assignments.
9. Ensuring in-house budget discipline.
10. Assessing the need for changes to demonstration project procedures and policies.
11. Adjudicating requests for retention pay, to include requests to adjust individual employee pay setting to avoid unintended pay loss due to conversion to the demonstration project.

I. Funding Levels

The Under Secretary of Defense (Personnel and Readiness), may, at his/her discretion, adjust the minimum funding levels of performance pay pools to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Broadbanding

1. Occupational Families

Occupations at the Technical Center will be grouped into occupational families. Occupations will be grouped according to similarities in type of work, customary requirements for formal training or credentials, and in consideration of the business practices at the Technical Center. Common patterns of advancement within the Technical Center's occupations, as practiced at DoD Laboratories and in the private sector, will also be considered. The Technical Center's current occupations and grades have been examined, and their characteristics and distribution were utilized as guidelines in developing the three occupational families described below:

a. Engineers and Scientists (E&S). This occupational family includes all technical professional positions, such as engineers, physicists, chemists, metallurgists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are generally required for these occupations.

b. Technical and Business Support. This occupational family contains positions that directly support the E&S mission; it includes specialized functions in fields such as technical information management, equipment specialists, quality assurance, engineering and electronics technicians, finance, accounting, general administrative, business and industry specialists, and management analysis. Employees in these jobs may or may not require specific course work or educational degrees. Analytical abilities and specialized knowledge in administrative fields are required for these positions. Knowledge of, and training in, various electrical, mechanical, chemical, or computer principles, methods, and techniques, as applicable to the specific positions, are also generally required.

c. General Support. This occupational family is composed of positions for which minimal formal education is needed, but for which special skills, such as office automation, are usually required. This occupational family includes: Clerical work, that usually involves processing and maintaining records; and assistant work, that requires knowledge of methods and procedures within a specific administrative area. Other support functions include secretarial work and other clerical support.

2. Paybands

Each occupational family will be composed of discrete paybands (levels) corresponding to recognized advancement within the occupations. These paybands will replace grades used under the GS system, and will not be the same for all occupational families. Each occupational family will be divided into four to five paybands; each payband will encompass one or more of the corresponding grades under the GS system. A salary overlap will be maintained, similar to the current overlap between GS grades.

Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead an employee to enter a payband at a higher level.

The proposed paybands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the

Fair Labor Standards Act (FLSA) within each payband is also shown in Figure 1. This payband concept has the following advantages:

1. It may reduce the number of classification decisions required during an employee's career.
2. It simplifies the classification decision-making process and paperwork. A payband covers a larger scope of work than a grade under the GS system, and will be defined in shorter and simpler language.
3. It supports delegation of classification authority to line managers.
4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a GS system grade will now have more potential for upward movement in the broader payband.
5. It prevents the progression of low performers through a payband by mere longevity, since job performance serves as the basis for determining pay.

The Technical Center will modify the CCDC AvMC flexibility establishing and implementing the concept of Payband V of the Engineers and Scientists occupational family. The CCDC AvMC paybanding plan expanded the paybanding concept used at China Lake and NIST by creating Payband V of the Engineers and Scientists (E&S) occupational family. This payband pertains to SSTMs who engage in research and development in the physical, biological, medical or engineering sciences, or another field closely related to the mission of the Technical Center and carry out technical supervisory responsibilities. SSTM positions may be filled using the authority in 10 U.S.C. 2358a. The number of such positions may not exceed two percent of the number of scientists and engineers employed at the Technical Center as of the close of the last fiscal year before the fiscal year in which any appointments subject to the numerical limitation are made.

The SSTM program will be managed and administered by the Technical Center Director. The Technical Center will review its positions classified at the GS–15 or equivalent level to determine those that may warrant classification above GS–15 equivalency. Panels will be created to assist in filling SSTM positions. Panel members will be selected from a pool of current Technical Center SES members, and later those in SSTM positions, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current Office of Personnel Management (OPM) Research Grade Evaluation Guide for positions exceeding the GS–15 level. Vacant SSTM positions will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Figure 1. Paybands and Occupational Families

Occupational Families		Bands															
Corresponding GS Grades		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers and Scientists (E&S)	**DB**	I N				II N/E							III* E		IV E		V E
Technical and Business Management	**DE**	I N				II N/E							III N/E		IV E		
General Support	**DK**	I N				II N/E			III N/E								

*E&S Band III has an upper limit equivalent to GS-13, step 10, plus $10,000.

FLSA Codes:
N - Nonexempt
E - Exempt
N/E - Exemption status determined on a case-by-case basis.

3. Fair Labor Standards Act

FLSA exempt and nonexempt determinations will be made consistent with criteria found in 5 CFR part 551. There are five paybands (see Figure 1) where employees can be either exempt or nonexempt from overtime provisions. For these five paybands supervisors with classification authority will make the determinations on a case-by-case basis by comparing the duties and responsibilities assigned, the classification standards for each payband, and the FLSA criteria under 5 CFR part 551. As needed, the advice and assistance of the servicing Civilian Personnel Advisory Center (CPAC) will be obtained in making determinations as part of the performance review process. The benchmark position descriptions will not be the sole basis for the determination, and the basis for an FLSA exemption determination will be documented and attached to each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the Deputy Chief of Staff for Personnel (G–1) and CPAC, as appropriate.

4. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the Technical Center have increased flexibility to assign employees. Broadbanding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have increased flexibility to assign an employee, without pay change, within broad descriptions consistent with the organization's needs and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the individual's current level descriptor.

Such assignments within the coverage of the generic descriptors are accomplished without the need to

process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

5. Promotion

A promotion is an action to move an employee to either a higher payband in the same occupational family, or a payband in another occupational family in combination with an increase in the employee's salary. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual knowledge, skills, abilities, and the organization's needs.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same payband and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher payband, of 180 days or less.

(f) A promotion based on reclassification of positions, to include reclassification based on an incumbent's personal qualifications after application of the Research Grade Evaluation Guide, the Equipment Development Grade Evaluation Guide, Part III, or similar guides.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate not given proper consideration in a competitive promotion action.

6. Link Between Promotion and Performance

a. Career ladder promotions and promotions resulting from the addition of duties and responsibilities are examples of promotions that can be made noncompetitively. To be promoted noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of B or better (see Performance Evaluation) or equivalent under a different performance management system.

b. Selection of employees through competitive procedures will require a current performance rating of B or better for internal Technical Center recruitment.

B. Pay-for-Performance Management System

1. Overview

The performance evaluation system will link compensation to performance through annual performance appraisals and performance scores. The performance evaluation system will allow optional use of peer evaluation and/or input from subordinates as determined appropriate by the PPB. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. A performance evaluation will consist of three meetings held between an employee and the supervisor during the performance cycle: The initial meeting (to establish performance objectives and performance elements), the midpoint meeting (a progress review), and the performance appraisal (a performance review and evaluation feedback meeting). The performance rating cycle will be October 1 through September 30.

2. Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals, and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. In case of disagreements, the supervisor's decision will prevail. Performance objectives deal with outputs and outcomes of a particular job. The performance objectives should be in place within 30 days from the beginning of each rating period.

3. Performance Elements

Performance elements are generic job performance attributes, such as technical competence, that an employee exhibits in performing job responsibilities and associated performance objectives. The new performance evaluation system will be based on critical and non-critical performance elements defined in Appendix B. Each performance element is assigned a weight within a specified range. The total weight of all elements is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. As a general rule, essentially identical positions will have the same critical elements and the same weight. These weights will be developed along with employee performance objectives.

4. Midpoint Review

A midpoint review between a supervisor and employee will be held to determine whether objectives are being met and whether ratings on performance elements are above an unsatisfactory level. Performance objectives should be modified as necessary to reflect changes in planning, workload, and resource allocation. The weights assigned to performance elements may be changed during the midpoint review. Additional reviews may be held to provide periodic feedback to the employee on level of performance. If, at any point in the rating cycle, the supervisor determines that the employee is not performing at an acceptable level on one or more elements, the supervisor must alert the employee and document the problem(s).

5. Employee Feedback to Supervisors

Opportunity for employee feedback to supervisors is a critical component of this demonstration project. A voluntary feedback process will be developed and implemented within six months after implementation of the demonstration. Employee feedback will be for the supervisors' information only, and will not be a factor in determining the supervisor's annual ratings of record.

6. Performance Appraisal Process

A performance appraisal process will begin the final weeks of the annual performance cycle, although an individual performance appraisal may be conducted at any time after the minimum appraisal period of 120 days. The performance appraisal process brings supervisors and employees together to discuss employee performance and results prior to assigning the employee a rating of record. If the employee is unavailable

for a meeting, the supervisor will document the reasons and provide a written assessment of performance to the employee.

7. Performance Review

A supervisor will meet with the employee to discuss job performance and accomplishments. The supervisor will notify the employee of the review meeting and allow reasonable time for the employee to prepare a list of accomplishments. Employees will have an opportunity at the meeting to provide a personal performance assessment and describe accomplishments. The supervisor and employee will discuss job performance and accomplishments in relation to performance objectives and performance elements. Supervisors will not assign performance scores or performance ratings at this meeting.

8. Evaluation Feedback

In a meeting with the employee, the supervisor will inform the employee of management's appraisal of the employee's performance on performance objectives, and the employee's performance score and rating on performance elements. During this meeting, the supervisor and employee will also discuss and document performance objectives for the next rating period.

9. Performance Scores

The overall performance score is the sum of individual performance element scores. Employees will receive an academic-type rating of A, B, C, D, or U depending upon the score attained. These summary ratings are representative of pattern H (a five-level system) in the summary level chart in 5 CFR 430.208(d)(1). This rating will become the rating of record, and only those employees rated D or higher will receive performance pay increases (*i.e.,* basic pay increases), and/or performance bonuses. A rating of an A will be assigned for scores from 90 to 100 points, B-High for scores from 85 to 89 points, B-Low for scores 80 to 84 points, C for scores from 70 to 79 points, D for scores 50–69 points, and U for scores below 50 points, or a failure to achieve at the 50 percent level of any critical element. The academic-type ratings will be used to determine performance payouts as follows:

Rating (score)	Summary level	Compensation
A (90–100)	5—Exceptional	4.0 shares.
B (High; 85–89)	4—Highly Successful	3.5 shares.
B (Low; 80–84)	4—Highly Successful	3.0 shares.
C (70–79)	3—Fully Successful	2.0 shares.
D (50–69)	2—Marginally Successful	1.0 share.
U (0–49)	1—Unsatisfactory	N/A.

Benchmark performance standards will be used to assist in selecting the weighted points to assign to an employee's performance on each of the performance elements. These benchmark performance standards, published in the IOP, will be modified versions of the performance standards used by CCDC AvMC (62 FR 34902). Each benchmark performance standard will describe the level of performance associated with a particular point on a rating scale. Supervisors may add supplemental standards for employees they supervise to further elaborate the benchmark performance standards.

10. Performance-Based Actions

The Technical Center Director or designee will implement a process to rehabilitate, reduce, or remove poor performers. The process may start at any time during the rating period and may lead to involuntary separation. The process will begin when the supervisor identifies one or more deficiencies that cause the level of performance to be at the U (unsatisfactory) level based on a composite score that is less than 50 for all elements or a score on any critical element of less than 50 percent.

When the employee's performance is determined to be unsatisfactory at the close of the annual rating period, the Unsatisfactory (U) rating will become the rating of record for all matters relating to pay or Reduction-in-Force (RIF). The process to address poor performance will be described in the IOP.

The Technical Center Director will preserve all relevant documentation which serves as the basis for an employment action related to poor performance and will make it available for review by the affected employee or the employee's designated representative. At a minimum, the record will consist of a notice of proposed action; the employee's written reply, if provided, or a summary if the employee makes an oral reply; the written notice of decision; evidence regarding the opportunity afforded the employee to demonstrate improved performance; and any other material considered by the decision maker.

11. Adverse Actions

The Technical Center Director may take an adverse employment action against an employee covered by the project only for such cause as will promote the efficiency of the project. An employee against whom an action is proposed will be provided at least 30 days advanced written notice and a reasonable time, but not less than 7 days, to respond. An employee against whom an action is proposed will be afforded the same procedural and appeal rights provided to non-covered employees by 5 U.S.C. chapter 75 and related OPM regulations.

12. Awards

The Technical Center currently has an extensive awards program consisting of both internal and external awards. On-the-spot, special act (which are both performance related and nonperformance related), and other internal awards (both monetary and nonmonetary) will continue under the project, and may be modified or expanded as appropriate. DA and DoD awards and other honorary non-cash awards will be retained.

The Technical Center Director will have the authority to grant awards of up to $10,000 to covered employees for a special act. The scale of the award will be determined using criteria in applicable DA regulations.

13. Pay Administration

The objective is to establish a pay system that will improve the Technical Center's ability to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance. The performance rating cycle in the Technical Center will be October 1 through September 30, although the first cycle may be shortened based on actual implementation date. The first performance payout will be made effective with the first full pay period of calendar year (CY) 2020 (January 2020).

Future pay adjustments will be effective at the beginning of the first full pay period of subsequent calendar years. General Pay Increases (GPI) and locality pay adjustments will be provided to all covered employees on the same basis as they are provided to GS employees.

14. Pay-for-Performance

The Technical Center will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. The proposed system will permit the manager/supervisor to base incentive pay increases entirely on performance or value added to the organization's goals. This system will allow managers to withhold pay increases from nonperformers, thereby giving the nonperformer the incentive to improve performance or leave government service. For example, employees with ratings of U will receive no performance pay increase or performance bonus, but will receive GPI.

Pay for performance has two components: Performance pay increases and/or performance bonuses. The basic rates of pay used in computing the pay pool and performance payouts exclude locality pay. Locality pay will be added to the performance pay increases and/or performance bonuses after calculations are completed. All covered employees will be given the full amount of locality pay adjustments. Employees receiving retained rates will receive a pay increase in accordance with 5 U.S.C. 5363. The funding for performance pay increases and/or performance bonuses is composed of money previously available for within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same payband, and for some performance awards. Additionally, funds will be obtained from performance pay increases withheld for poor performance (see Performance Evaluation).

15. Performance Pay Pool

The performance pay pool is composed of a base pay fund and a bonus pay fund. The payouts made to employees from the performance pay pool will be a mix of base pay increases and bonus payments and will be paid such that the allocated funds are distributed as intended.

The funding for the base pay fund is composed of money previously available for within-grade increases, quality step increases, and promotions between grades that are banded under the demonstration project. The bonus pay fund is separately funded within the constraints of the organization's overall performance award budget. The final bonus pay allocation may be indexed after initial calculations, within the constraints of in-house budget discipline, to be competitive with local industrial economic demographics such as market bonus percentages. Special ad hoc awards—*e.g.,* suggestion awards, or special act awards, will be separately funded within the constraints of the Technical Center's operating budget and will not be included as part of the performance pay pool. The Technical Center will calculate initial performance pay pool funds and allocate these funds to pay pool managers as appropriate. This pay pool allocation, approved by the Technical Center Director, will be determined early in the annual performance appraisal cycle.

16. Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for establishing final pay pool funds. The pay pool manager assigns performance pay increases and/or performance bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given payband. A pay pool manager may request approval from the PPB or its designee to grant a performance pay increase and/or bonus to an employee that is higher than the compensation formula for that employee, to recognize extraordinary achievement or to provide accelerated compensation for local interns. Extraordinary achievement recognition grants a base pay increase and/or bonus to an employee that is higher than the one generated by the compensation formula for that employee. Any base pay increase granted may not cause the employee to exceed the maximum rate of pay in the assigned payband. The funds available for extraordinary achievement recognition are separately funded within the constraints of the organization's budget.

Performance payouts, for the first year, will be calculated for each individual based upon a performance pay pool value that will be 3.7 percent (*e.g.,* 2.4 percent performance pay + 1.3 percent performance bonus) of the combined basic rates of pay of the assigned employees. For subsequent years, this percentage, a payout factor, will be adjusted as necessary to compensate for changing employee demographics which impact the elements used in the GS system, such as the amount of step raises, quality step increases, and promotions. For subsequent years, the performance bonus pool value will be set at a minimum of 1.0 percent of the total Lab Demo Base Salary, or the limit set by DA if lower than 1.0 percent. An employee's performance payout is computed as follows:

Performance Payout	=	(Pool Value * SAL * N) ÷ SUM (SAL_j * N_j); j = 1 to n
Pool Value	=	F * SUM (SAL_j); where $_j$ = 1 to n
n	=	Number of employees in pay pool
N	=	Number of shares earned by an employee based on their performance rating (0 to 4); where j = 1 to n
SAL	=	An individual's basic rate of pay
SUM	=	The summation of the entities in parenthesis over the range indicated
F	=	Payout Factor

Once the individual performance payout amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. A base pay share factor is derived by dividing the amount of the base pay fund by the amount of the total performance pay pool. This factor is multiplied by the individual performance payout amounts to derive each individual's projected base pay increase. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned payband, when the midpoint principle applies (see below), and when the 50 percent rule applies (see below). Also, for employees receiving retained rates above the applicable payband maximum, the entire performance payout will be in the form of a bonus payment.

If the Technical Center Director determines it is appropriate, the Director may reallocate a portion (up to the maximum possible amount) of the unexpended base pay funds for employees not eligible for base pay increases (capped) to employees who are eligible for base pay increases (uncapped). This reallocation must be made on a proportional basis so that all uncapped employees receive the same percentage increase in their base pay share (unless the reallocation adjustment is limited by a pay cap). Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's initial total performance payout is unchanged.

A midpoint principle will be used to determine performance pay increases. This principle requires that employees in all paybands must receive a C rating or higher to advance their basic rate of pay beyond the midpoint dollar threshold (the actual midpoint dollar amount between the top and bottom of the payband) of their respective paybands. If the performance payout formula yields a basic pay increase for a D-rated employee that would increase their basic rate of pay beyond the midpoint dollar threshold, then their basic rate of pay will be adjusted to the midpoint dollar threshold and the balance converted to a performance bonus. Once an employee has progressed beyond the midpoint dollar threshold, future performance pay increases will require a C rating or greater. If an employee attains a D rating and is beyond the midpoint dollar threshold, incentive pay increases will be restricted to performance bonuses only.

Annual performance pay increases will be limited to (1) 50 percent of the difference between the particular maximum band rate and the employee's current basic rate of pay, or (2) the projected performance pay increase, whichever is less, with the balance converted to a performance bonus. This rule will not apply when an employee's current basic rate of pay is within $500 of the maximum band rate. This means that employees whose pay has reached the upper limits of a particular payband will receive most performance incentives as a performance bonus. Performance bonuses are cash payments and are not part of the basic pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement).

17. Supervisory Pay Adjustments

Supervisory pay adjustments may be used at the discretion of the Technical Center Director, to compensate employees assuming positions entailing supervisory responsibilities. Supervisory pay adjustments are increases to the supervisor's basic rate of pay, ranging up to 10 percent of that pay rate, subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the payband maximum rate. Only employees in supervisory positions with formal supervisory authority, as defined in the OPM GS Supervisory Guide, may be considered for the supervisory pay adjustment. Criteria to be considered in determining the pay increase percentage include the following organizational and individual employee factors:

(1) Needs of the organization to attract, retain, and motivate high quality supervisors;

(2) Budgetary constraints;

(3) Years of supervisory experience;

(4) Amount of supervisory training received;

(5) Performance appraisals and experience as a group or team leader;

(6) Their organizational level of supervision; and

(7) Managerial impact on the organization.

Conditions, after the date of conversion into the demonstration project, under which the application of a supervisory pay adjustment may be considered are as follows:

(1) New hires into supervisory positions will have their initial rate of basic pay set at the supervisor's discretion within the pay range of the applicable payband. This rate of pay may include a supervisory pay adjustment determined using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory position that is within the employee's current payband may also be considered for a supervisory pay adjustment. If a supervisor is already authorized a supervisory pay adjustment and is subsequently selected for another supervisory position, within the same payband, then the supervisory pay adjustment will be re-determined.

Within the demonstration project rating system, the performance element ''Supervision/EEO'' is identified as a critical element. Changes in the rating value for this element awarded to a supervisor with a supervisory pay adjustment may generate a review of the adjustment and may result in an increase or decrease to that adjustment. Decrease to a supervisory pay adjustment is not an adverse action if this action results from changes in supervisory duties or supervisory ratings.

Upon initial conversion into the demonstration project, a supervisor converting into the same or substantially similar position, will be converted at the existing basic rate of pay and will not be offered a supervisory pay adjustment. Supervisory adjustments will not be funded from performance pay pools.

The supervisory adjustment will cease when an employee leaves a supervisory position. The cancellation of the adjustment is not an adverse action and is not appealable. If an employee is involuntarily removed from a supervisory position for cause, the removal action will be conducted using adverse action procedures, and the employee may request the PPB approve pay retention as part of that process.

18. Supervisory Pay Differentials

A supervisory pay differential is a cash incentive that may range up to 10 percent of the supervisor's basic rate of pay. It is paid on a pay period basis and is not included as part of the supervisor's basic rate of pay. Criteria to be considered in determining the amount of this supervisory pay differential includes those identified for Supervisory Pay Adjustments. For SSTM personnel, this incentive may range up to five percent of base pay (excluding locality pay). The SSTM supervisory pay differential is paid on a pay period basis with a specified not-to-exceed date up to one year and may be renewed as appropriate.

The supervisory pay differential may be considered, either during conversion into or after initiation of the demonstration project. The differential

must be terminated if the employee is removed from a supervisory position, regardless of cause, or no longer meets established eligibility criteria. Supervisory differentials will not be funded from performance pay pools.

All personnel actions involving a supervisory differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the Technical Center Director's discretion. The termination or reduction of the supervisory differential is not an adverse action and is not subject to appeal.

19. Distinguished Contribution Allowance (DCA)

The Technical Center needs increased capability to recognize and incentivize employees who are (a) consistently extremely high level performers and (b) paid at the top of their payband level. Eligibility for the Technical Center DCA is open to employees in all occupational families. A DCA, when added to an employee's pay (to include locality pay and any supervisory differential), may not exceed the rate of basic pay for Executive Level I. DCA is paid on either a bi-weekly basis or as a lump sum following completion of a designated performance period, or combination of these. DCA is not an entitlement, and is used at the discretion of Technical Center Director to recruit and retain high performing employees. DCA is not base pay for any purpose, such as retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. Employees may receive a DCA for up to five years but not more than 10 cumulative years over an employee's entire career. The DCA will be reviewed on an annual basis for continuation or termination. Further details will be published in the IOP.

20. Retention Counteroffers

The Technical Center Director, working with the PPB, may offer a retention counteroffer to retain high performing employees with critical scientific or technical skills who present evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the payband) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. This flexibility addresses the expected benefits described in paragraph II. C, particularly ''increased retention of high quality employees.'' Retention allowances, either in the form of a base pay increase and/or a bonus, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

21. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. In addition, each payband will have its own pay ceiling, just as grades do in the GS system. Pay rates for the various paybands will be directly keyed to the GS rates. Except for retained rates, base pay will be limited to the maximum rates payable for each payband.

22. Pay Setting for Promotion

Upon promotion, an employee will be entitled to an eight percent increase in base pay or the lowest level in the payband to which promoted, whichever is greater. For employees who, currently or in the future, are assigned to occupational categories and geographic areas covered by special salary rate tables: (1) The minimum salary rate in the payband to which the employee is promoted is the minimum salary for the corresponding special salary rate or locality rate, whichever is greater; and (2) a demonstration staffing adjusted pay is considered basic pay for promotion calculations. On a case-by-case basis, the Technical Center PPB may approve requests for promotion base pay increases beyond eight percent, in accordance with established Technical Center operating procedures. The Technical Center PPB will document its rationale for decisions to provide an increase above eight percent. Highest previous rate may also be considered in setting pay in accordance with existing pay-setting policies.

23. Pay Retention

When an employee is involuntarily placed in a lower paid position, pay retention may be approved by the PPB, except for SSTM members who require approval by the Technical Center Director. Pay retention establishes the employee's rate of basic pay upon entry into an initial or new position. Any future adjustments to basic pay will be determined in accordance with the provisions of this FRN.

C. Classification

The objectives of the demonstration project classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All Technical Center positions will be identified in the IOP. Provisions will be made for including other occupations as employment requirements change in response to changing technical programs, a change in mission requirements, or new OPM-recognized occupations.

1. Occupational Series

The present GS classification system has over 400 occupations (also called series), divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the workforce.

2. Classification Standards

The Technical Center will use the CCDC AvMC classification system, modified as needed. The present classification standards will be used to create local benchmark position descriptions for each payband, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each payband. There will be at least one benchmark position description for each payband. A supervisory benchmark position description may be added to those paybands that include supervisory employees. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

3. Position Descriptions and Classification Process

The Technical Center Director will have classification authority and may re-delegate this authority to subordinate managers in the IOP. Benchmark position descriptions to assist managers in exercising delegated position classification authority will be included in the IOP. Managers will identify the occupational family, job series, the functional code, the specialty code, payband level, and the appropriate acquisition codes. The manager will document these decisions on a benchmark cover sheet.

Specialty codes will be developed by Subject Matter Experts (SMEs) to identify the special nature of work performed. Functional codes are those currently found in the OPM

Introduction to the Classification Standards which define certain kinds of activities, *e.g.,* Research, Development, Test, and Evaluation, etc., and covers Engineers & Scientists.

4. Classification Appeals

Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. For all other positions, an employee may appeal the occupational family, occupational series, or payband level of the position at any time. An employee must first raise the areas of concern to a supervisor in the employee's immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. Appellate decisions from DoD are final. Time periods for case processing under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to an occupational family; the title of a position; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of a classification appeal under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the Civilian Personnel Advisory Center providing personnel service and will include copies of appropriate demonstration project criteria.

D. Hiring and Appointment Authorities

1. Qualifications

A candidate's basic eligibility will be determined using OPM's Qualification Standards Handbook for General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example, if the payband includes positions in grades GS–5 and GS–7, the candidate must meet the qualifications for positions at the GS–5 level. Specific experience/education requirements will be determined based on whether a position to be filled is at the lower or higher end of the band. Selective placement factors can be established in accordance with the OPM Qualification Handbook, when judged to be critical to successful job performance. These factors will be communicated to all candidates for particular position vacancies and must be met for basic eligibility.

Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will allow the Technical Center to compete more effectively for high quality personnel and strengthen the manager's role in personnel management as well as the goals of the demonstration project.

2. Appointment Authority

Under the demonstration project, there will continue to be career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities, and entitlements, and will comply with merit system principles. A public notice may be used to fill anticipated permanent or modified term vacancies with a full-time or part-time work schedule at various locations.

Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements may be competitively filled using the Flexible Length and Renewable Term Technical Appointment Authority (FLRTTA), authorized in 82 FR 43339, or the Contingent Employee Appointment Authority (CEAA), authorized in 62 FR 34876, 34889.

Employees hired for more than one year, under the Contingent Employee Appointment Authority, are given modified term appointments in the competitive service for up to five years. The Technical Center Director is authorized to extend a contingent appointment for up to one additional year.

Using the FLRTTA, a modified term scientific or technical position may be filled for any period of more than one year but not more than six years, and may be extended in up to six-year increments at any time. The initial source of candidates must be from outside of the DoD.

Employees hired under the FLRTTA and CEAA are entitled to the same rights and benefits as term employees. The Pay-for-Performance Management System described in III.B applies to employees appointed under these authorities. In addition, these employees may be eligible for conversion to career-conditional appointments. To be converted from CEAA or FLRTTA, the employee must (a) have been selected for the term position under an announcement or public notice specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date without further competition; (b) served two years of substantially continuous service in a term position; and (c) have a current rating of B or better.

Employees serving under term appointments at the time of conversion to the STRL Demonstration Project will be converted to new term contingent employee appointments. Time served in term positions prior to conversion to the contingent employee appointment is creditable to the requirement for two years of continuous service stated above, provided the service was continuous.

(a) Competitive Examining Authority

Category rating will be used to provide for a more streamlined and responsive hiring system to increase the number of eligible candidates referred to selecting officials. This provides for the grouping of eligible candidates into quality categories and the elimination of consideration according to the ''rule of three.'' This includes the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and appointment consistent with merit principles. Specific procedures used for competitive examining authority within the Technical Center will be detailed in the IOP.

(b) Distinguished Scholastic Achievement Appointment (DSAA)

A DSAA is an authorization to appoint candidates possessing a bachelor's degree or higher to Technical and Business Management positions up to pay band III. Candidates may be appointed to positions provided all of the following conditions are met: The candidate meets the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligible candidates who meet the above criteria will be considered ahead of non-preference eligible candidates. In making selections, to pass over any preference eligible candidate(s) to select a non-preference eligible candidate requires approval under applicable DA pass-over or objection procedures.

DSAAs will enable the Technical Center to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

(c) Direct Hire Authorities

The Technical Center will use the direct-hire authorities authorized by 10 U.S.C. 2358a to appoint the following:

(1) Candidates with advanced degrees to scientific and engineering positions;

(2) Candidates with bachelor's degrees to scientific and engineering positions;

(3) Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technician positions; and

(4) Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

3. Legal Authority

For actions taken under the auspices of the demonstration project, the first legal authority code (LAC)/legal authority Z2U/Public Law 103–337 will be used. The second LAC/legal authority may identify the authority utilized (*e.g.,* Direct Hire Authority). For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

4. Probationary Period

The probationary period will be two years for all newly hired employees. All other features of the current probationary period are retained, including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Probationary employees will be terminated if an employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the Technical Center Director or designee decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate fitness or qualifications for continued employment, the employee will be provided written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated will, as a minimum, consist of the manager's conclusions as to the inadequacies of their performance or conduct.

5. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one year probationary period for the initial appointment to a supervisory position. If, during the supervisory probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower payband and pay than the position from which they were promoted.

6. Volunteer Emeritus Program (VEP)

The Technical Center Director will have the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments in the Technical Center. Volunteer Emeritus Program assignments are not considered ''employment'' by the Federal government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the Technical Center's mission.

To be accepted into the Volunteer Emeritus Program, a candidate must be recommended by a Technical Center manager to the Technical Center Director. Everyone who applies is not entitled to participate in the program. The Technical Center Director will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the Technical Center Director, and the USASMDC G–1. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

(a) A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

(b) a statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals); and

(c) the volunteer's work schedule;

(d) the length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) the support to be provided by the Technical Center (travel, administrative, office space, supplies);

(f) the volunteer's duties;

(g) a provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Program;

(h) a provision allowing either party to void the agreement with 10 working days written notice;

(i) the level of security access required (any security clearance required by the assignment will be managed by the Technical Center while the volunteer is a participant in the Volunteer Emeritus Program);

(j) a provision that any written products prepared for publication that are related to Volunteer Emeritus Program participation will be submitted to the Technical Center Director for review and must be approved prior to publication;

(k) a statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

(l) a statement that the volunteer's activities on the premises will conform to the Technical Center's regulations and requirements;

(m) a statement that the volunteer will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Program participant or any non-Federal entities. Volunteer Emeritus Program participants will handle all non-public information in a manner that reduces the possibility of improper disclosure;

(n) a statement that the volunteer agrees to disclose any inventions made in the course of work performed at the Technical Center. The Technical Center Director will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the Technical Director elect not to take title, the Center will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government;

(o) a statement that the Volunteer Emeritus Program participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

(p) a statement that the Volunteer Emeritus Program participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

E. Employee Development

1. Expanded Developmental Opportunity Program

The Technical Center Expanded Developmental Opportunity Program will be funded by the Technical Center, and will cover all demonstration project employees. An expanded developmental opportunity complements existing developmental opportunities such as (1) long term training, (2) one year work experiences in an industrial setting via the Relations With Industry Program, (3) one year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the Technical Center, (5) up to one year developmental assignments in higher headquarters within the DA and/or the DoD, and (6) self-directed study via correspondence courses and local colleges and universities.

Each developmental opportunity period should benefit the Technical Center, as well as increase the employee's individual effectiveness. Various learning or uncompensated developmental work experiences may be considered, such as advanced academic teaching or research, or on-the-job work experience with public or non-profit organizations. Employees will be eligible for the Technical Center Expanded Developmental Opportunity Program after completion of seven years of Federal service. Final approval authority for participation in the Technical Center Expanded Developmental Opportunity Program will rest with the Technical Center Director, and selection for the Technical Center Expanded Developmental Opportunity Program will be granted on a competitive basis. An expanded developmental opportunity period will not result in loss of (or reduction in) basic pay, leave to which the employee is otherwise entitled, or credit for time or service. Employees accepting an expanded developmental opportunity may be required to enter a continued service agreement, which may vary from the requirement in 5 U.S.C. 4108(a)(1).

The opportunity to participate in the Technical Center Expanded Developmental Opportunity Program will be announced annually. Instructions for application and the selection criteria will be included in the announcement. Final selection for participation in the program will be made by the PPB. The position of employees on an expanded developmental opportunity may be backfilled with employees temporarily promoted or contingent employees or employees assigned via the simplified assignment process in Section III.A.

2. Training for Degrees

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with critical skills. Current government-wide regulations authorize payment for degrees based on recruitment or retention needs. Degree payment is not currently permitted for non-shortage occupations involving critical skills.

The Technical Center will expand use of these authorities to provide degree payment opportunities to employees in all occupational families for purposes of meeting current or projected mission requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. Degree payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. It is expected that the degree payment authority will be used primarily for advanced degrees, but may be used to fund undergraduate courses that are a necessary pre-requisite to the attainment of an advanced degree.

The Technical Center will develop guidelines to ensure competitive approval of degree training participation and that related decisions are fully documented. Employees participating in degree training will be required to enter a continued service agreement required by 5 U.S.C. 4108(a)(1).

IV. Training

Training about the demonstration project is key to its success. This training will provide the knowledge and skills necessary to carry out the demonstration project's proposed changes to the Technical Center's personnel system, as well as foster participant commitment to the program.

Training before the beginning of implementation and throughout the demonstration project will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, (7) the demonstration project

administrative and formal evaluation process, and (8) AFGE Local 1858's role and function in the demonstration program.

A. Supervisors

The focus of this demonstration project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in using the classification system, position description preparation, performance evaluation, and interaction with AFGE Local 1858 as a partner. Additional training may focus on non-project procedural techniques such as interpersonal and communication skills.

B. Administrative Staff

The administrative staff, including G–1 personnel specialists, Technical Center technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

C. Employees

The Technical Center, in conjunction with the AFGE Local 1858 and education and development assets of the USASMDC G–1 and the CPAC will train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate payband without loss of pay. Employees serving under regular term appointments at the time the demonstration project is implemented will be converted to the contingent employee appointments. Position announcements will not be required for these contingent employee appointments. An automatic conversion into the new broadband system will be accomplished from an interim GS grade and pay which corresponds to an employee's current broadband. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Employees who enter the demonstration project later by lateral reassignment or transfer (at the same pay grade from within the DoD) will be subject to these pay conversion rules.

If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a payband commensurate with the grade of the position to which they are promoted. At the conclusion of the temporary promotion, the employee will revert to the payband which corresponds to the employee's grade of record prior to the temporary promotion. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Technical Center. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases actions to make the temporary promotion permanent will be considered, and, if implemented, will be subject to all existing priority placement programs.

Employees who are covered by special salary rates (SSRs) upon being covered by the demonstration project will no longer be considered special rate employees under the demonstration project. These employees will, therefore, be entitled to full locality pay or a staffing supplement, whichever is greater. These employees' adjusted salaries will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in Section V.B.2.e. (Pay-Setting Provisions), if applicable. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

During the first 12 months after conversion into the demonstration project, employees in career ladder positions will receive pay increases for non-competitive promotion equivalents, provided the grade level of the promotion is encompassed within the same broadband, the employee's performance warrants the promotion, and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Employees who enter the demonstration project later by lateral reassignment or transfer from the GS classification and pay system may receive an adjustment to their demonstration project base salary for a prorated value based upon the number of weeks the employee has performed at a successful level for purposes of eligibility for the next higher step under the GS system.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and all project employees must be converted back to the GS system, the following procedures will be used to convert the employee's demonstration project payband to a GS-equivalent grade and the employee's demonstration project rate of pay to GS equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the demonstration project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For employee movement within DoD (transfers), promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a payband corresponding to a single GS grade is converted to that grade. An employee in a payband corresponding to two or more grades is converted to one of those grades according to the following rules:

a. The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates on the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's adjusted project rate equals or exceeds the applicable step four rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted project rate is lower than the applicable step four rate of the highest grade, the adjusted rate is compared with the step four rate of the second highest grade in the employee's payband. If the employee's adjusted rate equals or exceeds step four rate of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found for which the employee's adjusted project rate equals or exceeds the applicable step four rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step four rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described ''step four'' rule but fits in the rate range for the next higher applicable grade (*i.e.,* between step one and step four), then the employee will be converted to that next higher applicable grade.

f. Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or transfer from within DoD into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to the GS rate of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

b. An employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is converted to a GS adjusted rate on the highest applicable rate range for the converted GS grade. An employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is converted to the GS adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

c. If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

d. If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rates must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

e. Staffing Supplement.

• Application of the Staffing Supplement upon Conversion to the Demonstration Project:

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which the employee is assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after implementation of the staffing supplement will be the same as immediately before the staffing supplement, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. The staffing supplement is calculated as follows:

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration project staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration project special staffing rate equals the demonstration project base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for the banded grades)/(GS unadjusted rate corresponding to that special rate)

Demonstration project base rate = (Former GS adjusted rate, special or locality rate)/(staffing factor)

Staffing supplement = (Demonstration project base rate) × (staffing factor -1)

Salary upon conversion = (Demonstration project base rate) + (staffing supplement)

Note: This sum will equal the existing rate.

Example: Assume there is a GS–854–11, step 3, employee stationed in Huntsville, Alabama, who is entitled to the greater of a SSR of $65,213 or a locality rate of $64,312 ($55,265 + 16.37 percent). The maximum special rate for a GS–854–11, step 10 is $79,478, and the corresponding regular rate is $67,354. The maximum GS–11 locality rate in Huntsville is $78,380 ($67,354 + 16.37 percent), which is less than the maximum SSR. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $79,478/$67,354 = 1.1800

Demonstration project base rate = $65,213/1.1800 = $55,265

Then to determine the staffing supplement, multiply the demonstration project base rate by the staffing factor minus one.

Staffing supplement = $55,265 × 0.1800 = $9,948

The staffing supplement of $9,948 is added to the demonstration project base rate of $55,265 and the total salary is $65,213, which is the salary of the employee before this intervention.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration project base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, 1.1637 in the Huntsville area for CY 2016). The employee's demonstration project locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

• Application of the Staffing Supplement in Circumstances Other than Conversion to the Demonstration Project:

Calculation of the staffing supplement discussed above was presented in the context of a GS employee entering the demonstration project. Application of the staffing supplement is normally intended to maintain pay comparability for GS employees entering the demonstration project. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration project and also be adaptable to the special circumstances of employees already in the demonstration project. Employees who are already in the demonstration project and who are in occupational categories covered by SSR tables will have their salaries examined for the application of a staffing supplement or a one-time salary adjustment.

The principles in the following paragraphs (1) through (6) govern the modifications necessary to the previous staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the SSR. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

(1) If a non-Government employee is hired into the demonstration project, the employee's entry salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate.

(2) If a current demonstration project employee is covered by a SSR table that has not changed (other than by annual general pay increases), the employee's current demonstration project adjusted base salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate.

(3) If a current demonstration project employee is covered by a new or modified SSR table, the employee's current demonstration project base rate is used to calculate the staffing supplement percentage. The employee's new demonstration project adjusted base salary is the sum of the current demonstration project base rate and the calculated staffing supplement.

(4) If a current demonstration project employee is in an occupational category that is covered by a SSR table and, subsequently, the occupational category becomes covered by a different SSR table with a higher value, the following steps must be applied to calculate a new demonstration project base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee.

Step 2. Multiply the relevance factor resulting from step one by the employee's current adjusted demonstration project rate to determine a new adjusted demonstration project rate.

Step 3. Divide the result from step two by the applicable staffing factor to derive a new demonstration project base rate. This new demonstration project base rate will be used to calculate the staffing supplement and the new demonstration project adjusted base salary.

(5) If, after the establishment of a new or adjusted SSR table, an employee enters the demonstration project (whether converted/hired from GS or another pay system, or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate. This principle prevents double compensation due to the single event of a new or adjusted SSR table.

(6) If an employee is in an occupational category covered by a new or modified SSR table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the SSR. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Technical Center operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 SSR and the comparable step 10 locality rate and applying this percentage to the demonstration project base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), *i.e.,* for purposes of retirement, life insurance, premium pay, severance pay, and pay advances. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

3. E&S Payband III Employees

An employee in Payband III of the E&S Occupational family will convert out of the demonstration project at no higher than the GS–13, step 10 level. The Technical Center, in consultation with the USASMDC G–1 and CPAC, will develop a procedure to ensure that employees entering E&S Payband III understand that if they leave the demonstration project and their adjusted pay exceeds the GS–13, step 10 rate, there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS–13, step 10.

4. E&S Payband V Employees

The minimum basic pay for DB–V positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum DB–V basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. The total pay (including locality pay and any supervisory differential) may not exceed the midpoint between the maximum rate of basic pay of EX–III and the maximum rate of basic pay of EX–II, rounded up to the next thousand (*i.e.,* $182,050 for calendar year 2019). An employee in Payband V of the E&S Occupational family will convert out of the demonstration project at the GS–15 level. The Technical Center, in consultation with the USASMDC G–1 and CPAC, will develop a procedure to

ensure that employees entering Payband V understand that if they leave the demonstration project and their adjusted pay exceeds the GS–15, step 10 rate (*e.g.,* SSTMs), there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS–15, step 10. For those Payband V employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with paragraph 2.b.

5. Employees With Band or Pay Retention

a. If an employee is retaining a band level under the demonstration project, apply the procedures in paragraphs 1.a. and 1.b. (Grade-Setting Provisions) above, using the grades encompassed in the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the two-year limit on grade retention in 5 U.S.C. 5382.

b. If an employee is retaining a pay rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. The Technical Center will coordinate with the DoD to prescribe a procedure for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

6. Within-Grade Increase

Equivalent Increase Determinations: Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

7. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this demonstration project will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Supporting personnel specialists will continue to process personnel-related actions and provide consultative and other appropriate services.

Use of benchmark position descriptions is not anticipated to adversely impact an employee's ability to seek employment outside of the Technical Center. Technical Center employees participating in the demonstration project will have short generic benchmark position descriptions that describe the general type of work performed and the range of complexity and supervisory controls. The benchmark position description cover sheet lists the OPM occupational series, *e.g.,* 855 for Electronics Engineer, to which the employee is assigned, and, where additional specificity is needed, lists a specialty code that is tied to the employee's benchmark description to a particular technology or functional area. The OPM occupational code will serve as ready identification, Government-wide, of the basic qualifications and experience that the employee possesses. In addition, virtually all federal employment systems, including OPM's, rely on employee-generated resumes that allow applicants to summarize or describe the details of their experience and training. Any pertinent information regarding Technical Center employees' knowledge, skills, or abilities not contained in the benchmark position description can be conveyed to potential employers through an employee's resume.

8. Automation

The Technical Center will continue to use the Defense Civilian Personnel Data System (DCPDS) for processing personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computing performance related pay increases, bonuses, awards, and other personnel processes and systems associated with this demonstration project.

9. Experimentation and Revision

Many aspects of a demonstration project are experimental. Revisions will be considered and negotiated with the Union, where appropriate, as experience is gained, results are analyzed, and conclusions are reached on how the demonstration project is working. The Technical Center may make minor modifications, such as changes in the occupational series in an occupational family, without further notice. Major changes, such as a change in the number of occupational families, will be negotiated with the Union to the extent required by law, regulation, and Executive Order, and published in the **Federal Register**. See 5 CFR part 470.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. The demonstration project evaluation plan adequately addresses how each personnel management change or flexibility will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the flexibilities will be made if warranted by formative evaluation data and will be published in the **Federal Register** to the extent required.

VII. Evaluation Plan

A. Overview

Title 5 U.S.C. chapter 47 requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management changes or flexibilities. An evaluation plan for the entire STRL demonstration program covering 24 DoD labs was developed by a joint OPM/DoD Evaluation Committee. A comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved (Proposed Plan for Evaluation of the DoD S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current system as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The Demonstration Project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

B. Evaluation Model

An intervention impact model (Appendix A) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the

effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes: *e.g.,* Human Resource Management regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

C. Evaluation

The STRL Directors will conduct an internal evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. The comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information to DoD on how well the demonstration project achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

D. Method of Data Collection

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the Technical Center's budget. The projected annual expenses for each area is summarized in Table 1.

Table 1. Projected Developmental Costs (Then Year Dollars)

	FY 18	FY 19	FY 20	FY 21	FY 22
Training	5K	20K	10K	10K	5K
Project Evaluation			5K	5K	50K
Automation	20K	75K	25K	10K	10K
TOTALS	**25K**	**95K**	**40K**	**25K**	**65K**

IX. Required Waivers to Law and Regulation

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Title 5 U.S.C.

Chapter 5, section 552a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTMs.

Chapter 31, section 3132: The Senior Executive Service; Definitions and exclusions. Waived to allow SSTMs.

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

Chapter 33, section 3317(a), Competitive Service, certification from registers. Waived insofar as ''rule of three'' is eliminated.

Chapter 33, section 3318(a), Competitive Service, selection from certificates. Waived insofar as ''rule of three'' is eliminated.

Chapter 33, section 3321: Competitive Service; Probationary Period: This section waived only to the extent necessary to replace grade with ''pay band.''

Chapter 33, section 3324 and section 3325: Appointments to Positions Classified Above GS–15. Waived in entirety to allow SSTMs.

Chapter 33, section 3327: Civil service employment information. Waived to allow for provisions as described in this FRN.

Chapter 33, section 3330: Government-wide list of vacant positions. Waived to allow for provisions as described in this FRN.

Chapter 33, section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

Chapter 35, section 3502: Order of Retention. Waived to the extent necessary to allow provisions of the RIF plan as described in this FRN.

Chapter 41, section 4107: Pay for Degrees. Waived in entirety.

Chapter 41, section 4108: Employee Agreements; Service after Training. To the extent that employees who accept an expanded developmental opportunity (sabbatical) do not have to sign a continued service agreement.

Chapter 43, sections 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the performance management system as described in this FRN.

Chapter 51, sections 5101–5112: Related to classification standards and grading. Waived to the extent that white collar employees will be covered by broadbanding and to the extent necessary to allow classification provisions described in this FRN. Pay category determination criteria for federal wage system positions remain unchanged.

Chapter 53, sections 5301–5307: Related to pay comparability system and General Schedule pay rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as General Schedule employees, and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

Chapter 53, sections 5331–5336: General Schedule pay rates. These waivers apply to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees; (2) to allow the provisions of this FRN pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

Chapter 53, sections 5361–5366: Grade and pay retention. Waived to the extent necessary to allow pay and grade retention provisions described in this FRN.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to ST employees or employees in Payband V of the E&S occupational family.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753: Recruitment and Relocation Bonuses. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as General Schedule employees.

Chapter 57, section 5754: Retention Bonuses. Waived to the extent necessary to allow provisions of the retention counteroffer and incentives as described in this FRN.

Chapter 57, section 5755: Supervisory Differentials. Waived to the extent necessary to allow provisions as described in this FRN.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with the regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to remove the reference to one year of current continuous service, and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. This waiver applies only to the extent necessary to replace ''grade'' with ''payband.''

Chapter 75, section 7512(4): Adverse actions. This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to a nonsupervisory position.

B. Title 5, Code of Federal Regulations

Parts 300 through 330, Employment (General) other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

Sections 300.601 through 300.605: Time-in-Grade requirements. Restrictions eliminated under the demonstration.

Section 315.803(b): Agency Action during probationary period (general). Waived to allow for termination during an extended probationary period without using adverse action procedures under 5 CFR part 752, subpart D.

Section 315.901 and 315.907: Statutory requirements. This waiver applies only to the extent necessary to replace ''grade'' with ''pay band.''

Sections 316.301, 316.303, and 316.304: Term Employment. Waived to the extent necessary to allow modified term appointments and Flexible Length and Renewable Term Technical Appointments as described in this FRN.

Sections 330.103 through 330.105: Requirement to notify OPM. Waived to the extent necessary to allow the Technical Center to publish competitive announcements outside of USAJOBS.

Parts 332 and 335: Related to competitive examination. Waived to the extent necessary to allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates.

Section 332.401(b): Order on Registers. Waived to the extent that for non-professional or non-scientific positions equivalent to GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) qualification requirements will be entered at the top of the highest group certified without the need for further assessment.

Section 332.402: Referring candidates for appointment. ''Rule of three'' will not be used in the demonstration projects.

Section 332.404: Order of selection from certificates. Waived to the extent that order of selection is not limited to highest three eligibles.

Section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Section 338.301: Competitive service appointment. Waived to allow for Distinguished Scholastic Achievement Appointment grade point average requirements as described in this FRN.

Section 351.402(b): Competitive Areas. Waived to allow the Technical Center to be established as a single competitive area.

Section 351.403: Competitive level. Waived to the extent that payband is substituted for grade.

Section 351.504: Credit for Performance. Waived to the extent necessary to allow provisions described in this FRN.

Section 351.701: Assignment Involving Displacement. Waived to the extent that employees bump rights will be limited to one payband except in the case of 30 percent preference eligible, which is a position equivalent to five GS grades below the minimum grade level of his/her payband.

Section 359.705: Related to SES pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES placed on a SSTM position.

Section 410.308(a–f): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FRN.

Section 410.309: Agreements to continue in service. This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of such requirements, and to the extent that the service obligation is to the Technical Center.

Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees. Waived to the extent that employees under the demonstration project will not be subject to the requirements of Subpart B.

Sections 432.102—432.106(a): Related to Performance-based Actions. Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level and reduced in band level without a reduction in pay based on unacceptable performance. Modified also to delete reference to critical element.

Part 511: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN to include the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths; and to allow appeals to be decided by the Technical Center Director. If the employee is not satisfied with the Technical Center Director's response to the appeal, they may then appeal to the DoD appellate level.

Part 530, Subpart C: Special salary rates. Waived in its entirety.

Part 531, Subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases. Waived in its entirety.

Part 531, Subpart F: Locality-based comparability adjustments. This waiver applies only to the extent necessary to allow demonstration project employees, including SSTMs in Payband V, to be treated as General Schedule employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 536: Grade and pay retention. This waiver applies only to the extent necessary to (1) replace ''grade'' with ''payband''; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) provide that an employee on pay retention whose performance rating is ''U'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the payband of the employee's position; (4) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a 'staffing supplement;' and (5) to the extent necessary to allow SSTMs to receive pay retention as described in this FRN.

Sections 550.105 and 550.106: Biweekly and annual maximum earnings limitations. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Section 550.113(a): Computation of overtime pay. This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Section 550.703: Severance Pay. This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grades or pay levels'' with ''one band level'' and ''grade or pay Level'' with ''band level.''

Section 550.902: Hazardous Duty Differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to SSTM employees.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances and Supervisory Differentials. This waiver applies to the extent necessary to allow employees and positions under the STRL demonstration project covered by paybanding to be treated as employees and positions under the General Schedule; to allow the Technical Center Director to pay a retention counteroffer up to 50 percent of basic pay of either a base pay and/or a cash payment to retain quality employees; and to the extent necessary to allow SSTMs to receive supervisory pay differentials. Criteria for retention determination and preparing written service agreements will be as prescribed in 5 U.S.C. 5754 and as waived herein.

Sections 752.201 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to replace ''grade'' with ''payband''; and to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to a nonsupervisory position.

Appendix A: Project Evaluation and Oversight

INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM

Intervention	Expected effects	Measures	Data sources
1. Compensation			
a. Paybanding	—increased organizational flexibility	—perceived flexibility	—attitude survey.
	—reduced administrative workload, paperwork reduction.	—actual/perceived time savings	—personnel office data, attitude survey.
	—advanced in-hire rates	—starting salaries of banded v. non-banded employees.	—workforce data.
	—increased pay potential	—progression of new hires over time by band, occupational family.	—workforce data.
		—mean salaries by band, occupational family, demographics, total payroll cost.	—workforce data.
	—increased satisfaction with advancement	—employee perceptions of advancement	—attitude survey.
	—increased pay satisfaction	—pay satisfaction, internal/external equity	—attitude survey.
	—improved recruitment	—offer/acceptance ratios	—personnel office data.
		—percent declinations	—personnel office data.
b. Conversion buy-in	—employee acceptance	—employee perceptions of equity, fairness	—attitude survey.
		—cost as a percent of payroll	—workforce data.
c. Supervisor pay differential/adjustments.	—Increased incentive to accept supervisory positions.	—perceived motivational power	—attitude survey.
2. Performance Management			
a. Cash awards/bonuses.	—reward/motivate performance	—perceived motivational power	—attitude survey.
	—to support fair and appropriate distribution of awards.	—amount and number of awards by occupational family, demographics.	—workforce data.
		—perceived fairness of awards	—attitude survey.
		—satisfaction with monetary awards	—attitude survey.
b. Performance based pay progression.	—increased pay-performance link	—perceived pay-performance link	—attitude survey.
		—perceived fairness of ratings	—attitude survey.
	—improved performance feedback	—satisfaction with ratings	—attitude survey.
		—employee trust in supervisors	—attitude survey.
		—adequacy of performance feedback	—attitude survey.
	—decreased turnover of high performers/increased turnover of low performers.	—turnover by performance rating category	—workforce data.
	—differential pay progression of high/low performers.	—pay progression by performance rating category, occupational family.	—workforce data.
	—alignment of organizational and individual performance expectations and results.	—linkage of performance expectations to strategic plans/goals.	—attitude survey/focus groups.
	—increased employee involvement in performance planning and assessment.	—better communication of performance expectations.	—attitude survey/focus groups.
		—perceived involvement	—attitude survey/focus groups.
c. New appraisal process.	—reduced administrative burden	—employee and supervisor perception of revised procedures.	—attitude survey.
	—improved communication	—perceived fairness of process	—focus groups.
d. Performance development.	—better communication of performance expectations.	—feedback and coaching procedures used	—attitude survey.
		—time, funds spent on training by demographics.	—workforce data/training records.
	—improved satisfaction and quality of workforce.	—organizational commitment	—attitude survey.
		—perceived workforce quality	—attitude survey.
3. Classification			
a. Improved classification system with generic standards.	—reduction in amount of time and paperwork spent on classification.	—time spent on classification procedures	—workforce data.
		—reduction of paperwork/number of personnel actions (classification/promotion).	—workforce data.
	—ease of use	—managers' perceptions of time savings, ease of use, improved ability to recruit.	—attitude survey.
	—improved recruitment of employees with appropriate skills.	—quality of recruits	—focus groups/interviews.
		—perceived quality of recruits	—focus groups.
		—GPA of new hires, educational levels	—personnel office.

INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM—Continued

Intervention	Expected effects	Measures	Data sources
b. Classification authority delegated to managers.	—increased supervisory authority/accountability.	—perceived authority	—attitude survey.
	—decreased conflict between management and personnel staff.	—number of classification disputes/appeals pre/post.	—personnel office.
		—management satisfaction with service provided by personnel office.	—attitude survey.
	—no negative impact on internal pay equity	—internal pay equity	—attitude survey.
4. Combination of All Interventions			
All	—Improved organizational effectiveness	—combination of personnel management measures.	—all data sources.
	—improved management of R&D workforce	—employee/management satisfaction	—attitude survey.
	—cross functional coordination	—perceived effectiveness of planning procedures.	—attitude survey.
		—actual/perceived coordination	—attitude survey.
	—increased product success	—customer satisfaction	—customer satisfaction surveys.
	—cost of innovation	—project training/development cost (staff salaries, contract cost, training hours per employee).	—demo project records. —contract documents.

Appendix B: Performance Elements

All employees will be rated against at least the five generic performance elements listed through ''e'' in this appendix. Technical competence is a mandatory critical element. Other elements may be identified as critical by agreement between the rater and the employee. In case of disagreements, the decision of the supervisor will prevail. Generally, any performance element weighted 25 or higher should be critical. However, only those employees whose duties require manager/leader responsibilities will be rated on element ''f.'' Supervisors will be rated against an additional critical performance element, listed at ''g.'' in this appendix:

a. Technical Competence. Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate occupational families, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15 to 50).

b. Working Relationships. Accepts personal responsibility for assigned tasks. Considerate of others' views and open to compromise on areas of difference, if allowed by technology, scope, budget, or direction. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 15).

c. *Communications.* Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 15).

d. *Resource Management.* Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight Range: 15 to 50).

e. *Customer Relations.* Demonstrates care for customers through respectful, courteous, reliable, and conscientious actions. Seeks out and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight Range: 10 to 50).

f. *Management/Leadership.* Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due responsibility of technical/acquisition/organizational positions assigned to them. (Weight Range: 0 to 50).

g. *Supervision/EEO.* Works toward recruiting, developing, motivating, and retaining quality team members; takes timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range: 15 to 50).

Dated: September 16, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–20329 Filed 9–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0118]

Agency Information Collection Activities; Comment Request; Agreements Between an Eligible School and the Secretary To Participate in the Direct Loan Program

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 18, 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–0118. 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 Beth Grebeldinger, 202–377–4018.

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: Agreements between an eligible school and the Secretary to participate in the Direct Loan Program.

OMB Control Number: 1845–0143.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,010,519.

Total Estimated Number of Annual Burden Hours: 179,362.

Abstract: The Department of Education (the Department) requests an extension of this information collection tied to the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA). The 2018 negotiated rulemaking made final in the rule to be published in September 2019 makes changes made to the regulations in § 685.300. These final regulations are a result of negotiated rulemaking and will rescind the requirements of the current regulations in paragraphs (e), (f), (g), and (h) . The final rule and this rescission will not take effect until July 1, 2020. The Department is asking to extend the current burden assessment until the effective date of the change and at that time a discontinuation request will be filed.

Dated: September 13, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–20224 Filed 9–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0119]

Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection

AGENCY: Office for Civil Rights (OCR), 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 November 18, 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–0119. 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 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to the collection activities, please contact Rosa Olmeda, (202) 453–5968 or via email at *Rosa.Olmeda@ed.gov*.

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: Mandatory Civil Rights Data Collection.

OMB Control Number: 1870–0504.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 17,621.

Total Estimated Number of Annual Burden Hours: 1,466,407.

Abstract: The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education (ED). EDFacts,

an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all K–12 education programs, has transformed the way in which ED collects and uses data. For school years 2009–10 and 2011–12, the Civil Rights Data Collection (CRDC) was approved by OMB as part of the EDFacts information collection (1875–0240). For school years 2013–14, 2015–16, and 2017–18, the Office for Civil Rights (OCR) cleared the CRDC as a separate collection from EDFacts. The currently proposed revised CRDC information collection for school year 2019–20 is modeled after the most recent OMB-approved EDFacts information collection (1850–0925). For the 2019–20 CRDC, OCR is proposing some changes, and those changes will have the net effect of reducing burden on school districts. As with previous CRDC collections, the purpose of the 2019–20 CRDC is to obtain vital data related to the civil rights laws' requirement that public local educational agencies (LEAs) and elementary and secondary schools provide equal educational opportunity. ED has analyzed the uses of many data elements collected in the 2013–14 and 2015–16 CRDCs and sought advice from experts across ED to refine, improve, and where appropriate, add or remove data elements from the collection. ED also made the CRDC data definitions and metrics consistent with other mandatory collections across ED wherever possible. ED seeks OMB approval under the Paperwork Reduction Act to collect from LEAs, the elementary and secondary education data described in the sections of Attachment A. In addition, ED requests that LEAs and other stakeholders respond to the directed questions found in Attachment A–5.

Dated: September 16, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Office of the Chief Information Officer.

[FR Doc. 2019–20292 Filed 9–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update

Sabine Pass Liquefaction, LLC	[FE Docket No. 10–111–LNG]
Freeport LNG Expansion, L.P. et al.	[FE Docket No. 10–161–LNG]
Lake Charles Exports, LLC	[FE Docket No. 11–59–LNG]
Dominion Cove Point LNG, LP	[FE Docket No. 11–128–LNG]
Freeport LNG Expansion, L.P. et al.	[FE Docket No. 11–161–LNG]
Cameron LNG, LLC	[FE Docket No. 11–162–LNG]
Southern LNG Company, LLC	[FE Docket No. 12–100–LNG]
Gulf LNG Liquefaction Company, LLC	[FE Docket No. 12–101–LNG]
Jordan Cove Energy Project, L.P.	[FE Docket No. 12–32–LNG]
CE FLNG, LLC	[FE Docket No. 12–123–LNG]
Golden Pass Products, LLC	[FE Docket No. 12–156–LNG]
Lake Charles LNG Export Co.	[FE Docket No. 13–04–LNG]
MPEH LLC	[FE Docket No. 13–26–LNG]
Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC	[FE Docket Nos. 13–30–LNG, 13–42 LNG, & 13–121–LNG]
Venture Global Calcasieu Pass	[FE Docket Nos. 13–69–LNG, 14–88–LNG, & 15–25 LNG]
Eos LNG LLC	[FE Docket No. 13–116–LNG]
Barca LNG LLC	[FE Docket No. 13–118–LNG]
Magnolia LNG, LLC	[FE Docket No. 13–132–LNG]
Delfin LNG, LLC	[FE Docket No. 13–147–LNG]
Commonwealth LNG, LLC	[FE Docket No. 13–153–LNG]
SCT&E LNG, LLC	[FE Docket No. 14–98–LNG]
Pieridae Energy (USA) Ltd.	[FE Docket No. 14–179–LNG]
Bear Head LNG Corporation and Bear Head LNG (USA)	[FE Docket No. 15–33–LNG]
G2 LNG LLC	[FE Docket No. 15–45–LNG]
Texas LNG Brownsville LLC	[FE Docket No. 15–62–LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 15–63–LNG]
Cameron LNG, LLC	[FE Docket No. 15–90–LNG]
Port Arthur LNG, LLC	[FE Docket No. 15–96–LNG]
Rio Grande LNG, LLC	[FE Docket No. 15–190–LNG]
Venture Global Plaquemines LNG, LLC	[FE Docket No. 16–28–LNG]
Freeport LNG Expansion, L.P., et al.	[FE Docket No. 16–108–LNG]
Lake Charles LNG Export Co.	[FE Docket No. 16–109–LNG]
Lake Charles Exports, LLC	[FE Docket No. 16–110–LNG]
Driftwood LNG LLC	[FE Docket No. 16–144–LNG]
Fourchon LNG, LLC	[FE Docket No. 17–105–LNG]
Galveston Bay LNG, LLC	[FE Docket No. 17–167–LNG]
Freeport LNG Expansion, L.P., et al.	[FE Docket No. 18–26–LNG]
Corpus Christi Liquefaction Stage III, LLC	[FE Docket No. 18–78–LNG]
Mexico Pacific Limited LLC	[FE Docket No. 18–70–LNG]
Energía Costa Azul, S. de R.L. de C.V.	[FE Docket No. 18–144–LNG]
Energía Costa Azul, S. de R.L. de C.V.	[FE Docket No. 18–145–LNG]
Annova LNG Common Infrastructure, LLC	[FE Docket No. 19–34–LNG]

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of availability of report entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, and request for comments.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of the availability of the Report Life Cycle Greenhouse Gas

Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, dated September 12, 2019 (LCA GHG Update), in the above-referenced proceedings and invites the submission of comments regarding the LCA GHG Update. This analysis is an update to DOE's 2014 LCA GHG Report. The purpose of this LCA GHG is to provide additional information to the public and to inform DOE's decisions regarding the life cycle greenhouse gas emissions of U.S. liquefied natural gas (LNG) exports for use in electric power generation.

DATES: Comments are to be filed using procedures detailed in the Public Comment section no later than 4:30 p.m., Eastern Time, October 21, 2019. All comments received need only be submitted once, as they will be placed in the administrative record for each of the above-referenced proceedings.

ADDRESSES:

Electronic Filing of Comments Using Online Form: https://fossil.energy.gov/app/docketindex/docket/index/21.

Regular Mail: U.S. Department of Energy (FE–34), Attn: LCA GHG Update Comments, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Attn: LCA GHG Update Comments, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627, *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 3(a) of the Natural Gas Act, 15 U.S.C. 717b(a), directs DOE to authorize proposed exports of natural gas, including LNG, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries), unless DOE finds that the proposed exportation will not be consistent with the public interest.

Of the 42 long-term proceedings identified above, 16 involve pending applications requesting authorization to export U.S. LNG on water-borne vessels from the lower-48 states to non-FTA countries. In the remaining 26 proceedings, DOE already has issued a long-term order authorizing exports of LNG under NGA section 3(a).

The LCA GHG Update

On June 4, 2014, DOE issued the original LCA GHG Report,[1] entitled *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States.*[2] At DOE's request, the National Energy Technology Laboratory (NETL)—a DOE applied research laboratory—prepared the LCA GHG Report to calculate the life cycle GHG emissions for LNG exported from the United States. DOE received public comments on the LCA GHG Report, and responded to those comments in export authorizations issued under NGA section 3(a).[3]

In 2018, DOE commissioned NETL to conduct an update to the LCA GHG Report, referred to herein as the LCA GHG Update. The purpose of this Notice is to post the LCA GHG Update in the above-referenced proceedings and to invite public comment on the LCA GHG Update, as applied to the pending applications and existing orders described above.

As with the 2014 Report, the LCA GHG Update compares life cycle GHG emissions from U.S. LNG exports to regional coal and other imported natural gas for electric power generation in Europe and Asia. Although core aspects of the analysis—such as the scenarios investigated—are the same as the LCA GHG Report, NETL made the following updates:

- Incorporated NETL's most recent characterization of upstream natural gas production (NETL, 2019);[4]
- Updated the unit processes for liquefaction, ocean transport, and regasification characterization using engineering-based models and publicly-available data informed and reviewed by existing LNG export facilities, where possible; and
- Updated the 100-year global warming potential (GWP) for methane to reflect the current Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment Report (AR5).

The primary questions addressed by the LCA GHG Update are:

- How does exported LNG from the United States compare with regional coal (or other LNG sources) for electric power generation in Europe and Asia, from a life cycle GHG perspective?
- How do those results compare with natural gas sourced from Russia and delivered to the same European and Asian markets via pipeline?

To address these questions, NETL applied its LCA model to represent unconventional natural gas production and transportation to a U.S. Gulf Coast liquefaction facility, liquefaction of the natural gas at the facility, and transportation of the LNG to an import terminal in Rotterdam, Netherlands, to represent a European market, and to an import terminal in Shanghai, China, to represent Asian markets. LNG produced in Algeria was modeled to represent an alternative regional LNG European market supply source with a destination of Rotterdam. LNG from Darwin, Australia, was modeled to represent an alternative regional LNG Asian market supply source with a destination of Shanghai. Conventional natural gas extracted from the Yamal region of Siberia in Russia was modeled as the regional pipeline gas alternative for both the European and Asian markets. Regional coal production and consumption in Germany and China were also modeled. NETL used a parametric model for the scenarios to account for variability in supply chain characteristics and power plant efficiencies.

As described in the LCA GHG Update, NETL determined that the use of U.S. LNG exports for power production in European and Asian markets will not increase GHG emissions from a life cycle perspective, when compared to

[1] As used in this Notice, ''LCA'' stands for life cycle analysis, and ''GHG'' stands for greenhouse gas.

[2] U.S. Dep't of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014). DOE/FE announced the availability of the LCA GHG Report on its website on May 29, 2014.

[3] *See, e.g., Magnolia LNG, LLC,* DOE/FE Order No. 3909, FE Docket No. 13–132–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Proposed Magnolia LNG Terminal to be Constructed in Lake Charles, Louisiana, to Non-Free Trade Agreement Nations, at 95–121 (Nov. 30, 2016) (description of LCA GHG Report and response to comments); *see also Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 195, 201–02 (Aug. 15, 2017) (discussing LCA GHG Report in denying petition for review of export authorization).

[4] Nat'l Energy Technology Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation* (DOE/NETL 2019/2039) (Apr. 19, 2019), *available at: https://www.netl.doe.gov/energy-analysis/details?id=3198.*

regional coal extraction and consumption for power production.

Public Comment

In response to this Notice, any person may file comments addressing the LCA GHG Update. Comments submitted in compliance with the instructions in this Notice will be placed in the administrative record for all of the above-referenced proceedings and need only be submitted once.

DOE is not establishing a new proceeding or docket in this Notice. Additionally, the submission of comments in response to this Notice will not make commenters parties to any of the affected dockets. Persons with an interest in the outcome of one or more of the affected dockets already have been given an opportunity to intervene in or protest those matters by complying with the procedures established in the notice of application issued in each respective docket and published in the **Federal Register**.

Comments may be submitted using one of the following methods:

(1) Submitting the comments using the online form at *https://fossil.energy.gov/app/docketindex/docket/index/21.*

(2) Mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or

(3) Hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**.

For administrative efficiency, DOE/FE prefers comments to be filed electronically using the online form (method 1). All comments must include a reference to ''LCA GHG Update'' in the title line. Comments must be limited to the issues and potential impacts addressed in the LCA GHG Update, and DOE may disregard comments that are not germane.

The record in the above-referenced proceedings will include all comments received in response to this Notice. DOE will review the comments received on a consolidated basis, and no reply comments will be accepted.

Additionally, all comments filed in response to this Notice will be available on the following DOE/FE website: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

The LCA GHG Update and other relevant documents are available electronically at (*https://fossil.energy.gov/app/docketindex/docket/index/21*) and for inspection and copying in the Division of Natural Gas Regulation docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on September 13, 2019.

Steven Winberg,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2019–20230 Filed 9–18–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2790–000]

LSP-Whitewater Limited Partnership; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of LSP-Whitewater Limited Partnership's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 3, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20268 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19–76–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b),(e)/: COH Rates effective Aug 29 2019 to be effective 8/29/2019. Filing Type: 980.
Filed Date: 9/10/19.
Accession Number: 201909105050.
Comments/Protests Due: 5 p.m. ET 10/1/19.

Docket Numbers: RP19–1550–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Sept 2019 Negotiated Rates Cleanup Filing to be effective 10/10/2019.
Filed Date: 9/10/19.
Accession Number: 20190910–5033.
Comments Due: 5 p.m. ET 9/23/19.

Docket Numbers: RP19–1049–001.
Applicants: Discovery Gas Transmission LLC.
Description: Compliance filing NAESB Compliance Filing (Order No. 587–Y) to be effective 8/1/2019.
Filed Date: 9/11/19.
Accession Number: 20190911–5054.
Comments Due: 5 p.m. ET 9/23/19.

Docket Numbers: RP19–1551–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Sept 2019 Cleanup Filing to be effective 10/11/2019.

Filed Date: 9/11/19.

Accession Number: 20190911–5022.

Comments Due: 5 p.m. ET 9/23/19.

Docket Numbers: RP19–1552–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO Noble Negotiated Rate Amendment to be effective 9/11/2019.

Filed Date: 9/11/19.

Accession Number: 20190911–5104.

Comments Due: 5 p.m. ET 9/23/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20259 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12726–002]

Warm Springs Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original minor license.

b. *Project No.:* P–12726–002.

c. *Date filed:* April 1, 2019.

d. *Applicant:* Warm Springs Hydro, LLC (Warm Springs).

e. *Name of Project:* Rock Creek Hydroelectric Project.

f. *Location:* The Rock Creek Hydroelectric Project is located on Rock Creek in Haines County, Oregon. The project would occupy 1.8 acres of the Wallowa Whitman National Forest, which is administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Nicholas E. Josten, GeoSense, 2742 Saint Charles Avenue, Idaho Falls, ID 43404, (208) 528–6152.

i. *FERC Contact:* Kelly Wolcott at (202) 502–6480; or at *kelly.wolcott@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–12726–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The proposed project would consist of: (1) A new diversion and fish screen on Rock Creek; (2) a new 8,300-foot-long, 18 to 24-inch-diameter low pressure penstock, to be buried in an existing flume right-of-way and ending at the top of the ridge above the power plant site; (3) a new 3,100-foot-long, 20 to 24-inch-diameter high pressure penstock, extending from the end of the low pressure pipeline to the new powerhouse; (4) a new approximately 20-foot-long, 15-foot-wide powerhouse, located adjacent to Rock Creek just above the Wilcox Ditch diversion, containing a single 0.85-megawatt Pelton turbine; and (5) a 500-foot-long 12.5-kilovolt transmission line to deliver energy from the powerhouse to an Oregon Trail Electric Consumers Cooperative distribution line; and (6) appurtenant facilities. The estimated average annual generation is 3,900-megawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on, or before, the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRELIMINARY FISHWAY PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish

the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or preliminary prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Warm Springs intends to seek benefits under § 210 of the Public Utility Regulatory Policy Act of 1978 (PURPA), and believes that the project meets the definition under § 292.202(p) of 18 CFR for a new dam or diversion. As such, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency exercising authority over the fish and wildlife resources of the state have mandatory conditioning authority under the procedures provided for at § 30(c) of the Federal Power Act (Act).

p. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *Procedural schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Further revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing comments, recommendations, terms and conditions, and preliminary fishway prescriptions.	November 2019.
Commission issues EA	June 2020.
Comments on EA due	July 2020.

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20264 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Story County Wind, LLC	EG19–118–000
Ashtabula Wind I, LLC	EG19–119–000
Quitman Solar, LLC	EG19–120–000
Dougherty County Solar, LLC	EG19–121–000
Talen Montana, LLC	EG19–122–000
Burke Wind, LLC	EG19–123–000
Skeleton Creek Wind, LLC	EG19–124–000
Palmas Wind, LLC	EG19–125–000
Emmons-Logan Wind, LLC	EG19–126–000
West Columbia Storage LLC	EG19–127–000
Wessington Springs Wind, LLC	EG19–129–000
PSEG Keys Energy Center LLC	EG19–131–000
PSEG Fossil Sewaren Urban Renewal LLC	EG19–132–000
Cubico Palmetto Lessee, LLC	EG19–133–000
Palmetto Plains Solar Project, LLC	EG19–134–000
Pretty Prairie Wind, LLC	EG19–135–000
Crowned Ridge Wind, LLC	EG19–136–000
Crowned Ridge Wind II, LLC	EG19–137–000
RE Rambler LLC	EG19–138–000
Polaris Wind Energy, LLC	EG19–140–000
SRI Meridian III, LLC	EG19–141–000
Mesquite Star Special, LLC	EG19–142–000
Hancock County Wind, LLC	EG19–143–000
Stanton Energy Reliability Center, LLC	EG19–144–000
Coolberrin Wind Limited	FC19–5–000
Chenya Power Co., Ltd	FC19–6–000

Take notice that during the month of August 2019, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20258 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1553–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091219 Negotiated Rates—Mieco Inc. R–7080–11 to be effective 11/1/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5064.

Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: RP19–1554–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Formula Based Negotiated Rate—10/1/2019 Update to be effective 10/1/2019.

Filed Date: 9/12/19.
Accession Number: 20190912–5112.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: RP19–1555–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 091219 Negotiated Rates—Spark Energy Gas, LLC R–3045–26 to be effective 11/1/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5114.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: RP19–351–003.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Compliance filing 2019 Settlement Compliance V1 to be effective 11/1/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5094.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: RP19–1556–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Compliance filing Annual Cash-Out Report Period Ending July 31, 2019 to be effective N/A.
Filed Date: 9/13/19.
Accession Number: 20190913–5001.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: RP19–1557–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing Annual Report of Flow Through filed 9–13–19 to be effective N/A.
Filed Date: 9/13/19.
Accession Number: 20190913–5017.
Comments Due: 5 p.m. ET 9/25/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20256 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF19–7–000]

WBI Energy Transmission, Inc.; Notice of Intent To Prepare An Environmental Assessment for the Planned North Bakken Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Bakken Expansion Project involving construction and operation of facilities by WBI Energy Transmission, Inc. (WBI) in Burke, McKenzie, Mountrail, and Williams Counties, North Dakota. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 15, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on June 28, 2019, you will need to file those comments in Docket No. PF19–7–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up, go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for

submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing;''

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF19–7–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426; or

(4) In lieu of sending written comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
1 October 2019; 4:30–7:30 p.m.	Central Elementary School, 321 Benson Street N, Tioga, ND 58852, (701) 664–3441.
2 October 2019; 4:30–7:30 p.m.	Civic Center Hall, 213 2nd Street NE, Watford City, ND 58854, (701) 444–2533.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the EA. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 4:30 p.m. to 7:30 p.m. Central Daylight Time. You may arrive at any time after 4:30 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 7:30 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 7:00 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided verbally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from WBI will also be present to answer project-specific questions.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 2.

Summary of the Planned Project

WBI plans to construct and operate five sections of new natural gas pipeline totaling 102.5 miles. The North Bakken Expansion Project would provide about 300 million standard cubic feet of natural gas per day to the Midwest via Northern Border Pipeline Company's (Northern Border) existing mainline. According to WBI, its project would reduce flaring in northwest North Dakota.

The North Bakken Expansion Project would consist of the following facilities:

- A 61.9-mile-long, 20-inch-diameter natural gas pipeline from WBI's existing Tioga Compressor Station near Tioga, North Dakota to a new interconnect with Northern Border's mainline south of Watford City, North Dakota;
- a new 2,760 horsepower compressor station (Elkhorn Creek Compressor Station) near the interconnect with Northern Border's mainline;
- a 20.2-mile-long, 12-inch-diameter pipeline (Line Section 25 Loop)[2] between the Tioga Compressor Station and an existing receipt station along WBI's existing Line Section 25;
- a 9.5-mile-long, 12-inch-diameter pipeline (Line Section 30 Loop) along WBI's existing Line Section 30;
- a 0.5-mile-long, 20-inch-diameter receipt pipeline (Tioga Compressor Lateral) at the Tioga Compressor Station;
- a 10.4-mile-long, 12-inch-diameter pipeline (Line Section 7 Lateral) to WBI's existing Line Section 7;
- addition of about 16,875 horsepower to the existing Tioga Compressor Station;
- uprates to WBI's existing Line Section 25; and
- installation of new and modifications to existing receipt and delivery points and lateral pipeline facilities along the pipeline routes, including metering and regulating facilities.

The general location of the project facilities is shown in appendix 3.

Land Requirements for Construction

Construction of the planned facilities would disturb about 1,490 acres of land for the aboveground facilities and the pipeline. Following construction, WBI would maintain about 675 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 43 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;
- public safety; and
- cumulative impacts

Commission staff will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, Commission staff have

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers, the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management have expressed their intention to participate as cooperating agencies in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by WBI. This preliminary list of issues may change based on your comments and our analysis.

- Potential presence of the federally endangered Dakota Skipper butterfly;
- Crossing underneath Lake Sakakawea using the horizontal directional drill method;
- Crossing federally owned land managed by the U.S. Army Corps of Engineers and the U.S. Forest Service; and
- Crossing a federal conservation easement in the U.S. Fish and Wildlife Service Crosby Wetland Management District.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached Mailing List Update Form (appendix 4).

Becoming an Intervenor

Once WBI files its application with the Commission, you may want to become an intervenor which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* PF19–7). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20261 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 of the Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–97–000]

Gladstone New Energy, LLC v. Tri-State Generation and Transmission Association, Inc.; Notice of Complaint

Take notice that on September 11, 2019, pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, Gladstone New Energy, LLC (GNE or Complainant) filed a formal complaint against Tri-State Generation and Transmission Association, Inc. (Tri-State or Respondent) alleging that Tri-State's currently effective generation Interconnection Procedures and Generation Interconnection Agreement do not substantially conform to the *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, as required for non-jurisdictional utilities seeking reciprocity under Order Nos. 888 and 2003–A, all as more fully explained in the complaint.

GNE certifies that copies of the complaint were served on the contacts for Tri-State as listed in Tri-State's July 23, 2019 Open Access Transmission Tariff FERC Electric Tariff Volume No. 2 filing in Docket No. ER19–2441–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 1, 2019.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20270 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–138–000.
Applicants: Valentine Solar, LLC, Glaciers Edge Wind Project, LLC, PGGM Coöperatie U.A.
Description: Application for Authorization Under Section 203 of the Federal Power, et al. Act of Valentine Solar, LLC, et al.
Filed Date: 9/11/19.
Accession Number: 20190911–5140.
Comments Due: 5 p.m. ET 10/2/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–182–000.
Applicants: Blue Summit III Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blue Summit III Wind, LLC.
Filed Date: 9/12/19.
Accession Number: 20190912–5099.
Comments Due: 5 p.m. ET 10/3/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2405–000.
Applicants: Porterhouse Wind (4) LLC.
Description: Supplement to July 15, 2019 Porterhouse Wind (4) LLC tariff filing.
Filed Date: 9/12/19.
Accession Number: 20190912–5022.
Comments Due: 5 p.m. ET 9/23/19.

Docket Numbers: ER19–2460–000.
Applicants: DWW Solar II, LLC.
Description: Supplement to July 25, 2019 DWW Solar II, LLC tariff filing.
Filed Date: 9/12/19.
Accession Number: 20190912–5065.
Comments Due: 5 p.m. ET 9/26/19.

Docket Numbers: ER19–2787–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–09–11 Amendment No. 3 to Amended and Restated PLA with CDWR to be effective 11/1/2019.
Filed Date: 9/11/19.
Accession Number: 20190911–5118.
Comments Due: 5 p.m. ET 10/2/19.

Docket Numbers: ER19–2788–000.
Applicants: Emera Maine.
Description: § 205(d) Rate Filing: Interconnection Agreement with Liberty Utilities (Tinker Transmission) LP to be effective 9/10/2019.
Filed Date: 9/11/19.
Accession Number: 20190911–5130.
Comments Due: 5 p.m. ET 10/2/19.

Docket Numbers: ER19–2789–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo MBR Tariff_EFF 10.31.19 to be effective 10/31/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5037.
Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2790–000.
Applicants: LSP-Whitewater Limited Partnership.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 11/12/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5075.
Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2791–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–09–12_SA 3349 OTP-Deuel Harvest Wind FSA (J526) to be effective 11/12/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5074.
Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2792–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA SA No. 5472; Queue No AC1–204 and Cancellation of IISA No. 5373 to be effective 8/13/2019.
Filed Date: 9/12/19.
Accession Number: 20190912–5076.
Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2793–000.
Applicants: Northern States Power Company, a Minnesota corporation,

Northern States Power Company, a Wisconsin corporation.

Description: § 205(d) Rate Filing: 20190912_MBR_Tariff_Update to be effective 10/31/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5077.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2794–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Certificate of Concurrence PacifiCorp WIUFMP to be effective 10/9/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5059.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2795–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2019–09–12_SA 3350 OTP-Deuel Harvest Wind FSA (J526) Ortonville-Morris to be effective 11/12/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5063.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2796–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits Amended and Restated IA SA No. 4240 to be effective 11/11/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5088.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2797–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2019–09–12_SA 3351 OTP-Flying Cow Wind FSA (J493) Ortonville-Morris to be effective 11/12/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5092.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2798–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–09–12_SA 3347 NSP-Nobles 2 Power Partners GIA (J512) to be effective 8/28/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5095.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2799–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: 2019–09–12_MBR_Tariff_Update to be effective 10/31/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5113.

Comments Due: 5 p.m. ET 10/3/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20257 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 6398–023, 3428–182]

Hackett Mills Hydro Associates and Brown Bear II Hydro, Inc.; Notice of Applications Accepted for Filing and Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Proceeding:* Extension of License Terms.

b. *Project Nos.:* P–6398–023 and P–3428–182.

c. *Date Filed:* July 9, 2019.

d. *Licensees:* Hackett Mills Hydro Associates and Brown Bear II Hydro, Inc.

e. *Name and Location of Project:* Hackett Mills Hydroelectric Project No. 6398, located on the Little Androscoggin River and Worumbo Hydroelectric Project No. 3428, located on the Androscoggin River, in Androscoggin County, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensee Contact Information:* Mr. Michael Scarzello, Eagle Creek Renewable Energy, LLC, 116 North State Street, P.O. Box 167, Neshkoro, WI 54960; Phone: (973) 998–8400; email: *Michael.Scarzello@eaglecreekre.com.*

h. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–6398–023 and 3428–182.

j. *Description of Proceeding:* Hackett Mills Hydro Associates and Brown Bear II Hydro, Inc., licensees for the Hackett Mills (Project No. 6398) and Worumbo (Project No. 3428) hydroelectric projects, respectively, requests that the Commission extend the license terms for both projects. The 40-year license term for the Hackett Mills Project expires on August 31, 2024 and the 40-year license term for the Worumbo Project expires on November 30, 2025. The licensees request that the license terms for both projects be extended to February 28, 2029 to align the expiration dates with that of the Brunswick Project No. 2284 located downstream of both projects on the Androscoggin River.

Prior to filing its request, the licensees consulted with various federal and state resources agencies regarding the proposed license extensions. The licensees' request includes letters and email correspondence from the Maine Department of Environmental Protection, which supports extending the license terms, and from the National Marine Fisheries Service, Maine Department of Marine Resources, and U.S. Fish and Wildlife Service, which do not support extending the license terms.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.*

Enter the Docket number (P–6398–023) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request to extend the license terms. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20269 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3777–011]

Town of Rollinsford, New Hampshire; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3777–011.

c. *Date filed*: August 29, 2019.

d. *Applicant:* Town of Rollinsford, New Hampshire (Town).

e. *Name of Project:* Rollinsford Project.

f. *Location:* On the Salmon Falls River in Strafford County, New Hampshire and York County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Greenan, Green Mountain Power Corporation, 1252 Post Road, Rutland, VT 05701; Phone at (802) 770–2195, or email at *John.Greenan@greenmountainpower.com*.

i. *FERC Contact:* John Baummer, (202) 502–6837 or *john.baummer@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 28, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3777–011.

m. The application is not ready for environmental analysis at this time.

n. *The existing Rollinsford Project consists of:* (1) A 385-foot long, 19-foot-high concrete-masonry dam that includes: (i) A 255-foot-long spillway section topped with 15-inch-high flashboards, and (ii) an 82-foot-long, 52-foot-wide intake headworks section that includes five, 5.5-foot-high by 5.5-foot-wide vertical lift gates, one penstock intake protected by a 22.8-foot-wide by 15.7-foot-high trash rack structure with 2.5-inch clear bar spacing, one 8-foot-wide skimmer waste gate, and one 4-foot-wide by 4-foot-high inoperable sluice gate; (2) an 82-acre impoundment at a normal maximum elevation of 71.25 feet National Geodetic Vertical Datum of 1929 (NGVD 29), including the spillway flashboards; (3) a 600-foot-long, 10-foot diameter concrete penstock with a 250-foot-long, 9-foot diameter steel sleeve that directs flow from the intake headworks to a 40-foot-wide, 30-foot-long reinforced concrete forebay that is integral with the powerhouse; (4) a 60-foot-wide, 38-foot-long concrete and brick masonry powerhouse containing two Francis turbine-generator units for a total installed capacity of 1,500 kilowatts; (5) a 38-foot-long, 34-foot-wide tailrace channel at a normal tailwater elevation of 24 feet NGVD 29; (6) a 100-foot-long underground transmission line; and (7) appurtenant facilities.

The Town voluntarily operates the project in a run-of-river mode using an automatic pond level control system,

such that outflow from the project approximates inflow. The project bypasses approximately 680 feet of the Salmon Falls River. The existing license requires the licensee to release: (1) A continuous minimum flow of 10 cubic feet per second (cfs) or inflow, whichever is less, from the dam to the bypassed reach via a 5-foot, 9-inch wide by 5-inch deep notch in the flashboards; and (2) a minimum flow of 115 cfs or inflow, whichever is less, through the powerhouse to the downstream reach. When inflow falls below the minimum hydraulic capacity of the powerhouse (80 cfs), the minimum flow requirement for the downstream reach is met by releasing flows over the dam. The average annual generation was 5,837,900 kilowatt-hours for the period of record from 2005 to 2018.

The Town proposes to: (1) Continue operating the project in a run-of-river mode; (2) release a minimum flow of 35 cfs, or inflow, whichever is less into the bypassed reach to protect and enhance aquatic habitat; (3) install and operate an upstream eel ramp; (4) implement targeted nightly shutdowns for the protection of downstream migrating eels in September and October; and (5) construct a downstream fish bypass structure to pass eels and resident fish into the bypassed reach of the project. The Town also proposes to conduct a one-season tagging study to determine whether river herring and American shad can migrate upstream through the bypassed reach to the project dam.

Green Mountain Power estimates that the proposed measures would result in an average annual generation loss of approximately 759,000 MWh and will cost $98,500 per year for operation and maintenance.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—September 2019
Request for Additional Information—October 2019
Issue Acceptance Letter—January 2020
Issue Scoping Document 1 for Comments—February 2020
Request Additional Information (if necessary)—April 2020
Issue Scoping Document 2—May 2020
Notice that Application is Ready for Environmental Analysis—May 2020
Notice of the Availability of Environmental Assessment—November 2020

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20263 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8173–001]

Notice of Filing: Rogier, Daniel J.

Take notice that on September 11, 2019, Daniel J. Rogier, filed an, application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 2, 2019.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20267 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–35–000]

Notice of Petition for Declaratory Order: Medallion Pipeline Company, LLC

Take notice that on September 9, 2019, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Medallion Pipeline Company, LLC (Medallion), filed a petition for declaratory order seeking approval of open season procedures, transportation services agreement provisions, overall rate structure, and terms of service offered by Medallion for committed firm service on a proposed expansion of the Medallion pipeline system, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on October 10, 2019.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20262 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD19–3–000]

Commission Information Collection Activities (Ferc–725b3); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently-approved information collection FERC–725B3 (Mandatory Reliability Standards for Critical Infrastructure Protection (CIP) Reliability Standards) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. On June 20, 2019, the Commission published a Notice in the **Federal Register** in Docket No. RD19–3–000 requesting public comments. The Commission received no public comments and is indicating that in the related submittal to OMB.

DATES: Comments on the collection of information are due October 21, 2019.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. TBD, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. RD19–3–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Mandatory Reliability Standards for Critical Infrastructure Protection [CIP] Reliability Standards.

OMB Control No.: TBD.

Type of Request: Revisions to the information collection, as discussed in Docket No. RD19–3–000.

Abstract: On March 7, 2019, the North American Electric Reliability Corporation (NERC) requested Commission approval of Reliability Standard CIP–008–6 (Cyber Security—Incident Reporting and Response Planning). Reliability Standard CIP–008–6 addresses the Commission's directive in Order No. 848 to develop modifications to the Reliability Standards to require reporting of Cyber Security Incidents that compromise, or attempt to compromise, a Responsible Entity's Electronic Security Perimeter (ESP) or associated Electronic Access Control or Monitoring Systems (EACMS).[1]

Reliability Standard CIP–008–6, among other things, requires Responsible Entities[2] to broaden the mandatory reporting of Cyber Security Incidents to include compromises or attempts to compromise BES Cyber Systems or their associated ESPs or EACMS. Reliability Standard CIP–008–6 will not significantly increase the reporting burden on entities because it builds off the reporting threshold in the previous version of the Reliability Standard, Reliability Standard CIP–008–5.

Type of Respondents: Balancing Authority, Distribution Provider, Generator Operator, Generator Owner, Reliability Coordinator, Transmission Operator, and Transmission Owner.

Estimate of Annual Burden:[3] The Commission estimates the changes in the annual public reporting burden and cost as indicated below.[4]

[1] *Cyber Security Incident Reporting Reliability Standards,* Order No. 848, 164 FERC ¶ 61,033 (2018).

[2] ''Responsible Entities'' refers to Balancing Authority, Distribution Provider, Generator Operator, Generator Owner, Reliability Coordinator, Transmission Operator, and Transmission Owner.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[4] For the earlier version of the Reliability Standard retired in Docket No. RD19–3–000, the baseline numbers for respondents, burden, and cost are the same figures as those in Order No. 848. The requirements and burdens from the retired Reliability Standard are continued in Reliability Standard CIP–008–6, plus the additional requirements and burdens as indicated in the table.

RD19–3–000 COMMISSION LETTER ORDER

[Mandatory reliability standards for critical infrastructure protection reliability standards]

	Number of respondents and type of entity [5] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [6] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Update internal procedures to comply with augmented reporting requirements. (one-time) [7] (CIP–008–6 R1–R4).	288	1	288	50 hrs.; $4,050	14,400 hrs.; $1,166,400	$4,050
Annual cyber security incident plan review (on-going) [8] (CIP–008–6 R2.1).	288	1	288	10 hrs.; $810	2,880 hrs.; $233,280	810
Update cyber security incident plan per review findings (ongoing) (CIP–008–6 R3).	288	1	288	10 hrs.; $810	2,880 hrs.; $233,280	810
Incident reporting burden (ongoing) (CIP–008–6 R4).	288	12	3,456	12 hrs.; $972	3,456 hrs.; $279,936	972
Total (one-time)			288		14,400 hrs.; $1,166,400	
Total (ongoing)			4,032		9,216 hrs.; $746,496	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20260 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

[5] There are 1,414 unique registered entities in the NERC compliance registry as of May 24, 2019. Of this total, we estimate that 288 entities will face an increased paperwork burden.

[6] The loaded hourly wage figure (includes benefits) is based on the average of the occupational categories for 2017 found on the Bureau of Labor Statistics website: *https://www.bls.gov/oes/2017/may/oessrci.htm.*

Legal (Occupation Code: 23–0000): $143.68.

Information Security Analysts (Occupation Code 15–1122): $61.55.

Computer and Information Systems Managers (Occupation Code: 11–3021): $96.51.

Management (Occupation Code: 11–0000): $94.28.

Electrical Engineer (Occupation Code: 17–2071): $66.90.

Management Analyst (Code: 43–0000): $63.32.

These various occupational categories are weighted as follows: [($94.28)(.10) + ($61.55)(.315) + ($66.90)(.02) + ($143.68)(.15) + ($96.51)(.10) + ($63.32)(.315)] = $81.30. The figure is rounded to $81.00 for use in calculating wage figures in this order.

[7] One-time burdens apply in Year 1 only.

[8] Ongoing burdens apply in Year 2 and beyond.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–130–000.

Applicants: GP Energy Management LLC, Power Supply Services LLC.

Description: Supplement to August 30, 2019 Application for Authorization Under Section 203 of the Federal Power Act of GP Energy Management LLC, et al.

Filed Date: 9/12/19.

Accession Number: 20190912–5127.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: EC19–135–000.

Applicants: Avangrid Renewables, LLC, Avangrid Arizona Renewables, LLC, Poseidon Wind, LLC.

Description: Errata to September 3, 2019 Application for Authorization Under Section 203 of the Federal Power Act [Exhibit C] of Avangrid Renewables, LLC, et al.

Filed Date: 9/12/19.

Accession Number: 20190912–5078.

Comments Due: 5 p.m. ET 9/24/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1276–010; ER10–1292–009; ER10–1287–009; ER10–1303–009; ER10–1319–011; ER10–1353–011; ER18–1183–002; ER18–1184–002.

Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, LLC, Dearborn Industrial Generation, L.L.C., Delta Solar Power I, LLC, Delta Solar Power II, LLC.

Description: Notice of Non-Material Change-In-Status of Consumer Energy Company, et al.

Filed Date: 9/12/19.

Accession Number: 20190912–5122.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER10–1285–008.

Applicants: Craven County Wood Energy Limited Partnership.

Description: Notice of Non-Material Change-In-Status of Craven County Wood Energy Limited Partnership.

Filed Date: 9/12/19.

Accession Number: 20190912–5120.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER10–2475–020; ER10–2474–020; ER10–3246–014; ER13–1266–023; ER15–2211–020.

Applicants: Nevada Power Company, Sierra Pacific Power Company, PacifiCorp, CalEnergy, LLC, MidAmerican Energy Services, LLC.

Description: Notice of Non-Material Change in Status of the BHE MBR Sellers.

Filed Date: 9/13/19.

Accession Number: 20190913–5121.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER18–2435–001.

Applicants: ORNI 41 LLC.

Description: Notice of Non-Material Change in Status for ORNI 41 LLC.

Filed Date: 9/13/19.

Accession Number: 20190913–5118.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2800–000.

Applicants: Russell City Energy Company, LLC.

Description: § 205(d) Rate Filing: Executed Agreement for Black Start Service to be effective 11/6/2019.

Filed Date: 9/12/19.

Accession Number: 20190912–5115.

Comments Due: 5 p.m. ET 10/3/19.

Docket Numbers: ER19–2801–000.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company.

Description: § 205(d) Rate Filing: 2019–09–13_SA 3353 METC-River Fork Solar E&P (J806) to be effective 9/9/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5043.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2802–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Interim ISA, SA No. 5471; Queue No. AC1–051 to be effective 8/23/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5045.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2803–000.

Applicants: Cincinnati Bell Energy LLC.

Description: Compliance filing: Baseline Refiling to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5081.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2804–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Service Agreement No. 820–TSGT_Western_19–SLC–1007 to be effective 9/12/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5085.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2805–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 33, WAPA Triangle Agreement to be effective 12/31/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5095.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2806–000.

Applicants: Connecticut Gas & Electric, Inc.

Description: Compliance filing: Baseline Refiling 2019 to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5097.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2807–000.

Applicants: Energy Rewards, LLC.

Description: Compliance filing: Baseline Refiling 2019 to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5101.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2808–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B to be effective 11/13/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5104.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2809–000.

Applicants: Viridian Energy NY, LLC.

Description: Compliance filing: Baseline Refiling 2019 to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5105.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2810–000.

Applicants: Viridian Energy PA, LLC.

Description: Compliance filing: Baseline Refiling 2019 to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5148.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2811–000.

Applicants: Viridian Energy, LLC.

Description: Compliance filing: Baseline Refiling 2019 to be effective 8/15/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5149.

Comments Due: 5 p.m. ET 10/4/19.

Docket Numbers: ER19–2812–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and FPU First Amendment to FPL Rate Schedule FERC No. 401 to be effective 1/1/2019.

Filed Date: 9/13/19.

Accession Number: 20190913–5163.

Comments Due: 5 p.m. ET 10/4/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–53–000.

Applicants: Interstate Power and Light Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of Interstate Power and Light Company under ES19–53. (Replaces 20190913–5036).

Filed Date: 9/13/19.

Accession Number: 20190913–5117.

Comments Due: 5 p.m. ET 10/4/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF17–454–004.

Applicants: Broadview Solar LLC.

Description: Application for Certification of Broadview Solar LLC.

Filed Date: 9/11/19.

Accession Number: 20190911–5133.

Comments Due: 5 p.m. ET 10/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20265 Filed 9–18–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10000–17–OA]

Children's Health Protection Advisory Committee (CHPAC); Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Re-establishment of Children's Health Protection Advisory Committee.

SUMMARY: The Environmental Protection Agency (EPA) is publishing this notice to announce that it is re-establishing the Children's Health Protection Advisory Committee (CHPAC).

FOR FURTHER INFORMATION CONTACT: Nica Louie, Designated Federal Officer (DFO), Office of Children's Health Protection, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, (MC 1107A), Washington, DC 20460; telephone number: 202–564–7633; email address: *louie.nica@epa.gov.*

SUPPLEMENTARY INFORMATION: The CHPAC is being re-established in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). CHPAC will provide policy advice, information and recommendations to assist EPA in the development of regulations, guidance and policies to address children's environmental health.

The major objectives will be to provide policy advice and recommendations on:

a. Policy issues associated with regulations, economics, and outreach/communications to address prevention of adverse health effects to children, and improve the breadth and depth of analyses related to these efforts;

b. Critical policy and technical issues relating to children's health.

EPA has determined that this federal advisory committee is in the public interest and will assist the EPA in performing its duties and responsibilities. Copies of the CHPAC's charter will be filed with the appropriate congressional committees and the Library of Congress.

The CHPAC expects to meet in person or by electronic means (*e.g.,* telephone, videoconference, webcast, etc.) approximately two (2) times per year, or as needed and approved by the DFO. Meetings will be held in Washington, DC.

Membership: CHPAC will be composed of approximately eighteen to twenty-four (18–24) members who will generally serve as representatives of non-Federal interests. Nominations for membership will be solicited through the **Federal Register** and other sources. In selecting members, EPA will consider candidates representing a broad range of interests relating to children's health, including but not limited to, specific organizations, associations, or classes of individuals, Federal, State, local and Tribal governments, the regulated community, public interest groups, health care organizations and academic institutions. In selecting members, EPA will consider the differing perspectives and breadth of collective experience needed to address EPA's charge.

Dated: September 13, 2019.

Jeanne Briskin,

Director, Office of Children's Health Protection.

[FR Doc. 2019–20344 Filed 9–18–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2019–0415; FRL–10000–02–OW]

Water Quality Trading Under The National Pollutant Discharge Elimination System Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification, request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on policy approaches for addressing ''baseline'' issues in watersheds with EPA-approved Total Maximum Daily Loads (TMDLs) where policy makers would like to pursue water quality trading as a regulatory option for National Pollutant Discharge Elimination System (NPDES) permit compliance. These policy approaches may also be of interest to stakeholders pursuing market-based water quality improvement programs outside of the NPDES permit program.

DATES: Comments must be received on or before November 18, 2019. A combined in-person and online listening session will be held at EPA Headquarters in Washington, DC on October 21, 2019, from 12 p.m. to 5 p.m. EDT.

ADDRESSES: The listening session will be held at the following location:

- US EPA Headquarters, William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW, Washington, DC 20004;
- The online listening session will be accessible at *https://www.epa.gov/npdes/nonpoint-source-baselines-water-quality-trading.*

To register for the listening session, go to: https://www.epa.gov/npdes/nonpoint-source-baselines-water-quality-trading.

Submit your comments, identified by Docket ID No. EPA–HQ– OW–2019–0415, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, Office of Wastewater Management, Water Permits Division, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–5627; email address: *letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information
II. Background
III. Nonpoint Source Baselines for Water Quality Trading
IV. Request for Comment

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are: Authorized NPDES states, territorial, and tribal programs; municipal and industrial point sources; and nonpoint sources of pollution. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to affect.

TABLE I–1—ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Category	Examples of potentially affected entities
The Environmental Protection Agency	The Environmental Protection Agency when acting as a permitting authority, conducting oversight, and enforcing permits.
State, Territorial, and Indian Tribal Governments	States and territories authorized to administer the National Pollutant Discharge Elimination System (NPDES) permitting program (permitting authorities); states, territories, and Indian tribes that provide certification under section 401 of the Clean Water Act (CWA); states, territories, and Indian tribes that own or operate treatment works.
Municipalities	Publicly Owned Treatment Works (POTWs), municipal separate storm sewer systems (MS4s), or other municipal entities required to apply for or seek coverage under an NPDES individual or general permit.

TABLE I–1—ENTITIES POTENTIALLY AFFECTED BY THIS ACTION—Continued

Category	Examples of potentially affected entities
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit.
Nonpoint Sources	Facilities that are not required to apply for or seek coverage under an NPDES individual or general permit but may generate pollutant reduction credits.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. Public Listening Session

i. Public Listening Session: The EPA will hold a public listening session to hear feedback from interested members of the public on the issues and concerns of which the Agency should be aware concerning the issues presented in this document. The public listening session will include the ability to make a statement either in person or online in addition to any official comments. All official comments must be submitted in writing at *https://www.regulations.gov/*. The public listening session will begin with the EPA providing a brief background on the water quality trading issues discussed in this document, followed by an opportunity for the public to provide supplemental input on these issues. The EPA is asking that oral statements be limited to three minutes or less. The listening session will begin at 12 p.m. EDT and continue until all those wishing to speak have had a chance to make statements, or until 5 p.m., whichever comes first. A transcript of oral remarks made during the listening session will be at *https://www.epa.gov/npdes/nonpoint-source-baselines-water-quality-trading* and included in the docket for public review.

ii. Additional Information and Public Meeting Registration: Prior to each listening session, the EPA will post any relevant materials to the following website: *https://www.epa.gov/npdes/nonpoint-source-baselines-water-quality-trading*. Information posted to the website will include any handouts that may be provided at the meeting as well as a web link that participants may use to register for the listening session in advance. Advance registration is not required but is requested so that the EPA can ensure there is sufficient space and time allotted for those who wish to participate. The listening session will continue until all speakers in attendance have had a chance to make statements, or the listed end time, whichever comes first. If you choose not to pre-register to speak, it is recommended that you arrive at the start of the listening session to register in person to ensure the opportunity to participate.

II. Background

The EPA strongly supports market-based mechanisms to accomplish its mission to protect human health and the environment. Market-based mechanisms include water quality trading, an approach that promotes water quality improvements at lower cost than more traditional regulatory approaches. The Agency has long interpreted the CWA to allow pollutant reductions from water quality trading and offsets to achieve compliance with CWA regulatory requirements including water quality-based effluent limitations (WQBELs). Neither the CWA nor the EPA's implementing regulations explicitly address water quality trading. In the absence of explicit statutory language or regulations, the EPA has provided guidance for permitting authorities and stakeholders to consider when developing market-based programs, including water quality trading. However, the EPA is aware that despite its efforts to support these types of programs, they have not been implemented to their fullest potential. In response, the Agency is exploring ways to expand the implementation of water quality trading and other market-based mechanisms to accomplish water quality improvements.

In 2003, the EPA issued its Water Quality Trading Policy [1] (2003 Policy). The 2003 Policy included recommendations for permitting authorities and stakeholders to consider when developing water quality trading programs. The Agency issued the Water Quality Trading Toolkit for Permit Writers in 2007 and updated it in 2009 [2] (2009 Toolkit) to expand on the 2003 Policy and provide real-life examples. The EPA understands that some permitting authorities and stakeholders have viewed the 2003 Policy and 2009 Toolkit as having the force and effect of law or regulation, *i.e.,* mandating certain actions or outcomes and containing standards or requirements with which a market-based program must conform. The Agency wants to clarify that the 2003 Policy and the 2009 Toolkit do not mandate specific actions, outcomes or requirements; but rather provide non-binding and non-mandatory recommendations and guidance for permitting authorities to consider when establishing and implementing water quality trading programs for NPDES permit compliance.

In the intervening fifteen years since the release of the 2003 Policy, nonpoint source pollution reduction technologies and practices have improved. Research has provided better information on the performance of many best management practices (BMPs). Mapping and modeling efforts have become more robust. Capabilities for evaluating resources at the edge-of-field and at the landscape scale have improved. In-stream and other monitoring approaches have expanded our understanding of the resources we are working to protect. These advances have created an opportunity for the Agency to reconsider and, if appropriate, update and expand its recommendations for policy makers considering implementing market-based mechanisms, including water quality trading.

As a first step to modernizing its approach to market-based programs, the EPA issued ''Updating the Environmental Protection Agency's (EPA) Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality'' on February 6, 2019 (2019 Memorandum). The 2019 Memorandum reiterates the EPA's strong support for water quality trading; promotes the adoption of market-based programs to incentivize the implementation of technologies and practices to reduce nonpoint source pollution; provides additional guidance and policy options to stakeholders for developing and implementing market-based programs; and promotes increased investment in conservation actions. To achieve these goals, the 2019 Memorandum identified six market-based principles:

[1] This document is available at *https://www.epa.gov/sites/production/files/2016-04/documents/wqtradingtoolkit_app_b_trading_policy.pdf.*

[2] This document is available at *https://www.epa.gov/npdes/water-quality-trading-toolkit-permit-writers.*

(1) States, tribes, and stakeholders should consider implementing water quality trading and other market-based programs on a watershed scale.

(2) The EPA encourages the use of adaptive management strategies for implementing market-based programs.

(3) Water quality credits and offsets may be banked for future use.

(4) The EPA encourages simplicity and flexibility in implementing baseline concepts.

(5) A single project may generate credits for multiple markets.

(6) Financing opportunities exist to assist with deployment of nonpoint source land use practices.

This document is the next step in modernizing the EPA's approach to market-based programs and water quality trading and focuses on the fourth principle in the 2019 Memorandum—simplicity and flexibility in implementing baseline concepts. The EPA's interpretation of the 2003 Policy, as provided in the 2009 Toolkit, recommended that individual nonpoint sources were to make their portion of the reductions identified in a TMDL as the ''load allocation,'' called the ''baseline,'' before nonpoint source pollution reduction activities could generate credits or offsets. In many TMDLs, the load allocation/baseline is not an insubstantial portion of reductions necessary in the watershed; achieving this level of reduction may be costly and a barrier to entry to a trading or offset market. The EPA is seeking and will consider comments on proposed recommendations related to baselines for nonpoint sources in watersheds covered by a TMDL.

The EPA is proposing to provide additional guidance on several of the market-based principles identified in the 2019 Memorandum. This proposal seeks comment on additional draft guidance related to nonpoint source baseline issues and presents a variety of tools and approaches that could be used to develop and implement nonpoint source trading baselines. Lastly, the EPA is seeking comment on other topics addressed in the 2003 Policy and the 2009 Toolkit that should be clarified, updated, or otherwise modified to be consistent with the 2019 Memorandum.

III. Nonpoint Source Baselines for Water Quality Trading

The EPA has developed and is seeking comment on a variety of policy options regarding nonpoint source baselines for water quality trading in areas with a TMDL. These options can be used individually or combined in a single program. Some of these options would be changes to existing policy, while others offer additional clarification.

A. Definition of Baseline

As previously noted, neither the CWA nor the EPA's implementing regulations address water quality trading generally, or the specific issue of nonpoint source baselines. In the absence of explicit statutory language or regulations, the EPA provided guidance for permitting authorities and stakeholders to consider when developing market-based programs, including water quality trading.

As described above, the 2003 Policy and 2009 Toolkit recommended an approach to defining a nonpoint source baseline in a watershed where a TMDL has been approved or established. That approach could lead to substantial upfront costs for nonpoint sources despite no regulatory requirement mandating those reductions. The baseline portions of the 2003 Policy were seen by some stakeholders as confusing, complex and restrictive, creating a barrier to entry for point source-nonpoint source trading in watersheds where a TMDL has been approved by the EPA. Another concern is that expecting a nonpoint source to meet a pollutant reduction baseline derived from a TMDL load allocation *before* the nonpoint source can generate tradable credits may be inconsistent with the definition of baseline in the 2003 Policy. This is because load allocations on their own are not legally enforceable pollutant control ''requirements.'' As a result, such load allocation baselines should not be considered to be ''requirements'' that must be met by the nonpoint source prior to being able to generate credits for sale into a market. The EPA is seeking comment on the above concerns and whether the following proposed baseline definition revision would provide clarity and flexibility to states and tribes to define a nonpoint source baseline and ensure that market-based programs and water quality trading may be implemented in watersheds with EPA-approved TMDLs.

The EPA is considering whether to include the language below in an updated policy memorandum on water quality trading.

B. Baselines for Water Quality Trading

The EPA recommends that pollution reduction credits that are applied to water quality-based effluent limitations in NPDES permits be derived from and comply with all applicable water quality standards and be consistent with the assumptions and requirements of wasteload allocations in applicable EPA-approved TMDLs, consistent with 40 CFR 122.44(d)(1)(vii).

For point source-nonpoint source trading, where a TMDL has been established for the particular waterbody, the EPA recommends that nonpoint sources be allowed to generate credits for any pollutant reductions the nonpoint source makes that are not included in the assumptions that support the TMDL load allocation. Under this revised baseline definition, any such pollutant reductions would be immediately available for use by point sources as credits.

The EPA seeks comment on whether this language provides the clarity necessary to support market-based programs, including water quality trading, and whether there is other language that may provide greater clarity or regulatory certainty. The EPA intends that, in watersheds where a TMDL has been approved by the EPA, this definition of ''baseline'' would allow for individual nonpoint sources to generate pollutant reduction credits for any pollutant reduction above existing practices, provided there is a reasonable assurance that the overall load allocation will, over time, be met. Stated differently, nonpoint sources may not need to apply pollution controls to meet a baseline derived from a load allocation before pollutant reduction credits could be generated. This option is intended to encourage stakeholders to make progress towards meeting water quality standards while allowing credits to be generated without unnecessary delay.

This approach assumes that: (1) The TMDL, its implementation plan or other documentation describes plans to achieve the TMDL's load allocation, and (2) the reductions that a nonpoint source makes to generate credits are in addition to reductions described in such plans to achieve the load allocation. If the state, territory, or tribe desires increased certainty that the overall load allocation will be met under this approach, it might provide a greater level of detail in its implementation plan to ensure a greater commitment to achieving the load allocation. Policy makers and permitting authorities may conclude that modifying a TMDL implementation plan may be necessary to provide additional flexibility to prioritize specific areas of the watershed for reductions; to describe a specifically-identified pollutant reduction project (such as the Dixie Drain Phosphorus Removal Facility in Idaho); [3] or to

[3] For additional information on the Dixie Drain Phosphorus Removal Facility see *https://www.livboise.org/initiatives/dixie-drain.*

implement other watershed-wide plans for meeting the TMDL.

In most cases, the EPA assumes that point source-nonpoint source water quality trading would represent a relatively small portion of the total loadings under a TMDL. The EPA solicits comment on the potential environmental and policy impacts—positive or negative—of the proposed change to the nonpoint source baseline definition at large volumes and over larger geographic areas. The EPA solicits comment on the proposed language and the assumptions articulated above, and on whether pollutant reductions used to generate credits could also be used to achieve a TMDL load allocation.

C. Incremental Baseline

As described above, the EPA is requesting comments on additional recommendations to provide additional flexibility for permitting authorities whereby nonpoint sources may not need to apply pollution controls to meet a baseline derived from a TMDL load allocation before pollutant reduction credits could be generated. Alternatively, permitting authorities might consider an incremental approach. An incremental baseline approach divides nonpoint source reductions into (1) immediately available tradeable credits, and (2) reductions assigned towards meeting the load allocation. The state, territory, or tribe would identify the appropriate ratio between the two types of reductions.

This ratio could be directly aligned with the reductions anticipated in the TMDL load allocation, or it could be based on an alternate policy goal. The concept could be analogous to a mortgage payment divided between principal and interest. Some of the pollutant reductions would be applied to meeting the load allocation and some of the pollutant reductions would be applied to generate credits.

Variations on an incremental approach could address alternate policy goals by establishing a variable percentage on bases such as:

- Creating incentives for nonpoint source reductions in certain areas of a watershed;
- A nonpoint source's existing BMPs; or
- A community's ability to pay.

Under these variations, some nonpoint sources might generate more credits than others based on factors such as geography, existing BMPs, or availability of trading partners.

As in all trading scenarios, a point source would need to make sufficient reductions to meet its WQBEL. This can be through onsite controls (a non-trading approach), through the purchase of credits (water quality trading), or through a combination of the two approaches. If there are insufficient credits immediately available, this approach might, where appropriate, be coupled with a compliance schedule as described below. The EPA solicits comment on the incremental baseline approach described in this document and if it could be a useful tool for policy makers and permitting authorities to implement market-based programs, including water quality trading.

D. Compliance Schedules

Where the appropriate criteria under 40 CFR 122.47 are met, a permitting authority has the discretion to include a schedule of compliance with a WQBEL in an NPDES permit. Under this policy option, a permitting authority might consider including a compliance schedule in the permit to account for the time it would take for a nonpoint source partner to generate sufficient pollutant reduction credits or offsets to achieve compliance with the NPDES permit WQBEL. For example, an NPDES permit might provide a schedule for a point source permittee to arrange for a nonpoint source to install BMPs necessary to generate pollutant reduction credits sufficient to offset reductions required by WQBEL. A compliance schedule would need to specify the achievement of these reductions ''as soon as possible'' (see 40 CFR 122.47(a)(1)). While the types of activities/BMPs leading to nonpoint source pollutant reductions during the compliance schedule might differ in a trading scenario from those undertaken by a point source in a non-trading scenario, the regulatory requirements for a permittee to qualify for and the authority to establish a compliance schedule would remain the same under either scenario.

The EPA solicits comment on whether the use of compliance schedules could be a useful tool for policy makers and permitting authorities to implement market-based programs, including water quality trading.

E. Water Quality Standard (WQS) Variances

A WQS variance is a time-limited designated use and criterion for a specific pollutant(s) that reflects the highest attainable condition of a waterbody during the term of the WQS variance. A WQS variance is a WQS that is subject to review and approval by the EPA under section 303(c) of the CWA. States and tribes might consider whether in appropriate cases, a WQS variance might be used to support a market-based program, including water quality trading.

A WQS variance might be appropriate in those circumstances where it is not clearly known how or if a point source can buy enough pollutant reduction credits from nonpoint sources to meet its WQBEL. In that circumstance, a WQS variance might be designed to ensure that at the end of the WQS variance, enough pollutant reduction credits would be generated by nonpoint sources to meet the point source's WQBEL, based on the terms of the WQS variance.

For example, a state, territory, or authorized tribe might identify in the WQS variance a quantifiable interim effluent condition that reflects the greatest pollutant reduction achievable (40 CFR 131.14(b)(1)(ii)(A)(2)) by a combination of point source control and funding of nonpoint source reductions. The state, territory, or authorized tribe might collect funds from the point source(s) to pay for nonpoint source reductions needed to achieve the highest attainable condition in the WQS variance. Alternatively, the point source might enter into binding agreements with nonpoint sources directly. In this situation, the reductions made to achieve the highest attainable condition could first be credited to the point source, and then applied to the nonpoint source load allocation.

As another example, the point source might be able to identify and fund implementation of nonpoint source reductions as part of the adopted and legally binding pollutant minimization program (PMP) that would be a required part of the highest attainable condition under 40 CFR 131.14(b)(1)(ii)(A)(3) (where no additional feasible pollutant control technology can be identified). In this case, the point source maintains an existing level of treatment, and the activities necessary to achieve nonpoint source reductions would be part of the adopted PMP. At the WQS variance reevaluation period (which is required at least every five years for any WQS variance longer than five years), the state, territory, or authorized tribe would determine if there are additional nonpoint source reduction activities to incorporate into the permit.

The EPA solicits comment on whether the use of WQS variances in this context could be a useful tool for policy makers and permitting authorities to implement market-based programs, including water quality trading.

F. Alternative Approaches to Disaggregation

Generally, TMDL load allocations are identified very broadly, covering entire sectors, or even having a single load allocation for all nonpoint sources in the watershed. The EPA recommends that states, tribes, and territories consider whether it is appropriate to apply these broad load allocations uniformly across the watershed or, instead, apply it differentially to nonpoint sources on a geographic basis or some other basis within the watershed to maximize water quality improvements. Examples of options that policy makers and permitting authorities may consider include:

- Reductions of nonpoint source pollution at certain locations within the watershed will result in reductions sufficient to meet the TMDL load allocation (*e.g.,* at the headwaters of streams or along the shoreline of the impaired waterbody). Under this scenario, because the entire load allocation would be met by reductions in a certain segment of the watershed, nonpoint sources in other areas of the watershed could be free to generate credits immediately because reductions from those sources are not needed to meet the load allocation.
- A group of nonpoint source pollutant reduction practices will meet the load allocation and any pollutant reduction activities beyond those practices are eligible to generate credits. This option addresses equity concerns that might prevent early actors from making early reductions.
- Specific nonpoint source sectors (*e.g.* agriculture, silviculture, rangeland) may need different levels of reductions to meet the overall load allocation.
- A treatment facility installed on a polluted waterway segment (as was done in Idaho on the Dixie Drain) may make sufficient reductions through wastewater treatment to achieve the load allocation.

The EPA recommends that any alternate approaches that states decide to adopt should be clear, transparent, and demonstrate that the overall planned reductions in the watershed are sufficient to meet the overall TMDL allocations for the watershed. The EPA solicits comment on whether these are viable and appropriate options and whether additional or alternate approaches may also be appropriate.

G. In-Lieu Fee Program

An in-lieu fee program might allow NPDES permitted facilities to meet their WQBELs by paying into a state, territorial, or tribal fund specifically allocated for nonpoint source pollutant loading reductions. The state, territory, or tribe might use this funding, possibly combined with other state, territorial, tribal, or federal funds, to implement nonpoint source BMPs in the relevant geographic area. In-lieu fee programs might be based on a payment of a uniform fee, or payment of varying fees (established in increasing tiers) to:

- Incentivize onsite as well as offsite reductions;
- Provide equity for early actors;
- Address affordability;
- Address geographic disparities; or
- Address any relevant environmental justice concerns.

The in-lieu fee could be set at a level slightly higher than necessary for the state, territory, or tribe to fund the BMPs needed to generate the required credits to cover the administrative costs of running the program, insure against risk, and enhance overall environmental benefit.

To ensure water quality protection and progress towards meeting TMDL goals, the state, territory, or tribe could use these funds to pay nonpoint sources to implement pollutant reductions or to support other activities that would reduce overall nutrient loading in the TMDL watershed. A reverse auction model could maximize reductions per dollar. In a reverse auction, the buyer (the state, territory, or tribe) could offer a price it would pay for a specified pollutant reduction, and whomever is willing to produce that reduction (the credit) accepts the offer. If the offer is not sufficient to cover credit generation costs, generally no one would make a bid, and the buyer would offer a higher bid until it has found a willing generator of a sufficient amount of credits. This approach could keep costs down and offer flexibility if the true cost of credit generation rises.

The EPA solicits comment on the concept of an in-lieu fee program and whether it could be a useful tool for policy makers and permitting authorities to implement market-based programs, including water quality trading. The EPA also solicits comment on examples of existing in-lieu fee programs that are used to achieve environmental improvements and if there are specific programmatic components that may enhance water quality improvements.

IV. Request for Comment

The EPA is considering modifying or clarifying existing EPA policy and guidance on water quality trading to remove unnecessary barriers and better support market-based mechanisms, including water quality trading, consistent with the 2019 Memorandum. The EPA is requesting comment from states, tribes, stakeholders and other members of the public on all aspects of this document. In particular, the Agency is requesting comment on:

- The proposed approaches described in Section III of this document, including preferences between the approaches and the recommended mechanisms to implement those approaches;
- Other policy ideas or enhancements that could help promote or facilitate market-based programs to improve water quality; and
- Other aspects of the 2003 Policy and the 2019 Memorandum (including potential conflicting or ambiguous policy advice) that may benefit from additional policy or clarification from the EPA.

Dated: September 4, 2019.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2019–20324 Filed 9–18–19; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board; Appointment of Members

AGENCY: U.S. Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board (PRB) of the U.S. Equal Employment Opportunity Commission (EEOC).

FOR FURTHER INFORMATION CONTACT: Kevin L. Richardson, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Publication of the PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a Senior Executive's performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments, and performance awards.

The following are the names and titles of executives appointed to serve as members of the SES PRB. Designated members will serve a 12-month term, which begins on November 1, 2019.

PRB Chair

Mr. Robbie Dix, Associate Director, Appellate Review Programs, U.S.

Equal Employment Opportunity Commission

Members

Dr. Chris Haffer, Chief Data Officer, U.S. Equal Employment Opportunity Commission

Ms. Carol Miaskoff, Associate Legal Counsel, U.S. Equal Employment Opportunity Commission

Ms. Rosa Viramontes, Program Manager, U.S. Equal Employment Opportunity Commission

Mr. Richard Toscano, Director, Equal Employment Opportunity Staff, U.S. Department of Justice

By the direction of the Commission.

Dated: September 13, 2019.

Reuben Daniels,

Acting Chief Operating Officer.

[FR Doc. 2019–20204 Filed 9–18–19; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 1:49 p.m. on Tuesday, September 17, 2019, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: The meeting was closed to the public.

MATTERS CONSIDERED: In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Joseph M. Otting (Comptroller of the Currency), and concurred in by Kathleen L. Kraninger (Director, Consumer Financial Protection Bureau) and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on September 17, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–20453 Filed 9–17–19; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0046; –0113; –0169; –0174; and –0191)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below. On July 12, 2019, the FDIC requested comment for 60 days on a proposal to renew these information collections. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these information collections, and again invites comment on their renewal.

DATES: Comments must be submitted on or before October 21, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On July 12, 2019, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collection, and again invites [1] comment on their renewal.

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Home Mortgage Disclosure (HMDA).

OMB Control Number: 3064–0046.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (minutes)	Frequency of response	Total estimated annual burden (hours)
Full Data Set							
Home Mortgage Disclosure	Reporting	Mandatory	650	1,400	5	On Occasion	75,833
	Recordkeeping	Mandatory	650	1,400	5	On Occasion	75,833

SUMMARY OF ANNUAL BURDEN—Continued

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (minutes)	Frequency of response	Total estimated annual burden (hours)
Partial Data Set							
Home Mortgage Disclosure	Recordkeeping	Mandatory	1,200	200	2.5	On Occasion	10,000
	Reporting	Mandatory	1,200	200	2.5	On Occasion	10,000
Total Estimated Annual Burden Hours							[2] 171,667

General Description of Collection: The Board of Governors of the Federal Reserve System promulgated Regulation C, 12 CFR part 203, to implement the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801–2810. Regulation C requires depository institutions that meet its asset-size threshold to maintain data about home loan applications (the type of loan requested, the purpose of the loan, whether the loan was approved, and the type of purchaser if the loan was later sold), to update the information quarterly, and to report the information annually. The Home Mortgage Disclosure Act and Regulation C now come under the authority of the Consumer Financial Protection Bureau (CFPB).

Pursuant to Regulation C, insured state-nonmember banks supervised by the FDIC with assets over a certain dollar threshold must collect, record, and report data about home loan applications.[3] For 2017 transactions, 1,865 FDIC-supervised institutions reported under HMDA; 1,217 of these institutions were small entities.[4] [5] For transactions beginning in 2018, the set of data fields to be reported under HMDA was expanded. Institutions that meet certain criteria are partially exempt from reporting certain data fields.[6] To estimate the number of Full and Partial filers for 2018, subject matter experts (SMEs) in the Division of Consumer Protection (DCP) examined 2016 and 2017 data collected under HMDA, as well as preliminary data for 2018. Results from this analysis indicate that for 2018 data, there were roughly 650 and 1,200 respondents to the Full and Partial reporting requirements of this information collection, respectively. The frequency of responses was estimated by taking the total number of Full and Partial disclosure filings and dividing that number by the number of respondents.[7]

The frequency of response is 'on occasion', which remains unchanged from the 2016 ICR.[8] Due to an increase in the number of required items, the estimated time per response for the Full Data loan disclosure form will increase from 5 minutes to 10 minutes. The estimated time per response for the Partial Data loan disclosure form will remain unchanged at 5 minutes. For both the Full and Partial loan disclosure, the estimated burden is divided equally among reporting and recordkeeping.

2. *Title:* External Audits.

OMB Control Number: 3064–0113.

Form Number: None.

Affected Public: All insured financial institutions with total assets of $500 million or more and other insured financial institutions with total assets of less than $500 million that voluntarily choose to comply.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
FDIC Supervised Institutions with $10 Billion or More in Total Assets							
Annual Report	Recordkeeping	Mandatory	28	1	150	Annually	4,200
	Reporting	Mandatory	28	1	150	Annually	4,200
Audit Committee Composition	Recordkeeping	Mandatory	28	1	3	Annually	84
	Reporting	Mandatory	28	1	3	Annually	84
Filing of Other Reports	Recordkeeping	Mandatory	28	1	.125	Annually	3.5
	Reporting	Mandatory	28	1	.125	Annually	3.5
Notice of Change in Accountants	Recordkeeping	Mandatory	7	1	.25	Annually	1.75
	Reporting	Mandatory	7	1	.25	Annually	1.75
FDIC Supervised Institutions with $10 Billion or More in Total Assets.							8,578.5

[2] The one-hour difference in the Total Estimated Annual Burden Hours is due to rounding.

[3] Regulation C, 12 CFR part 1003, Home Mortgage Disclosure, *https://www.govinfo.gov/content/pkg/CFR-2018-title12-vol8/pdf/CFR-2018-title12-vol8-part1003-appA.pdf.*

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

[5] Call Report, December 31, 2017.

[6] Interpretive and Procedural Rule, Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 *https://www.federalregister.gov/documents/2018/09/07/2018-19244/partial-exemptions-from-the-requirements-of-the-home-mortgage-disclosure-act-under-the-economic.*

[7] 910,000 Full Data disclosures ÷ 650 respondents = 1,400 disclosures per respondent.

240,000 Partial Data disclosures ÷ 1,200 respondents = 200 disclosures per respondent.

[8] See *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=20151203064-006.*

SUMMARY OF ANNUAL BURDEN—Continued

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
FDIC Supervised Institutions with $3 Billion to $10 Billion in Total Assets							
Annual Report	Recordkeeping	Mandatory	98	1	125	Annually	12,250
	Reporting	Mandatory	98	1	125	Annually	12,250
Audit Committee Composition	Recordkeeping	Mandatory	98	1	3	Annually	294
	Reporting	Mandatory	98	1	3	Annually	294
Filing of Other Reports	Recordkeeping	Mandatory	98	1	.125	Annually	12.25
	Reporting	Mandatory	98	1	.125	Annually	12.25
Notice of Change in Accountants	Recordkeeping	Mandatory	25	1	.25	Annually	6.25
	Reporting	Mandatory	25	1	.25	Annually	6.25
FDIC Supervised Institutions with $3 Billion to $10 Billion in Total Assets.							25,125
FDIC Supervised Institutions with $1 Billion to $3 Billion in Total Assets							
Annual Report	Recordkeeping	Mandatory	225	1	100	Annually	22,500
	Reporting	Mandatory	225	1	100	Annually	22,500
Audit Committee Composition	Recordkeeping	Mandatory	225	1	2	Annually	450
	Reporting	Mandatory	225	1	2	Annually	450
Filing of Other Reports	Recordkeeping	Mandatory	225	1	.125	Annually	28.125
	Reporting	Mandatory	225	1	.125	Annually	28.125
Notice of Change in Accountants	Recordkeeping	Mandatory	56	1	.25	Annually	14
	Reporting	Mandatory	56	*1*	*.25*	Annually	14
FDIC Supervised Institutions with $1 Billion to $3 Billion in Total Assets.							45,984.25
FDIC Supervised Institutions with $500 Million to $1 Billion in Total Assets							
Annual Report	Recordkeeping	Mandatory	401	1	12.5	Annually	5,012.5
	Reporting	Mandatory	401	1	12.5	Annually	5,012.5
Audit Committee Composition	Recordkeeping	Mandatory	401	1	1	Annually	401
	Reporting	Mandatory	401	1	1	Annually	401
Filing of Other Reports	Recordkeeping	Mandatory	401	1	.125	Annually	50.125
	Reporting	Mandatory	401	1	.125	Annually	50.125
Notice of Change in Accountants	Recordkeeping	Mandatory	100	1	.25	Annually	25
	Reporting	Mandatory	100	1	.25	Annually	25
FDIC Supervised Institutions with $500 Million to $1 Billion in Total Assets.							10,977.25
FDIC Supervised Institutions with Less Than $500 Million in Total Assets							
Filing of Other Reports	Recordkeeping	Mandatory	3,291	1	.25	Annually	822.75
	Reporting	Mandatory	3.291	2	.25	Annually	1,645.5
FDIC Supervised Institutions with $500 Million to $1 Billion in Total Assets.							2,468.25
Total Estimated Annual Burden							93,133.25

General Description of Collection: FDIC's regulations at 12 CFR part 363 establish annual independent audit and reporting requirements for financial institutions with total assets of $500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions.

3. *Title:* Qualifications for Failed Bank Acquisitions.

OMB Control Number: 3064–0169.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Section D—Investor Reports on Affiliates	Reporting	Mandatory	3	12	2	On Occasion	72
Section E—Maintenance of Business Books and Records.	Recordkeeping	Mandatory	3	4	2	On Occasion	24

SUMMARY OF ANNUAL BURDEN—Continued

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Section I—Disclosures Regarding Investors and Entities in Ownership Chain.	Reporting	Mandatory	3	4	4	On Occasion	48
Total Estimated Annual Burden Hours							144

General Description of Collection: The FDIC's policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements.

There were eight (8) bank failures in 2015, five (5) failures in 2016, eight (8) failures in 2017, and zero bank failures in 2018 and one in the first eight months of 2019. This is an average of fewer than 5 bank failures per year. Based on this recent data, the declining trend in failures, and the improvement in bank financial conditions, the FDIC believes that it is appropriate to reduce the expected number of respondents for Sections D and I from 10 per year to 3 while keeping the expected number of respondents at 3 per year for Section E.

The estimated total number of hours per respondent, per year will remain unchanged at 48 hours. The 48 hours is comprised of 12 monthly reports of two hours each for Section D, four quarterly reports of two hours each for Section E, and four quarterly reports of four hours each for Section I. Thus the total estimated annual burden for the ICR is 144 hours as reflected in the table above This represents a reduction of 280 hours from the 2016 estimate of 424 hours.

4. *Title:* Funding and Liquidity Risk Management.

OMB Control Number: 3064–0174.

Form Number: None.

Affected Public: Businesses or other for-profits.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Par. 14—Strategies, Policies, Procedures and Risk Tolerances.	Recordkeeping	Voluntary	3,483	1	96	On Occasion	334,368
Par. 20—Liquidity Risk Management, Measurement, Monitoring and Reporting.	Reporting	Voluntary	3,483	12	4	On Occasion	167,184
Total Estimated Annual Burden Hours							501,552

General Description of Collection: The information collection includes reporting and recordkeeping requirements related to sound risk management principles applicable to insured depository institutions. To enable an institution and its supervisor to evaluate the liquidity risk exposure of an institution's individual business lines and for the institution as a whole, the Interagency Policy Statement on Funding and Liquidity Risk Management (Interagency Statement) summarizes principles of sound liquidity risk management and advocates the establishment of policies and procedures that consider liquidity costs, benefits, and risks in strategic planning. In addition, the Interagency Statement encourages the use of liquidity risk reports that provide detailed and aggregate information on items such as cash flow gaps, cash flow projections, assumptions used in cash flow projections, asset and funding concentrations, funding availability, and early warning or risk indicators. This is intended to enable management to assess an institution's sensitivity to changes in market conditions, the institution's financial performance, and other important risk factors.

5. *Title:* Interagency Guidance on Leveraged Lending.

OMB Control Number: 3064–0191.

Form Number: None.

Affected Public: Insured state nonmember banks and savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Interagency Guidance on Leveraged Lending—Implementation.	Recordkeeping	Voluntary	1	1	988	On Occasion	988
Interagency Guidance on Leveraged Lending—Ongoing.	Recordkeeping	Voluntary	6	1	527.3	On Occasion	3,164

SUMMARY OF ANNUAL BURDEN—Continued

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Total Estimated Annual Burden Hours ..	.....	.....	.....	.....	.....	.....	4,152

General Description of Collection: The Interagency Guidance on Leveraged Lending (Guidance) outlines for agency-supervised institutions high level principles related to safe-and sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress testing expectations, pipeline portfolio management, and risk management expectations for exposures held by the institution.

This Guidance provides information to all financial institutions supervised by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the FDIC (the Agencies) that engage in leveraged lending activities. The number of community banks with substantial involvement in leveraged lending is small; therefore, the Agencies generally expect community banks to be largely unaffected by this information collection. There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 12, 2019.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–20216 Filed 9–18–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201320.

Agreement Name: CNCO/Matson Slot Charter Agreement.

Parties: The China Navigation Co. Pte. Ltd. and Matson Navigation Company, Inc.

Filing Party: Conte Cicala; Clyde & Co US LLP.

Synopsis: The Agreement authorizes China Navigation Company to charter space to Matson in the trade between the U.S. Pacific Coast, Samoa, American Samoa, and Tahiti.

Proposed Effective Date: 9/10/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/23436.

Dated: September 13, 2019.

Rachel E. Dickon,

Secretary.

[FR Doc. 2019–20211 Filed 9–18–19; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Healthcare Research and Quality), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 81 FR 22271, on April 15, 2016) is amended to reflect recent organizational changes. The specific amendments are as follows:

I. Under Section E–10, Organization, delete all components and replace with the following:

A. Office of the Director.

B. Center for Evidence and Practice Improvement.

C. Center for Quality Improvement and Patient Safety.

D. Center for Financing, Access, and Cost Trends.

E. Office of Communications.

F. Office of Extramural Research, Education, and Priority Populations.

G. Office of Management Services.

II. Under Section E–20, Functions, delete Center for Evidence and Practice Improvement, Center for Quality Improvement and Patient Safety, Center for Delivery, Organization, and Markets, and Center for Financing Access and Cost Trends in its entirety and replace with the following:

Center for Evidence and Practice Improvement. Conducts and supports research on health care delivery and practice improvement across the continuum of care from prevention to chronic care management to end of life care. Specifically: (1) Synthesizes evidence and translates science for multiple stakeholders; (2) advances decision and communication sciences to facilitate informed treatment and health care decision making by patients and their health care providers; (3) explores how health information technology can improve clinical decision making and health care quality; (4) catalyzes and promotes sustainability of improvements in clinical practice across health care settings through research,

demonstration projects, and partnership development; (5) studies the roles that health professionals, health systems, and organizations play in the provision of health care services; (6) examines the role of health systems in improving quality and efficiency of health care services; and (7) operates the National Center for Excellence in Primary Care Research.

Shall be organized into the following five divisions:

Division of Evidence-Based Practice Centers: Produces evidence syntheses by conducting systematic evidence reviews using robust and rigorous methodologies and advances the methods of evidence synthesis to ensure scientific rigor and unbiased reviews.

Division of U.S. Preventive Services Task Force: Provides scientific, administrative, and dissemination support for the independent U.S. Preventive Services Task Force, enabling the Task Force to make evidence-based recommendations on clinical preventive services.

Division of Digital Healthcare Research: Via advanced analytics to enhance health care decision making, the division focuses on conducting research to determine how the parts of the ever evolving digital health care ecosystem can best come together to affect transformational value for patients and their families in the safe delivery of care.

Division of Practice Improvement: Advances the science of clinical practice improvement including shared decision making; evaluates and supports innovative models of practice transformation in diverse settings; facilitates communities of learning to promote the implementation of evidence for practice improvement; and serves as a trusted source of evidence and tools for methods, measures, and evaluation of practice improvement.

Division of Healthcare Delivery and Systems Research: Develops new evidence, tools and measures to understand how health care is delivered in the U.S., emphasizing the roles that physicians, physician practices, hospitals, health systems, other medical professionals, and organizations play in the provision of health care services.

Center for Quality Improvement and Patient Safety. Measures performance of the U.S. health care system; identifies, promotes, and supports evidence-based research; and provides information that is used to improve the safety and quality of health care. Collaborates with stakeholders across the health care system to: Implement evidence-based practices, accelerate and amplify improvements in quality and patient safety.

Shall be organized into the following four divisions:

Division of General Patient Safety: Leads intramural and extramural research that focuses on the risks and harms inherent in the delivery of health care for a variety of conditions in all health care settings, including the hospital, ambulatory and long-term care facilities, and the home. Develops, tests, and facilitates understanding and use of evidence-based tools and information to improve the quality and safety of health care and reduce the risk of patient harm. Major topics of research and tool development include health care leadership and teamwork, safe medication use, health care simulation, diagnostic performance, care coordination, measurement, patient safety reporting and surveillance, detection and analysis, patient and family engagement, and health care facility design.

Division of Patient Safety Organizations: Administers the Patient Safety Organization (PSO) Program in accordance with the Patient Safety and Quality Improvement Act of 2005. Approves and oversees PSOs that apply for official federal ''listing.'' Publishes Common Formats for measuring adverse events in hospitals.

Division of Healthcare-Associated Infections (HAI): Leads AHRQ's robust program of research studies and implementation projects that has two closely related purposes: To prevent, reduce, and ultimately eliminate HAIs; and to combat antibiotic resistance. Fosters the creation of new knowledge and the generation of evidence to develop improved methods for preventing health care associated infections and improving antibiotic use in multiple health care settings, including hospital acute care, long-term care, and ambulatory care, and promotes the wide-scale implementation of effective interventions for preventing healthcare-associated infections and promoting antibiotic stewardship in all these care settings.

Division of Quality Measurement and Improvement: Conducts quality measurement and evaluates improvement activities in order to improve healthcare delivered in the United States. Seeks opportunities to integrate various measurement efforts in order to provide a more complete picture of quality and safety. Promotes enhanced collaboration and coordination of measurement efforts, including integration where possible, in order to serve the needs of multiple stakeholders who use measurement, such as front-line clinicians, patients, safety and quality experts, administrators, researchers, payers, policymakers, and others. Conducts focused measurement programs including the National Healthcare Quality and Disparities Report, the Consumer Assessment of Healthcare Providers and Systems, Surveys on Patient Safety Culture programs, and the AHRQ Quality Indicators.

Center for Financing, Access, and Cost Trends. Conducts and supports studies of the use of and expenditures for health care services, of the sources of payment for that care, of the availability and cost of health insurance, and of access to health care. Administers surveys and develops large data sets to support health care policy and behavioral research and analysis. The mission includes the production of the Medical Expenditure Panel Survey (MEPS) and the Healthcare Cost and Utilization Project (HCUP).

Shall be organized into the following four divisions:

Division of Statistical Research and Methods (DSRM): Responsible for a wide range of statistical activities (*e.g.,* determining sample size and allocation, data imputation and weighting strategies) for the design and implementation of the three components (household, provider, and insurance/employer) of MEPS and for planning and conducting research to help guide and improve these activities.

Division of Research and Modeling (DRM): Conducts studies of the access to and costs and financing of health care and is responsible for the conduct of research and the development of models and databases in support of the overall mission of AHRQ and CFACT. Provides ongoing analytic support to MEPS and HCUP design and implementation. Develops and maintains various simulation models, components, databases, tools, and research products that enhance the value of the AHRQ data. Utilizes these models and databases to conduct microsimulation analyses of the effects, on households and individuals, of health policies embodied in current law, and the potential effects of health care policies embodied in generic versions of proposed health care reforms.

Division of Healthcare Data and Analytics (DHDA): Leads the development, production, and improvement of health care delivery data and tools for use in research and policy analysis with a focus on HCUP and the supply side of the medical care market. Directs, conducts, and supports research on health care delivery and utilization to examine issues related to

access, utilization, cost, safety, and quality of hospital, physician, and other services. Disseminates data, tools, and statistics to facilitate and inform public and private health policy analysis, clinical studies, and socioeconomic research to inform public and private healthcare policy.

Division of Survey Operations (DSO): Responsible for the MEPS data collection, processing and distribution activities. These responsibilities include directing data collection for the three major MEPS surveys, preparing data files for public use, conducting workshops on the appropriate use of MEPS data and the development of a website for disseminating MEPS products. Publishes statistical briefs, research findings and a series of methodological reports. Administers a data center at which researchers can, with approved projects and under specific technical controls and privacy protocols, access data that cannot be released to the public for use in specific research activities. Maintains liaisons with individuals and organizations engaged in health services research both within and outside the federal government.

All delegations and redelegations of authority to officers and employees of the Agency for Healthcare Research and Quality that were in effect immediately prior to the effective date of this reorganization shall continue in effect pending further redelegation provided they are consistent with this reorganization.

These changes are effective upon date of signature.

Dated: September 18, 2019.

Gopal Khanna,

Director.

[FR Doc. 2019–20218 Filed 9–18–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Therapies for Clinically Localized Prostate Cancer

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Therapies for Clinically Localized Prostate Cancer,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES:

Submission Deadline: Comments must be received on or before 30 days after date of publication of this notice.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Therapies for Clinically Localized Prostate Cancer.* AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Therapies for Clinically Localized Prostate Cancer,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/prostate-cancer-therapies/protocol.*

This is to notify the public that the EPC Program would find the following information on Therapies for Clinically Localized Prostate Cancer helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on* ClinicalTrials.gov *along with the* ClinicalTrials.gov *trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions

KQ 1: What are the comparative effectiveness and harms of CLPC therapies?

(1) Watchful waiting
(2) Active surveillance
(3) Androgen deprivation therapy (ADT)
(4) Focal therapies
  (a) Brachytherapy
  (b) Cryotherapy
  (c) High-intensity focused ultrasound (HIFU)
  (d) Laser ablation

(e) Photodynamic therapy
(f) Irreversible electroporation
(5) Whole gland therapies
(a) Brachytherapy
(b) Cryotherapy
(c) External beam radiation therapy
(i) three-dimensional conformal radiotherapy
(ii) intensity-modulated radiation therapy
(iii) proton beam therapy
(iv) stereotactic body radiation therapy
(d) Radical prostatectomy
(i) open
(ii) laparoscopic
(1) without robotic assistance
(2) with robotic assistance
(6) Combination of above

KQ 2: How do patient characteristics modify comparative effectiveness and harms of CLPC therapies?

(1) Age
(2) Race/ethnicity
(3) Comorbidities
(4) Health status

KQ 3: How do tumor characteristics modify comparative effectiveness and harms of CLPC therapies?

(1) Baseline PSA
(2) Gleason score
(3) Tumor index scores (*e.g.,* Cancer of the Prostate Risk Assessment Score [CAPRA], D'Amico Risk Classification for Prostate Cancer, etc.)
(4) Biomarker Status
(a) Decipher (Genomic Classifier)
(b) Oncotype Dx (Genomic Prostate Score)
(c) Prolaris (Cell Cycle Progression)

KQ 4: How do provider/hospital characteristics modify comparative effectiveness of RP compared to other therapies?

(1) Geographic region
(2) Hospital type
(3) Provider volume
(4) Institutional volume

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

Population(s)

- Treatment naïve men with CLPC (stages T1 to T3)

Interventions

KQ1 to 3

(1) Watchful waiting (WW)
(2) Active surveillance (AS)
(3) Androgen deprivation therapy (ADT)
(4) Focal therapies
(a) Brachytherapy
(b) Cryotherapy
(c) High-intensity focused ultrasound (HIFU)
(d) Laser ablation
(e) Photodynamic therapy
(f) Irreversible electroporation
(5) Whole gland therapies
(a) Brachytherapy
(b) Cryotherapy
(c) External beam radiation therapy
(i) Three-dimensional conformal radiotherapy
(ii) Intensity-modulated radiation therapy
(iii) Proton beam therapy
(iv) Stereotactic body radiation therapy
(d) Radical prostatectomy
(i) Open
(ii) Laparoscopic
(1) Without robotic assistance
(2) With robotic assistance
(6) Combination of above

KQ4

(1) Radical prostatectomy (RP)

Comparators

KQ1 to KQ4

- Any other intervention of listed above except certain within category comparisons (*e.g.,* nerve-sparing vs non-nerve sparing prostatectomy; different dosage/frequency/timing/duration of same therapy)

Outcomes

KQ1 to KQ3

- Overall survival/mortality
- Prostate cancer specific survival/mortality
- Metastatic-progression free survival
- Metastases (lymph nodes/distant)
- Health status
- Quality of life (measured with validated instruments)
- Prostate-cancer related quality of life (measured with validated instruments)

KQ4

- Overall survival/mortality
- Prostate cancer specific survival/mortality
- Metastatic free survival/metastases (lymph nodes/distant)

Harms

KQ1 to KQ3

Common and serious treatment side effects:

- Bowel, bladder, and sexual/erectile dysfunction
- Serious adverse effects associated with ADT such as cognitive impairment, MACE, fractures

Timing

KQ1 to KQ3

Follow up from treatment initiation:

- Mortality/survival outcomes/metastases: 5 years or more
- Health status, quality of life and harms: 1 year or more

KQ4

Follow up from treatment initiation:

- Mortality/survival outcomes/metastases: 5 years or more

Setting

KQ1 to KQ4

- All settings

Study Design

KQ1 to KQ4

(1) RCTs
(2) Non-RCT if:
(a) Comparative
(b) Concurrent
(c) Multicenter (enrolling patients treated at multiple locations)
(d) ≥500 patients
(e) Some method to control for selection bias (propensity scores, instrumental variables, multivariate regression)
(f) Prospective data collection

Dated: September 16, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–20303 Filed 9–18–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review: Assessing Models of Coordinated Services for Low-Income Children and Their Families (AMCS) (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; ACF; HHS

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new study, Assessing Models of Coordinated Services for Low-Income Children and Their Families (AMCS).

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Description: Through AMCS, ACF seeks to learn more about how states and communities coordinate early care and education, family economic security, and/or other health and human services to most efficiently and effectively serve the needs of low-income children and their families. ACF aims to understand strategies used to support partnerships, including the federal barriers to agency collaboration. In support of achieving these goals, the study team will conduct site visits to six programs that offer coordinated services. The study team will gather information through interviews with program staff members, such as agency leaders or frontline staff, and focus groups with parents.

Data collection activities will include up to six program site visits. Programs will be identified through a scan of publicly available information about programs, recommendations from stakeholders, and proposed telephone interviews (the information collection request for these interviews will be submitted under the generic clearance: Formative Data Collections for ACF Research, OMB #0970–0356)). Once potential programs are identified, agency leaders will be invited to participate in the site visit. Site visits will include semi-structured interviews with up to 30 total staff at each site. Staff invited will include lead program and partner staff to include agency leaders (including program directors, executive directors, or CEOs), directors of programs within the site, frontline staff (including service navigators or coordinators), and focus groups with 8–10 parents at each site. Semi-structured interviews with program and partner staff will obtain in-depth information about the goals and objectives of programs, the services provided, how the coordinated services are implemented, how staffing is managed, data use, and any facilitators and barriers to coordination. Focus groups with parents participating in the program will provide the opportunity to learn about how parents perceive the program, how it meets their needs, what benefits they gain from the program, and how they enroll, participate, and progress through the program.

Respondents: Lead program and partner program staff members working in six programs across the United States that coordinate early care and education services with family economic security services and/or other health and human services, as well as parents receiving services from these programs. Staff respondents will be selected with the goal of having staff represent each level of the organization. Parents who have participated in the program for at least six months and who received early childhood services and at least one other program service will be invited to participate in focus groups.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Master Interview Protocol	180	1	2	360
Parent Focus-Group Protocol	60	1	1	60

Estimated Total Annual Burden Hours: 420.

Authority: 42 U.S.C. 9858(a)(5).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–20307 Filed 9–18–19; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4048]

Safer Technologies Program for Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; 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 the draft guidance entitled ''Safer Technologies Program for Medical Devices.'' This draft guidance describes a new, voluntary program for certain medical devices and device-led combination products that are reasonably expected to significantly improve the safety of currently available treatments or diagnostics that target an underlying disease or condition associated with morbidities and mortalities less serious than those eligible for the Breakthrough Devices Program. Devices and device-led combination products are eligible for this program if they are subject to review under a premarket approval application (PMA), De Novo classification request (''De Novo request''), or premarket notification (510(k)). Consistent with the Agency's statutory mission to protect and promote public health, FDA believes that this ''Safer Technologies Program'' or ''STeP'' will help patients have more timely access to these medical devices and device-led combination products by expediting their development, assessment, and review, while preserving the statutory standards for premarket approval, De Novo marketing authorization, and 510(k) clearance. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 18, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the

instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–4048 for ''Safer Technologies Program for Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Safer Technologies Program for Medical Devices'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Maureen Dreher, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1545, Silver Spring, MD 20993–0002, 301–796–2505; 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, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is introducing a new, voluntary program for certain medical devices and device-led combination products that are reasonably expected to significantly improve the safety of currently available treatments or diagnostics that target an underlying disease or condition associated with morbidities and mortalities less serious than those eligible for the Breakthrough Devices Program; for example, this may include devices treating or diagnosing non-life-threatening or reasonably reversible conditions. Devices and device-led combination products are eligible for this program if they are subject to review under a premarket approval application (PMA), De Novo classification request (''De Novo request''), or premarket notification (510(k)). Consistent with the Agency's statutory mission to protect and promote public health, FDA believes that this ''Safer Technologies Program'' or ''STeP'' will help patients have more timely access to these medical devices and device-led combination products by expediting their development, assessment, and review, while preserving the statutory standards for premarket approval, De Novo marketing authorization, and 510(k) clearance. FDA has modeled STeP on the key principles and features of FDA's Breakthrough Devices Program as mandated in section 515B of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360e–3) and further described in the FDA guidance document entitled ''Breakthrough Devices Program''.[1] As resources permit, FDA intends for STeP to incorporate similar features offered under the Breakthrough Devices Program, such as interactive and timely communications, early engagement on Data Development Plans, prioritized review, and senior management engagement.

FDA recognizes and anticipates that the Agency may need up to 60 days to perform activities to operationalize this STeP following issuance of the final guidance. FDA does not intend to accept requests for inclusion in STeP within this time period.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

[1] *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/breakthrough-devices-program.*

The draft guidance, when finalized, will represent the current thinking of FDA on Safer Technologies Program for Medical Devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Safer Technologies Program for Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 19001 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
814, subparts A through E	Premarket Approval	0910–0231
812	Investigational Device Exemption	0910–0078
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo Classification Process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756

Dated: September 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20322 Filed 9–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0008]

Citizen Petitions and Petitions for Stay of Action Subject to the Federal Food, Drug, and Cosmetic Act; 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 ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' Among other things, this guidance provides FDA's current thinking on what constitutes a 505(q) petition and describes some of the considerations that FDA will take into account in determining whether a petition is submitted with the primary purpose of delaying the approval of an application. This guidance finalizes the draft guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' issued in October 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on September 19, 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–2009–D–0008 for ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential

information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. 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: Kim Thomas, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6282, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' This guidance provides information regarding FDA's current thinking on interpreting section 505(q) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(q)). Section 505(q) of the FD&C Act governs certain citizen petitions and petitions for stay of Agency action that request that FDA take any form of action related to a pending application submitted under (1) section 505(b)(2) of the FD&C Act (referred to in this document as a 505(b)(2) application), (2) section 505(j) of the FD&C Act (referred to in this document as an abbreviated new drug application (ANDA)), or (3) section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)) (referred to in this document as a 351(k) application).

This guidance describes FDA's interpretation of section 505(q) of the FD&C Act regarding how the Agency determines (1) if the provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of Agency action (collectively, petitions) apply to a particular petition and (2) if a petition would delay approval of a pending ANDA, 505(b)(2) application, or 351(k) application. This guidance also describes how FDA interprets the provisions of section 505(q) requiring that (1) a petition include a certification and (2) supplemental information or comments on a petition include a verification. It also addresses the relationship between the review of petitions and pending ANDAs, 505(b)(2) applications, and 351(k) applications for which the Agency has not yet made a decision on approvability. In addition, this guidance describes some of the considerations that FDA will take into account in determining whether a petition is submitted with the primary purpose of delaying the approval of an application under section 505(q)(1)(E) of the FD&C Act.

This guidance supersedes the guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act,'' issued in November 2014, and finalizes the draft guidance announced in the **Federal Register** of October 3, 2018 (83 FR 49935). In that **Federal Register** notice, FDA gave interested parties an opportunity to submit comments by December 3, 2018, to ensure that FDA considers the comments before beginning work on the final version of the guidance. FDA received a number of comments on the draft guidance. FDA has considered the comments and made clarifying revisions to the draft guidance.

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 ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 10.20, 10.30, and 10.35 have been approved under OMB control number 0910–0191; the collections of information in 21 CFR 10.31 have been approved under OMB control number 0910–0679; and the collections of information in 21 CFR 314.54, 314.94, and 314.102 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: September 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20312 Filed 9–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0578]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information relating to general licensing provisions for biologics license applications (BLAs), changes to an approved application, labeling, revocation and suspension, postmarketing studies status reports, and Form FDA 356h.

DATES: Submit electronic or written comments on the collection of information by November 18, 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 November 18, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 18, 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: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://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 *http://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–2013–N–0578 for ''General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h.'' 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 *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 *http://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 *http://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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *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, including each proposed extension of an existing 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.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

OMB Control Number 0910–0338—Extension

Under section 351 of the Public Health Services Act (PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to ensure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601).

Section 130(a) of the Food and Drug Administration Modernization Act (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a new provision (section 506B of the FD&C Act (21 U.S.C. 356b)) requiring reports of postmarketing studies for approved human drugs and licensed biological products. Section 506B of the FD&C Act provides FDA with additional authority to monitor the progress of postmarketing studies that applicants have made a commitment to conduct and requires the Agency to make publicly available information that pertains to the status of these studies. Under section 506B(a) of the FD&C Act, applicants that have committed to conduct a postmarketing study for an approved human drug or licensed biological product must submit to FDA a status report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the application and then annually until the study is completed or terminated.

A summary of the collection of information requirements follows:

Section 601.2(a) requires a manufacturer of a biological product to submit an application on forms prescribed for such purposes with accompanying data and information, including certain labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimate for these regulations is included in the estimate under § 601.2(a) in table 1.

Section 601.5(a) requires a manufacturer to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires the manufacturer to notify selling agents and distributors upon suspension of its license, and provide FDA of such notification.

Section 601.12(a)(2) requires, generally, that the holder of an approved BLA must assess the effects of a manufacturing change before distributing a biological product made with the change. Section 601.12(a)(4) requires, generally, that the applicant must promptly revise all promotional labeling and advertising to make it consistent with any labeling changes implemented. Section 601.12(a)(5) requires the applicant to include a list of all changes contained in the supplement or annual report; for supplements, this list must be provided in the cover letter. The burden estimates for § 601.12(a)(2) are included in the estimates for supplements (§§ 601.12(b) and (c)) and annual reports (§ 601.12(d)). The burden estimates for § 601.12(a)(4) are included in the estimates under 601.12(f)(4) in table 1.

Sections 601.12(b)(1) and (3), (c)(1), (3), and (5), and (d)(1) and (3) require applicants to follow specific procedures to submit information to FDA of any changes, in the product, production process, quality controls, equipment, facilities, or responsible personnel established in an approved license application. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the identity, strength, quality, purity, or potency of the products as they may relate to the safety or effectiveness of the product. Under § 601.12(b)(4), an applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship of the applicant. The burden estimate for § 601.12(b)(4) is minimal and included in the estimate under § 601.12(b)(1) and (3) in table 1.

Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1) through (3) requires applicants to follow specific procedures to report certain labeling changes to FDA. Section 601.12(f)(4) requires applicants to report to FDA advertising and promotional labeling and any changes.

Under § 601.14, the content of labeling required in 21 CFR 201.100(d)(3) must be in electronic format and in a form that FDA can process, review, and archive. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f). The burden estimate for § 601.14 is minimal and included in the estimate under §§ 601.2(a) (BLAs) and 601.12(f)(1) through (3) (labeling supplements and annual reports) in table 1.

Section 601.45 requires applicants of biological products for serious or life-threatening illnesses to submit to the Agency for consideration, during the preapproval review period, copies of all promotional materials, including promotional labeling as well as advertisements.

In addition to §§ 601.2 and 601.12, there are other regulations in 21 CFR parts 640, 660, and 680 that relate to information to be submitted in a license application or supplement for certain blood or allergenic products as follows: §§ 640.6; 640.17; 640.21(c); 640.22(c); 640.25(c); 640.56(c); 640.64(c); 640.74(a) and (b)(2); 660.51(a)(4); and 680.1(b)(2)(iii) and (d).

In table 1, the burden associated with the information collection requirements in the applicable regulations is included in the burden estimate for §§ 601.2 and/or 601.12. A regulation may be listed under more than one subsection of § 601.12 due to the type of category under which a change to an approved application may be submitted.

There are also additional container and/or package labeling requirements for certain licensed biological products including: § 640.74(b)(3) and (4) for Source Plasma Liquid; § 640.84(a) and (c) for Albumin; § 640.94(a) for Plasma Protein Fraction; § 660.2(c) for Antibody to Hepatitis B Surface Antigen; § 660.28(a), (b), and (c) for Blood Grouping Reagent; § 660.35(a) through (d) for Reagent Red Blood Cells; § 660.45 for Hepatitis B Surface Antigen; and § 660.55(a) and (b) for Anti-Human Globulin. The burden associated with the additional labeling requirements for

submission of a license application for these certain biological products is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.65 or 21 CFR 809.10. Therefore, the burden estimates for these regulations are included in the estimate under §§ 610.60 through 610.65 in table 1. The burden estimates associated with § 809.10 are approved under OMB control number 0910–0485.

Section 601.27(a) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that an applicant may request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a) until after licensing the product for use in adults. Section 601.27(c) provides that an applicant may request a full or partial waiver of the requirements under § 601.27(a) with adequate justification. The burden estimates for § 601.27(a) are included in the burden estimate under § 601.2(a) in table 1 since these regulations deal with information to be provided in an application.

Section 601.28 requires sponsors of licensed biological products to submit the information in § 601.28(a)–(c) to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drug Evaluation and Research (CDER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant. If the postmarketing studies were required or agreed to, the status of these studies is to be reported under § 601.70 rather than under this section.

Sections 601.33 through 601.35 clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use. The burden estimates for §§ 601.33 through 601.35 are included in the burden estimate under § 601.2(a) in table 1 since these regulations deal with information to be provided in an application.

Section 601.70 (b) requires each applicant of a licensed biological product to submit annually a report to FDA on the status of postmarketing studies for each approved product application. Each annual postmarketing status report must be accompanied by a completed transmittal Form FDA 2252 (Form FDA 2252 approved under OMB control number 0910–0001). Under § 601.70(d), two copies of the annual report shall be submitted to FDA.

Sections 601.91 through 601.94 concern biological products for which human efficacy studies are not ethical or feasible. Section 601.91(b)(2) requires, in certain circumstances, such postmarking restrictions as are needed to ensure the safe use of the biological product. Section 601.91(b)(3) requires applicants to prepare and provide labeling with relevant information to patients or potential patients for biological products approved under part 601, subpart H, when human efficacy studies are not ethical or feasible (or based on evidence of effectiveness from studies in animals). Section 601.93 provides that biological products approved under subpart H are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products. Section 601.94 requires applicants under subpart H to submit to the Agency for consideration during preapproval review period copies of all promotional materials including promotional labeling as well as advertisements. Under §§ 601.91(b)(2) and 601.93, any potential postmarketing reports and/or recordkeeping burdens would be included under the adverse experience reporting (AER) requirements under 21 CFR part 600 (OMB control number 0910–0308). Therefore, any burdens associated with these requirements would be reported under the AER information collection requirements (OMB control number 0910–0308). The burden estimate for § 601.91(b)(3) is included in the estimate under §§ 610.60 through 610.65.

Section 610.9(a) requires the applicant to present certain information, in the form of a license application or supplement to the application, for a modification of any particular test method or manufacturing process or the conditions which it is conducted under the biologics regulations. The burden estimate for § 610.9(a) is included in the estimate under §§ 601.2(a) and 601.12(b) and (c) in table 1.

Under § 610.15(d), the Director of CBER or the Director of CDER may approve, as appropriate, a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. Manufacturers seeking approval of an exception or alternative must submit a request in writing with a brief statement describing the basis for the request and the supporting data.

Section 640.120 requires licensed establishments to submit a request for an exception or alternative to any requirement in the biologics regulations regarding blood, blood components, or blood products. For licensed establishments, a request for an exception or alternative must be submitted in accordance with § 601.12; therefore, the burden estimate for § 640.120 is included in the estimate under § 601.12(b) in table 1.

Section 680.1(c) requires manufacturers to update annually their license file with the list of source materials and the suppliers of the materials. Section 680.1(b)(3)(iv) requires manufacturers to notify FDA when certain diseases are detected in source materials.

Sections 600.15(b) and 610.53(b) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 606.110(b) (21 CFR 606.110(b)) requires the submission of a request for approval to perform plasmapheresis of donors who do not meet certain donor requirements for the collection of plasma containing rare antibodies. Under §§ 600.15(b), 610.53(b), and 606.110(b), a request for an exemption or modification to the requirements would be submitted as a supplement. Therefore, the burden hours for any submissions under §§ 600.15(b), 610.53(d), and 606.110(b) are included in the estimates under § 601.12(b) in table 1.

Form FDA 356h, ''Application to Market a New or Abbreviated New Drug or Biologic for Human Use,'' is used for the applicable submissions to both CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit certain information to FDA and helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. In addition, the form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. FDA

estimates an average of 24 hours to complete the application form which is included in the average burden per response. The estimated burden hours for nonbiological product submissions to CDER using FDA Form 356h are approved under OMB control number 0910–0001 (an estimated 16,650 submissions × 24 hours = 399,600 hours).

For advertisements and promotional labeling (*e.g.,* circulars, package labels, container labels, etc.) and labeling changes, manufacturers of licensed biological products may submit to CBER or CDER Form FDA 2253. Form FDA 2253 can also be submitted electronically. Form FDA 2253 is approved under OMB control number 0910–0001.

Respondents to this collection of information are manufacturers of biological products. Under table 1, the numbers of respondents are based on the estimated annual number of manufacturers that submitted the required information to FDA or the number of submissions FDA received in fiscal year 2018. Based on information obtained from FDA's database systems, there are an estimated 424 licensed biologics manufacturers. The total annual responses are based on the estimated number of submissions (*i.e.,* license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided below as necessary.

Under §§ 601.2 and 601.12, the estimated hours per response are based on the average number of hours to submit the various submissions. The estimated average number of hours is based on the range of hours to complete a very basic application or supplement and a complex application or supplement.

Under section 601.6(a), the total annual responses are based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension, and provide FDA of such notification. The number of respondents is based on the estimated annual number of suspensions of a biologic license. In table 1, FDA is estimating one in case a suspension occurs.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use Form FDA 2253 to submit advertising and promotional labeling (which can include multiple pieces). Based on information obtained from FDA's database system, the estimate is based on the number of submissions received using Form FDA 2253 for advertising and promotional labeling.

Under §§ 601.28 and 601.70(b), FDA estimates that it takes an applicant approximately 24 hours (8 hours per study × 3 studies) annually to gather, complete, and submit the appropriate information for each postmarketing status report (approximately 2 to 4 studies per report) and the accompanied transmittal Form FDA 2252. Included in these 24 hours is the time necessary to prepare and submit two copies of the annual progress report of postmarketing studies to FDA under § 601.70(d).

Under § 610.15(d), FDA has received no submissions since the implementation of the final rule in April 2011. Therefore, FDA is estimating one respondent and one annual request to account for a possible submission to CBER or CDER of a request for an exception or alternative for constituent materials under § 610.15(d).

There were a total of 3,398 amendments to an unapproved application or supplement and resubmissions submitted using Form FDA 356h.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [10]
601.2(a),[2] 610.60 through 610.65 [3]	356h	36	1.28	46	860	39,560
601.5(a)	NA	8	1.13	9	0.33 (20 minutes)	3
601.6(a)	NA	1	1	1	0.33 (20 minutes)	1
601.12(a)(5)	NA	430	4.158	1,788	1	1,788
601.12(b)(1)/(b)(3)/(e) [4]	356h [2]	166	4.843	804	80	64,320
601.12(c)(1)/(c)(3) [5]	356h [2]	149	4.58	682	50	34,100
601.12(c)(5)	356h [2]	7	1.14	8	50	400
601.12(d)(1)/(d)(3) [6]/(f)(3) [8]	356h [2]	245	3.575	876	24	21,024
601.12(f)(1) [7]	2253	65	3.169	206	40	8,240
601.12(f)(2) [7]	2253	43	2.05	88	20	1,760
601.12(f)(4)/601.45 [9]	2253	134	145.86	19,545	10	195,450
601.27(b)	NA	12	1.08	13	24	312
601.27(c)	NA	2	1	2	8	16
601.70(b) and (d)/601.28	2252	65	3.169	206	24	4,944
610.15(d)	NA	1	1	1	1	1
680.1(c)	NA	9	1	9	2	18
680.1(b)(3)(iv)	NA	1	1	1	2	2
Amendments/Resubmissions	356h	136	24.985	3,398	20	67,960
Total						439,899

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The reporting requirements under §§ 601.14, 601.27(a), 601.33, 601.34, 601.35, 610.9(a), 640.17, 640.25(c), 640.56(c), 640.74(b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) are included in the estimate under § 601.2(a).

[3] The reporting requirements under §§ 601.93(b)(3), 640.74(b)(3) and (4), 640.84(a) and (c), 640.94(a), 660.2(c), 660.28(a), (b), and (c), 660.35(a) through (d), 660.45, and 660.55(a) and (b) are included under §§ 610.60 through 610.65.

[4] The reporting requirements under §§ 601.12(a)(2) and (b)(4), 600.15(b), 610.9(a), 610.53(b), 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 640.120, and 680.1(d) are included in the estimate under § 601.12(b).

[5] The reporting requirements under §§ 601.12(a)(2), 610.9(a), 640.17, 640.25(c), 640.56(c), and 640.74(b)(2) are included in the estimate under § 601.12(c).

[6] The reporting requirement under § 601.12(a)(2) is included in the estimate under § 601.12(d).
[7] The reporting requirement under § 601.14 is included in the estimate under § 601.12(f)(1) and (2).
[8] The reporting requirement under §§ 601.12(a)(4) and 601.14 is included in the estimate under § 601.12(f)(3).
[9] The reporting requirement under § 601.94 is included in the estimate under § 601.45.
[10] The numbers in this column have been rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Annual disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
601.6(a)	1	20	20	0.33 (20 minutes)	7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The number is this column have been rounded to the nearest whole number.

Our estimated burden for the information collection reflects an overall increase of 105,948 hours and a corresponding decrease of 2,671 responses. We attribute this adjustment in the total hours to an increase in the number of submissions we have received under §§ 601.12(f)(4) and 601.45 and §§ 601.12(b)(1), (b)(3), and (e) over the last few years. We attribute the decrease in total annual responses to a decrease in responses received under §§ 601.12(a)(5) and 601.27(b) over the last few years.

Dated: September 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20328 Filed 9–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3277]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of Zika Virus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Luminex Corp., for the xMAP MultiFLEX Zika RNA Assay. FDA revoked this Authorization on July 3, 2019, under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as requested by Luminex Corp. by a letter dated June 18, 2019. The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization is revoked as of July 3, 2019.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3), as amended by the Project BioShield Act of 2004 (Pub. L. 108–276), and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On August 4, 2016, FDA issued an EUA to Luminex Corp. for the xMAP MultiFLEX Zika RNA Assay, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on October 28, 2016 (81 FR 75092), as required by section 564(h)(1) of the FD&C Act. In response to requests from Luminex Corp., the EUA was amended on January 7, 2017, and May 19, 2017. Under section 564(g)(2) of the FD&C Act, the Secretary of HHS may revoke an EUA if, among other things, the criteria for issuance are no longer met or other circumstances make such revocation appropriate to protect the public health or safety.

II. EUA Revocation Request for an In Vitro Diagnostic Device for Detection of the Zika Virus

On June 18, 2019, Luminex Corp. requested, and on July 3, 2019, FDA revoked, the EUA for the xMAP MultiFLEX Zika RNA Assay because the product will no longer be marketed, and these circumstances make revocation appropriate to protect the public health or safety.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov/.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for Luminex Corp.'s xMAP MultiFLEX Zika RNA Assay. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

U.S. FOOD & DRUG ADMINISTRATION

July 3, 2019

Ronald Dunn
Vice President Global Regulatory and Clinical Affairs
Luminex Corporation
12212 Technology Blvd.
Austin, TX 78727

Dear Mr. Dunn:

This letter is in response to Luminex Corporation's ("Luminex's") request dated June 18, 2019, that the Food and Drug Administration (FDA) withdraw the Emergency Use Authorization (EUA160015) for emergency use of the xMAP MultiFLEX Zika RNA Assay issued on August 4, 2016, and amended on January 7, 2017, and May 19, 2017. Luminex has decided to discontinue manufacture of the product and indicated that there are currently no lots of product in the field, all inventory is expired and Luminex will not manufacture additional lots.

Accordingly, FDA revokes EUA160015 for emergency use of the xMAP MultiFLEX Zika RNA Assay, under section 564(g)(2) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3(g)(2)). The product will no longer be marketed, and these circumstances make revocation appropriate to protect the public health or safety. As of the date of this letter, the xMAP MultiFLEX Zika RNA Assay that was authorized by FDA for use by clinical laboratories for the qualitative detection of RNA from Zika virus is no longer authorized by FDA.

FDA encourages Luminex to instruct laboratories to discontinue use of and discard any remaining inventory immediately.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: September 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20327 Filed 9–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/Fellow FTE Chart

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than October 21, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/Fellow FTE Chart OMB No. 0915–0367 − Extension

Abstract: THCGME Program, Section 340H of the Public Health Service Act, was established by Section 5508 of Public Law 111–148. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) provided continued funding for the THCGME Program. THCGME Program awards payment for both direct and indirect expenses to support training for primary care residents in community-based ambulatory patient care settings. THCGME Program Eligible Resident/Fellow Full-Time Equivalents (FTE) Chart, published in the THCGME Notice of Funding Opportunity (NOFO), is a means for determining the number of eligible resident/fellow FTE's in an applicant's primary care residency program.

A 60-day notice was published in the **Federal Register** on June 19, 2019, vol. 84, No. 118; pp. 28559—60. There were no public comments.

Need and Proposed Use of the Information: THCGME Program Eligible Resident/Fellow FTE Chart requires applicants to provide: (a) Data related to the size and/or growth of the residency program over previous academic years, (b) the number of residents enrolled in the program during the baseline academic year, and (c) a projection of the program's proposed expansion over the next five academic years. It is imperative that applicants complete this chart to quantify the total supported residents. THCGME funding is used to support an expanded number of residents in a residency program, to establish a new residency training program, or to maintain filled positions at existing programs. Utilization of a chart to gather this important information has decreased the number of errors in the eligibility review process resulting in a more accurate review and funding process, and comports with the regulatory requirement imposed by 45 CFR 75.206(a) ''Standard application requirements, including forms for applying for HHS financial assistance, and state plans.''

Likely Respondents: Teaching Health Centers applying for THCGME funding through a THCGME NOFO process, which may include new applicants and existing awardees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
THCGME Program Eligible Resident/Fellow FTE Chart	90	1	90	1	90
Total	90	.....	90	.....	90

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–20244 Filed 9–18–19; 8:45 am]

BILLING CODE 4165–15–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; The NIDDK-KUH Fellowship Review Committee.

Date: October 4, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Warwick Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Xiaodu Guo, M.D., Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK-D Member Conflict.

Date: October 4, 2019.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Warwick Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Xiaodu, Guo, M.D., Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Diabetes, Endocrinology and Metabolic Diseases.

Date: October 7, 2019.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK-B Conflicts.

Date: October 7, 2019.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK-C Member Conflicts.

Date: October 18, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@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: September 12, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20208 Filed 9–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Clinician Scientist K08 and K23 Review.

Date: September 30, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 13, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20206 Filed 9–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel: Career Development in K Applications I.

Date: October 8, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive,

Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Laura A., Thomas, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Career Development in K Applications II.

Date: October 15, 2019.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Virtual Meeting).

Contact Person: Laura A., Thomas, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Ruth L. Kirschstein National Research Service Award Institutional Research Training Grants.

Date: October 30, 2019.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfield Inn and Suites Durham Southpoint, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Division of Extramural Research and Training (DERT), National Institute of Environmental Health Sciences, Keystone Building, Durham NC 27713.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 12, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20205 Filed 9–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: October 17, 2019.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Chittari V Shivakumar, Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

Date: October 17, 2019.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Allerton Chicago, 701 N Michigan Avenue, Chicago, IL 60611.

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 E. Wacker Driver, Chicago, IL 60601.

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: October 17, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 13, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20207 Filed 9–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4457–DR; Docket ID FEMA–2019–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4457–DR), dated August 15, 2019, and related determinations.

DATES: The declaration was issued August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 15, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe storm and flooding during the period of July 11 to July 12, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James McPherson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Grafton County for Public Assistance.

All areas within the State of New Hampshire are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20275 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4456–DR; Docket ID FEMA–2019–0001]

Muscogee (Creek) Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Muscogee (Creek) Nation (FEMA–4456–DR), dated August 7, 2019, and related determinations.

DATES: The declaration was issued August 7, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 7, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Muscogee (Creek) Nation resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of May 7 to June 9, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Muscogee (Creek) Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Muscogee (Creek) Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benjamin D. Abbott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Muscogee (Creek) Nation for Public Assistance.

The Muscogee (Creek) Nation is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20281 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3419–EM; Docket ID FEMA–2019–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3419–EM), dated August 30, 2019, and related determinations.

DATES: This amendment was issued September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 9, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20288 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3421–EM; Docket ID FEMA–2019–0001]

South Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of South Carolina (FEMA–3421–EM), dated September 1, 2019, and related determinations.

DATES: This amendment was issued September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 6, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20290 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3419–EM; Docket ID FEMA–2019–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3419–EM), dated August 30, 2019, and related determinations.

DATES: The declaration was issued August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 30, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Florida resulting from Hurricane Dorian beginning on August 28, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

All 67 counties in the State of Florida for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20297 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3420–EM; Docket ID FEMA–2019–0001]

Seminole Tribe of Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Seminole Tribe of Florida (FEMA–3420–EM), dated August 31, 2019, and related determinations.

DATES: This amendment was issued September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 4, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20289 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4337–DR; Docket ID FEMA–2019–0001]

Florida; Amendment No. 18 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–4337–DR), dated September 10, 2017, and related determinations.

DATES: This amendment was issued August 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2019, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Pete Gaynor, Acting Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Irma during the period of September 4 to October 18, 2017, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of September 10, 2017, and October 2, 2017, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs, except assistance previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20293 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4458–DR; Docket ID FEMA–2019–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4458–DR), dated August 27, 2019, and related determinations.

DATES: The declaration was issued August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Barry during the period of July 10 to July 15, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Allen, Iberia, Lafourche, Plaquemines, St. Mary, Terrebonne, and Vermillion Parishes for Public Assistance.

Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Jefferson, Orleans, St. Charles, St. Helena, St. John the Baptist, Tangipahoa, and West Feliciana Parishes for debris removal and emergency protective measures (Categories A and B), including direct federal assistance.

All areas within the State of Louisiana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20283 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3398–EM; Docket ID FEMA–2019–0001]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3398–EM), dated July 28, 2018, and related determinations.

DATES: This amendment was issued August 28, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 19, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20285 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3420–EM; Docket ID FEMA–2019–0001]

Seminole Tribe of Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Seminole Tribe of Florida (FEMA–3420–EM), dated August 31, 2019, and related determinations.

DATES: The declaration was issued August 31, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 31, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the lands associated with the Seminole Tribe of Florida resulting from Hurricane Dorian beginning on August 28, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists for the Seminole Tribe of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas have been designated as adversely affected by this declared emergency:

The Seminole Tribe of Florida for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20298 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3417–EM; Docket ID FEMA–2019–0001]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3417–EM), dated August 27, 2019, and related determinations.

DATES: The declaration was issued August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Puerto Rico resulting from Tropical Storm Dorian beginning on August 26, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

All municipalities in the Commonwealth of Puerto Rico for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20294 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3417–EM; Docket ID FEMA–2019–0001]

Puerto Rico; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Puerto Rico (FEMA–3417–EM), dated August 27, 2019, and related determinations.

DATES: This amendment was issued September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 6, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20287 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3422–EM; Docket ID FEMA–2019–0001]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3422–EM), dated September 1, 2019, and related determinations.

DATES: The declaration was issued September 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia resulting from Hurricane Dorian beginning on August 29, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Georgia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Georgia have been designated as adversely affected by this declared emergency:

Brantley, Bryan, Camden, Charlton, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, Pierce, and Wayne Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20300 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3418–EM; Docket ID FEMA–2019–0001]

Virgin Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the territory of the U.S. Virgin Islands (FEMA–3418–EM), dated August 28, 2019, and related determinations.

DATES: The declaration was issued August 28, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the territory of the U.S. Virgin Islands resulting from Hurricane Dorian beginning on August 26, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the territory of the U.S. Virgin Islands.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Seamus K. Leary, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this declared emergency:

All islands in the territory of the U. S. Virgin Islands for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20296 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3421–EM; Docket ID FEMA–2019–0001]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3421–EM), dated September 1, 2019, and related determinations.

DATES: The declaration was issued September 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from Hurricane Dorian beginning on August 31, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

All 46 counties and the Catawba Indian Nation for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20299 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4455–DR; Docket ID FEMA–2019–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4455–DR), dated August 2, 2019, and related determinations.

DATES: The declaration was issued August 2, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of June 29 to June 30, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jason Burroughs, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Grant, Pendleton, Preston, Randolph, and Tucker Counties for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20278 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4459–DR; Docket ID FEMA–2019–0001]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–4459–DR), dated August 27, 2019, and related determinations.

DATES: The declaration was issued August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of July 18 to July 20, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Barron, Clark, Forest, La Crosse, Langlade, Menominee, Monroe, Oconto, Oneida, Outagamie, Polk, Portage, Rusk, Shawano, Vernon, Waupaca, and Wood Counties and the Menominee Indian Tribe of Wisconsin and the St. Croix Chippewa Indians of Wisconsin for Public Assistance.

All areas within the State of Wisconsin are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20284 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3415–EM; Docket ID FEMA–2019–0001]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3415–EM), dated July 8, 2019, and related determinations.

DATES: This amendment was issued August 28, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective July 12, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–20286 Filed 9–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6164–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2019

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2019 and ending on June 30, 2019.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Acting Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410–0500, telephone 202–708–5300 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2019.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2019 through June 30, 2019. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in

time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2019) before the next report is published (the third quarter of calendar year 2019), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 12, 2019.

J. Paul Compton Jr.,

General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2019 through June 30, 2019

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Fair Housing and Equal Opportunity.

III. Regulatory waivers granted by the Government National Mortgage Association

IV. Regulatory waivers granted by the Office of Housing.

V. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* Section II.B.3.a of the NSP Unified Notice.

Project/Activity: State of West Virginia's Request to Amend Affordability Period for eight Units.

Nature of Requirement: Consistent with the Housing and Economic Recovery Act of 2008 (HERA), which authorized NSP, the Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, at 75 FR 64322, requires NSP grantees to ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental or redevelopment of abandoned and foreclosed NSP-assisted homes and residential properties remain affordable to individuals or families whose incomes do not exceed 120% of area median income. Further, the Notice, at section II.B.3.a, states grants must adopt, at a minimum, the HOME program standards in 24 CFR part 92 to comply with the continued affordability requirement.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: This waiver will allow the state of West Virginia, using CDBG–DR funds, to redevelop the ground floor of a flooded NSP building for commercial or other non-residential uses. This will enable the state to lift the requirement that the first floor units remain residential, which could put them at risk for another flood. The state will also repair the utilities so that the third floor can once again serve as affordable housing, and will develop eight new affordable housing units at a different site.

Contact: John Laswick, Deputy Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–4521.

• *Regulation:* 24 CFR 51.104(b)(2).

Project/Activity: Delamarre Apartments—Celebration, Florida. The construction of a mixed-use project to create 379 housing units of market-rate housing and a clubhouse under HUD's Section 221(d)(4) mortgage insurance program.

Nature of Requirement: The regulation at 24 CFR 51.104(b)(2) requires an environmental impact statement for projects in unacceptable noise zones. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts 50.

Granted By: David C. Woll, Jr. Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: June 12, 2019.

Reason Waived: The project will further the HUD mission and will advance HUD program goals to develop viable, sustainable communities and affordable housing. The construction of the units will adequately protect the interiors, and outdoor, noise-sensitive uses will be protected by noise barriers to ensure HUD's exterior noise goal. Based on the environmental assessments, no adverse environmental impact will result from this development in an unacceptable noise zone.

Contact: Marcel Tchaou, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development 451 Seventh Street SW, Room 7212, Washington, DC 20410, telephone (202) 402–7077.

• *Regulation:* 24 CFR 91.105(c)(2); 24 CFR 91.105(k) and 24 CFR 91.115(c)(2) and 24 CFR 91.115(i)—30-day Public Comment Period for Consolidated Plan Amendment.

Project/Activity: Hurricane Michael and subsequent flooding caused substantial damage to neighborhoods throughout Florida's Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Taylor, Wakulla, and Washington counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the Emergency Solutions Grants (ESG) Program and families eligible to receive ESG assistance. The state has inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

On October 19, 2018, the aforementioned Florida counties were included in a major disaster declaration (FEMA–DR–4399) under Title IV of the Stafford Act.

Nature of Requirement: An ESG Program recipient may amend an approved consolidated plan in accordance with 24 CFR 91.505. Substantial amendments to the consolidated plan, such as the addition of new activities or a change in the use of ESG Program funds from one eligible activity to another, are subject to the citizen participation process in the recipient's citizen participation plan. The citizen participation plan must provide citizens with 30 days to comment on substantial amendments.

Regulations at 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115 (c)(2) and (i) set forth the citizen participation plan requirements for local governments and states, respectively. For substantial amendments to the consolidated plan, the regulations require the recipient to follow its citizen participation plan to provide citizens, for both local government and state plans, and units of general local government, for state plans, with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: Given the need to expedite actions to respond to the disaster, HUD waives the 30-day public comment requirement of 24 CFR 91.105(c)(2) and (k) and 91.115(c)(2) and (i) and reduces the public comment period to seven days. In reducing the comment period to seven days, HUD is balancing the need to quickly assist families dealing with the aftereffects of the hurricane while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of ESG Program funds.

In addition, HUD recognizes that the destruction wrought by Hurricane Michael makes it difficult for the recipient to provide notice to citizens in accordance with its citizen participation plan. Therefore, HUD waives 24 CFR 91.105(c)(2) and (k) and 91.115(c)(2) and (i) to allow the recipient to determine what constitutes reasonable notice and opportunity to comment.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 91.105(c)(2); 24 CFR 91.105(k) and 24 CFR 91.115(c)(2) and 24 CFR 91.115(i)—30-day Public Comment Period for Consolidated Plan Amendment.

Project/Activity: The California wildfires caused substantial damage to neighborhoods throughout Butte, Los Angeles, and Ventura counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the ESG Program and families eligible to receive ESG assistance. The state inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

Nature of Requirement: An ESG Program recipient may amend an approved consolidated plan in accordance with 24 CFR 91.505. Substantial amendments to the consolidated plan, such as the addition of new activities or a change in the use of ESG Program funds from one eligible activity to another, are subject to the citizen participation process in the recipient's citizen participation plan. The citizen participation plan must provide citizens with 30 days to comment on substantial amendments.

Regulations at 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115 (c)(2) and (i) set forth the citizen participation plan requirements for local governments and states, respectively. For substantial amendments to the consolidated plan, the regulations require the recipient to follow its citizen participation plan to provide citizens, for both local government and state plans, and units of general local government, for state plans, with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: Given the need to expedite actions to respond to the disaster, HUD waives the 30-day public comment requirement of 24 CFR 91.105(c)(2) and (k) and 91.115(c)(2) and (i) and reduces the public comment period to seven days. In reducing the comment period to seven days, HUD is balancing the need to quickly assist families dealing with the aftereffects of the wildfires while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of ESG Program funds.

In addition, HUD recognizes that the destruction wrought by the California wildfires makes it difficult for the recipient to provide notice to citizens in accordance with its citizen participation plan. Therefore, HUD waives 24 CFR 91.105(c)(2) and (k) and 91.115(c)(2) and (i) to allow the recipient to determine what constitutes reasonable notice and opportunity to comment.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 91.105(c)(2) and 24 CFR 91.115(i).

Project/Activity: Northern Mariana Islands' Plan Amendments for use of CDBG funding.

Nature of Requirement: The citizen participation plan (part of the Consolidated Plan) must provide residents and units of general local government with reasonable notice and an opportunity to comment on consolidated plan substantial amendments. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment before the consolidated plan substantial amendment is implemented. The waiver reduced this period to not less than seven days.

Granted By: David C. Woll, Jr., Principal Deputy Assistant Secretary, Office of Community Planning and Development.

Date Granted: January 29, 2019.

Reason Waived: In reducing the comment period to seven, HUD is balancing the need to quickly assist families dealing with the after-effects of the tropical storm [FEMA–4404–DR] while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of the Northern Mariana Islands' CDBG funds.

Contact: James Höemann, Deputy Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 91.115(c)(2) and 24 CFR 91.115(i).

Project/Activity: State of Nebraska's Plan Amendments for use of CDBG funding.

Nature of Requirement: The citizen participation plan (part of the Consolidated Plan) must provide residents and units of general local government with reasonable notice and an opportunity to comment on consolidated plan substantial amendments. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment before the consolidated plan substantial amendment is implemented. The waiver reduced this period to not less than seven days.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: In reducing the comment period to seven, HUD is balancing the need to quickly assist families dealing with the after-effects of the flood [DR–4420] while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of the State of Nebraska's CDBG funds.

Contact: James Höemann, Deputy Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: Contra Costa County, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of the utility allowance established by its local public housing agency (PHA) for a HOME-assisted project—St. Paul's Commons.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013.

Granted By: David C. Woll Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 18, 2019.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 576.106(a); 24 CFR 576.105(a)(5); and 24 CFR 576.105(b)(2)—Term limits on Rental Assistance and Housing Relocation and Stabilization Services.

Project/Activity: Hurricane Michael and subsequent flooding caused substantial damage to neighborhoods throughout Florida's Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Taylor, Wakulla, and Washington counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the ESG Program and families eligible to receive ESG assistance. The state has inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

On October 19, 2018, the aforementioned Florida counties were included in a major disaster declaration (FEMA–DR–4399) under Title IV of the Stafford Act.

Nature of Requirement: The ESG regulation at 24 CFR 576.106(a) prohibits a program participant from receiving more than 24 months of ESG rental assistance during any three-year period. Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing and 24 months while the program participant is living in permanent housing.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: Waiving the 24 month caps on rental assistance, utility payments, and housing stability case management

assistance will assist individuals and families, both those already receiving assistance and those who will receive assistance subsequent to the date of this memorandum to maintain stable permanent housing in place or in another area and help them return to their hometowns, as desired, when additional permanent housing is available.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 576.106(a); 24 CFR 576.105(a)(5); and 24 CFR 576.105(b)(2)—Term limits on Rental Assistance and Housing Relocation and Stabilization Services.

Project/Activity: The California wildfires caused substantial damage to neighborhoods throughout Butte, Los Angeles, and Ventura counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the ESG Program and families eligible to receive ESG assistance. The state inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

Nature of Requirement: The ESG regulation at 24 CFR 576.106(a) prohibits a program participant from receiving more than 24 months of ESG rental assistance during any three-year period. Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing and 24 months while the program participant is living in permanent housing.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: Waiving the 24 month caps on rental assistance, utility payments, and housing stability case management assistance will assist individuals and families, both those already receiving assistance and those who will receive assistance subsequent to the date of this memorandum to maintain stable permanent housing in place or in another area and help them return to their hometowns, as desired, when additional permanent housing is available.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 576.106(d)(1).

Project/Activity: Hurricane Michael and subsequent flooding caused substantial damage to neighborhoods throughout Florida's Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Taylor, Wakulla, and Washington counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the ESG Program and families eligible to receive ESG assistance. The state has inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

On October 19, 2018, the aforementioned Florida counties were included in a major disaster declaration (FEMA–DR–4399) under Title IV of the Stafford Act.

Nature of Requirement: Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: HUD has determined that the rental vacancy rate in affected areas after hurricanes is extraordinarily low. Waiving the FMR restriction will make more units available to individuals and families in need of permanent housing.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 576.106(d)(1).

Project/Activity: The California wildfires caused substantial damage to neighborhoods throughout Butte, Los Angeles, and Ventura counties. Consequently, many individuals and families residing in the declared-disaster area were affected, including the current beneficiaries of the ESG Program and families eligible to receive ESG assistance. The state inquired about the availability of certain regulatory waivers of ESG Program requirements to facilitate recovery and assist individuals and families affected by the disaster.

Nature of Requirement: Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 2, 2019.

Reason Waived: HUD has determined that the rental vacancy rate in affected areas after the wildfires is extraordinarily low. Waiving the FMR restriction will make more units available to individuals and families in need of permanent housing.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

• *Regulation:* 24 CFR 578.23(c)(9) and 24 CFR 578.23(c)(10);

Project/Activity: NY–603—Long Island Continuum of Care (CoC) Program reallocated 11 Permanent Supportive Housing (PSH) projects in the FY 2018 CoC Program Competition, which affects almost 300 program participants—many with disabilities, who face returning to homelessness. The interim rule requires certain documentation requirements and imposes eligibility requirements which severely limits potential available housing options for program participants to transfer into other CoC Program-funded projects.

Nature of Requirement: 24 CFR 578.23(c)(9) and 24 CFR 578.23(c)(10) requires the recipient to sign a grant agreement under which they agree to use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8) and follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9). Section 578.7(a)(9)(v) requires these written standards to include policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 31, 2019.

Reason Waived: The waiver will permit program participants residing in PSH projects defunded in the FY 2018 CoC Program Competition permanent housing to be served by other CoC Program-funded projects by waiving prioritization requirements and allowing program participants to self-certify their homeless status at the time they entered the defunded PSH project.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 578.3 and 24 CFR 578.51(l)(1).

Project/Activity: Family Support Center of South Sound (FSCSS) provides program participants with Rapid Re-Housing (RRH) assistance that includes short- and medium-term rental assistance, ranging from three months to nine months, while also providing supportive services to help increase participant income through employment and the acquisition of mainstream benefits.

Nature of Requirement: The ''permanent housing'' definition at 24 CFR 578.3 and the lease requirement for permanent housing rental assistance at 24 CFR 578.51(l)(1) require program participants to have a lease with an initial term of at least one year, which is renewable for terms that are a minimum of one month long and is terminable only for cause.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 17, 2019.

Reason Waived: FCSS states that the HUD rule requiring a lease term of at least one year creates an unintentional barrier for participant access to available housing units. Between July and December of 2018, FCSS documented a minimum of five households who identified a housing option but were denied by the landlord because of this requirement. Each of these participants had to restart their housing search and their episode of homelessness was extended because shorter lease term options were not allowable.

Waiving these provisions will allow the recipient expedite voucher utilization and better coordinate with landlords in an area with low vacancy rates and housing providers that aren't willing to enter into one-year lease agreements. Program participants residing in rapid re-housing units may enter into leases that have an initial term of less than one year, so long as the leases have an initial term of more than one month, are renewable for terms that are a minimum of one month long and are only terminable for cause.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 578.3 and 24 CFR 578.51(l)(1).

Project/Activity: Home Forward administers six projects that provides permanent supportive housing projects that provide rental assistance on behalf of program participants with disabilities and experiencing chronic homelessness in the Multnomah County, OR region.

Nature of Requirement: The ''permanent housing'' definition at 24 CFR 578.3 and the lease requirement for permanent housing rental assistance at 24 CFR 578.51(l)(1) require program participants to have a lease with an initial term of at least one year, which is renewable for terms that are a minimum of one month long and is terminable only for cause.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 18, 2019.

Reason Waived: This jurisdiction has incredibly low vacancy rates ranging from 2.87 to 4.37 percent over the past couple years. In addition, rents in this area have increased at a rate of 6.37 to 10.5 percent in comparison to a national average of 1.4 to 3.5 percent annually. Finding affordable housing units in a market where many landlords have expressed a preference for entering into lease agreements with terms of less than one year is a challenge. Waiving these provisions will allow the recipient to better coordinate with landlords in an area with low vacancy rates and housing providers that aren't willing to enter into one-year lease agreements. Program participants residing in permanent supportive housing units may enter into leases that have an initial term of less than one year, so long as the leases have an initial term of more than one month, are renewable for terms that are a minimum of one month long and are only terminable for cause.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 578.3 and 24 CFR 578.51(l)(1).

Project/Activity: Los Angeles Homeless Services Authority administers four projects that provides program participants with RRH assistance and supportive services to help increase participant income through employment and the acquisition of mainstream benefits.

Nature of Requirement: The ''permanent housing'' definition at 24 CFR 578.3 and the lease requirement for permanent housing rental assistance at 24 CFR 578.51(l)(1) require program participants to have a lease with an initial term of at least one year, which is renewable for terms that are a minimum of one month long and is terminable only for cause.

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 11, 2019.

Reason Waived: The Los Angeles Metro area is the most cost-burdened in the United States. According to the Joint Center for Housing Studies, 48 percent of all residents in Los Angeles County pay more than 30 percent of their income on rent and 82 percent of the lowest income residents pay more than 50 percent of their income on rent. Additionally, according to the U.S. Census Bureau 2016 American Community Survey, the rental vacancy rate for Los Angeles was 2.0 percent. Landlords are also refusing to accept households experiencing homelessness served by these agencies because of the 12-month lease requirement while they are accepting other households with similar characteristics and backgrounds that are not enrolled in their projects. Waiving these provisions will allow the recipient expedite voucher utilization and better coordinate with landlords in an area with low vacancy rates and housing providers that aren't willing to enter into one-year lease agreements. Program participants residing in rapid re-housing units may enter into leases that have an initial term of less than one year, so long as the leases have an initial term of more than one month, are renewable for terms that are a minimum of one month long and are only terminable for cause.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

• *Regulation:* 24 CFR 578.103(a)(4).

Project/Activity: NY–603–Long Island CoC reallocated 11 Permanent Supportive Housing (PSH) projects in the FY 2018 CoC Program Competition, which affects almost 300 program participants—many with disabilities, who face returning to homelessness. The interim rule requires certain documentation requirements and imposes eligibility requirements which severely limits potential available housing options for program participants to transfer into other CoC Program-funded projects.

Nature of Requirement: This requirement establishes a prescriptive process for verifying and documenting a person's ''chronically homeless'' status and only allows for self-certification if the preferred evidence has proved unobtainable, and the intake worker's due diligence to obtain the preferred evidence has been documented

Granted By: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 31, 2019.

Reason Waived: The prescriptive requirements for verifying and documenting ''chronically homeless'' status were written for persons presenting as chronic homeless at time of initial intake, when the preferred evidence under the rule would most likely be available and obtainable. The requirements were not meant to be applied to years-long residents of permanent supportive housing who only now are being asked for evidence they were chronically homeless when they entered their permanent supportive housing. It seems overly burdensome to require these persons or their intake workers to dig around for the preferred evidence now—as many as ten years after the person was homeless. In this case, the time and costs required to dig up the preferred evidence at this point outweighs the extra assurance any evidence obtainable at this point would provide over a self-certification.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Fair Housing and Equal Opportunity

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR Sec 115.305.

Project/Activity: Fair Housing Assistance Program, Washington, DC.

Nature of Requirement: FHEO is providing an Enforcement Fund under existing SEE fund authority set forth at 24 CFR Sec 115.305 for the purpose of providing financial assistance to FHAP agencies struggling with litigation costs. SEE funds are funds that HUD may provide to a FHAP agency to support enforcement activities of the FHAP agency's fair housing law. SEE funds are limited by regulation to 20 percent of an agency's total FHAP cooperative agreement for the previous contract year.

Granted By: Anne Maria Farías, Assistant Secretary for Fair Housing and Equal Opportunity.

Date Granted: March 25, 2019.

Reason Waived: Waiver of the 20 percent limitation on SEE funds for eligible FHAP

agencies whose total cooperative agreement for fiscal year 2018 was less than $300,000. This allows more meaningful support for small and medium-sized agencies.

Contact: Joseph A. Pelletier, Director, Fair Housing Assistance Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5206, Washington, DC 20410, telephone (202) 402–2126.

III. Regulatory Waivers Granted by the Office of Government National Mortgage Association

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 330.20(a)(2)(i)(D).

Project/Activity: BofA Securities, Inc. (BofAS) eligibility for approval as a sponsor of Ginnie Mae guaranteed structured securities.

Nature of the Requirement: The regulation at 24 CFR 330.20(a)(2)(i)(D) establishes certain eligibility requirements for an entity applying for approval as a Ginnie Mae Sponsor. An applicant must have at least $250 million in shareholders' equity or partners' capital evidenced by the sponsor's audited financial statements, which must have been issued within the preceding 12-month period.

Granted By: Maren M. Kasper, Acting President, Ginnie Mae.

Date Granted: April 24, 2019.

Reason Waived: The new broker-dealer entity BofA Securities is a wholly-owned, indirect subsidiary of Bank of America Corporation and an affiliate of Merrill, Lynch, Pierce, Fenner & Smith Inc. (MLPF&S), an active sponsor in Ginnie Mae's Multiclass Securities Program. Due to a reorganization, MLPF&S will stop sponsoring Ginnie Mae deals and its team leading Ginnie Mae's Multiclass deals will be transferred to BofAS. This new entity meets the minimum required amount of $250 million in shareholders' equity or partners' capital but cannot provide an audited financial statement reflecting this amount issued in the preceding 12 months due to it being a new operating entity. BofAS has agreed to assume responsibility for the legacy Ginnie Mae assets currently under MLPF&S and Bank of America has provided assurances for liability. This is a special situation where Ginnie Mae has found good cause to issue a one-time waiver of the requirement for an applicant for approval as a sponsor to submit an audited financial statement issued within the preceding 12-month period that evidences the minimum required amount in shareholders' equity or partners' capital.

Contact: Richard Perrelli, Product Manager Multiclass Securities, Office of Capital Markets, Government National Mortgage Association, Department of Housing and Urban Development, 425 Third St. SW, 4th FL, Washington, DC 20024, telephone (202) 475–7992.

IV. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.73(c).

Project/Activity: Kenmore Commons, FHA Project Number 042–35722, Cleveland, Ohio. The subject project has two phases consisting of 17 scattered sites with 25 buildings containing a combined 102 units; however, 12 of the 25 buildings have less than 5 units. All 102 units are covered by Section 8 HAP Contracts and will continue the affordability restriction via a 30-year affordable use Regulatory Agreement with the Ohio Housing Finance Agency. The lender, Bellwether Enterprise Real Estate Capital, LLC is seeking FHA financing to substantially renovate 102 affordable units.

Nature of Requirement: The 24 CFR part 200.73(c) which, states that a site must contain no less than 5 rental dwelling units. Section 3.1.O.l.CC of the MAP Guide permits a project with two or more noncontiguous parcels of land when the parcels comprise one marketable, manageable real estate entity and each parcel (or combination of contiguous parcels) has at least 5 units.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 17, 2019.

Reason Waived: The waiver was granted to allow preservation of 102 units that are 100% affordable, where there is a high demand for affordable housing in the Hough neighborhood near downtown Cleveland, OH. This project constitutes one manageable and marketable property.

Contact: Patricia M. Burke, Acting Director Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 200.73(c).

Project/Activity: Riverside Park Homes, FHA Project Number 042–11324, Cleveland, Ohio. The subject project consists of 20 buildings containing a combined 90 units; however, 18 of the 20 buildings have less than 5 units. The lender, Orix Real Estate Capital, LLC is seeking FHA financing to renovate 90 affordable units.

Nature of Requirement: The 24 CFR part 200.73(c) which, states that a site must contain no less than 5 rental dwelling units. Section 3.1.O.l.CC of the MAP Guide permits a project with two or more noncontiguous parcels of land when the parcels comprise one marketable, manageable real estate entity and each parcel (or combination of contiguous parcels) has at least 5 units.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 17, 2019.

Reason Waived: The waiver was granted to allow preservation of 90 units that are 100% affordable with a Rental Assistance Demonstration (RAD) conversion. In addition, a provision of a new 20-year Housing Assistance Payment (HAP) contract. This project constitutes one manageable and marketable property.

Contact: Patricia M. Burke, Acting Director Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Summit Carolina Manor, FHA Project Number 075–22141, and Applewood Our Hose, FHA Project Number 101–22143 are Assisted Living/Memory Care facilities, which do not meet the requirements of 24 CFR 232.7 ''Bathroom'' of FHA's regulations. Summit Carolina Manor is located in Appleton, Wisconsin. Applewood Our House is located on five scattered sites in the suburbs of Denver, Colorado.

Nature of Requirement: The regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2019.

Reason Waived: The two projects both currently exceed the 4:1 resident to shower ratio. Each project only serves memory care residents who require assistance with bathing. These residents are housed in units in a secure, lock-down area, with a half-bathroom each and access to the shower rooms through a hallway. The projects meet the States' licensing requirements for bathing and toileting facilities. The projects will benefit from a refinance at reduced interest rates. As part of the refinancing, an additional bathroom is being added to one of the Applewood sites, which would bring the building's ratio of residents to full baths to 4:1.

Contact: John M. Hartung, Policy Division Director, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6264, Washington, DC 20401, telephone (202) 402–5377.

• *Regulation:* 24 CFR 266.200(b)(2).

Project/Activity: 542(c) Risk-Sharing Program regulations waiver was granted on February 7, 2019 for forty (40) projects through the end of fiscal year 2019 (*i.e.* HUD issuance of a firm approval letter by September 30, 2019) for the revised definition of Substantial Rehabilitation published in the MAP Guide on January 16, 2016, to the Massachusetts Housing Finance Agency (MassHousing), Boston, MA, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

The High Cost Factors for 2017 were recently published through a Housing Notice

(HN) on August 31, 2017 and the revised statutory limits were recently published in the **Federal Register** on November 7, 2017. The 2017 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,315. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2019.

Reason Waived: MassHousing has been working with developers to finalize financing proposals; however, they will not be able to process all forty (40) projects before the end of fiscal year 2019 (*i.e.* HUD issuance of a firm approval letter by September 30, 2019). By granting the extension of the waiver to the end of fiscal year 2021 (September 30, 2021), it will allow enough time to complete the process.

Contact: Patricia M. Burke, Acting Director Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Section 542(c) Risk-Sharing Program regulations waiver was granted on February 7, 2019 for forty (40) projects through the end of fiscal year 2019 (*i.e.* HUD issuance of a firm approval letter by September 30, 2019) for the revised definition of Substantial Rehabilitation published in the MAP Guide on January 16, 2016, to the Massachusetts Housing Finance Agency (MassHousing), Boston, MA, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(c)(2), Existing Projects ''Equity Take-outs''. The Department will permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs, or ''equity take-outs'' in refinances of MassHousing-financed projects and those outside MassHousing's portfolio if the result is preservation with the following conditions:

1. Occupancy is no less than 93 percent for previous 12 months;

2. No defaults in the last 12 months of the HFA loan to be refinanced;

3. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

4. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

5. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorizations, etc.), and

b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time MHP determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, MHP must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contracts expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2019.

Reason Waived: MassHousing has been working with developers to finalize financing proposals; however, they will not be able to process all forty (40) projects before the end of fiscal year 2019 (*i.e.* HUD issuance of a firm approval letter by September 30, 2019). By granting the extension of the waiver to the end of fiscal year 2021 (September 30, 2021), it will allow enough time to complete the process.

Contact: Patricia M. Burke, Acting Director Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5693.

V. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Coshocton Metropolitan Housing Authority (OH037).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: R. Hunter Kurtz, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 14, 2019.

Reason Waived: The Coshocton Metropolitan Housing Authority (HA) requested to waive the reporting requirements for submitting its audited financial information to extend the due date of its fiscal year end date of (FYE) June 30, 2018, because the HUD Office of Inspector General (HUDOIG) is in possession of most of the HA's records, due to an ongoing investigation into the HA and its employees. As a result, the Auditor of the State of Ohio had instructed the HA's independent auditor to hold the audit report until the HUDOIG investigation is completed. Accordingly, the HA was granted a six-month extension, until September 30, 2019, to complete and submit its FYE June 30, 2018, audited financial data to the Department. This Financial Assessment Subsystem (FASS) audited waiver (extension) does not apply to Single Audit submissions required by the Federal Audit Clearinghouse.

Contact: Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 983.301(f)(2)(ii).

Project/Activity: New York City Housing Authority in New York, New York, requested a waiver of 24 CFR 983.301(f)(2)(ii) to establish a site-specific utility allowance for all project-based voucher units at Hope Gardens.

Nature of Requirement: The regulation 24 CFR 983.301(f)(2)(ii) states that the PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

Granted By: R. Hunter Kurtz, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2019.

Reason Waived: New York City Housing Authority has demonstrated that the utility allowance provided under the HCV Program would discourage conservation and ultimately lead to inefficient use of HAP funds at Hope Gardens.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.301(f)(2)(ii).

Project/Activity: Schenectady Housing Authority in Schenectady, New York requested a waiver of 24 CFR 983.301(f)(2)(ii) to establish a site-specific utility allowance for all project- based voucher units at Yates Village Phase I.

Nature of Requirement: The regulation 24 CFR 983.301(f)(2)(ii) states that the PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

Granted By: R. Hunter Kurtz, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2019.

Reason Waived: Schenectady Housing Authority has demonstrated that the utility allowance provided under the HCV Program would discourage conservation and ultimately lead to inefficient use of HAP funds at Yates Village Phase I.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(b)(1)(i).

Project/Activity: The Housing Authority of Pittsburgh, in Pittsburgh Pennsylvania requested a waiver of 24 CFR 982.503(b)(l)(i).

Nature of Requirement: The regulation states that the PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range (''basic range''). The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

Granted By: R. Hunter Kurtz, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2019.

Reason Waived: This waiver was approved, taking into account the administrative burden HACP would face if it were to implement SAMFRs, only to then receive HUD approval of an alternative payment standards policy.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.156(b).

Project/Activity: Boise City Housing Authority, in Boise, Idaho, requested a waiver of 24 CFR 983.156(b) requesting approval to enter into a PBV HAP contract.

Nature of Requirement: The regulation 24 CFR 983.156(b) states that if the PHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

Granted By: R. Hunter Kurtz, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 11, 2019.

Reason Waived: This waiver was approved due to a Government Shutdown which caused a delay in the PBV Contract execution.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* [PIH please insert info].

Project/Activity: The San Antonio Housing Authority in San Antonio, Texas, requested a waiver of FR–5596–N Section II.j. to approve MTW flexibilities for its HUD–VASH participants in terms of regulatory relief and flexibility.

Nature of Requirement: The regulation FR 5596–N Section II.j. states HUD–VASH vouchers must be administered in accordance with this notice and are not eligible for fungibility under a PHA's MTW agreements. HUD–VASH vouchers must be reported on separately from vouchers under the agency's MTW Agreement.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2019.

Reason Waived: This waiver was approved because the Department determined that as described the MTW flexibilities do not have a negative impact on HUD–VASH participants and better serve HUD–VASH families.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2019–20250 Filed 9–18–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6179–D–01]

Order of Succession for the Office of the Chief Financial Officer

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Secretary designates the Order of Succession for the Office of the Chief Financial Officer. Today's Order of Succession supersedes all prior Orders of Succession for the Office of the Chief Financial Officer.

DATES: September 12, 2019.

FOR FURTHER INFORMATION CONTACT: Michelle Hollins, Director, Office of the Chief Financial Officer Management Staff, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 3120, Washington, DC 20410, telephone number 202–402–2322 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Financial Officer when—by reason of absence, disability, or vacancy in office—the Chief Financial Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d).

Today's publication supersedes all prior Orders of Succession for the Office of the Chief Financial Officer. Accordingly, the Secretary designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when—by reason of absence, disability, or vacancy in office—the Chief Financial Officer is not available to exercise the powers or perform the duties of the Chief Financial Officer the following officials within the Office of the Chief Financial Officer are hereby designated to exercise the powers and perform the duties of the office:

(1) Deputy Chief Financial Officer.

(2) Assistant Chief Financial Officer for Budget.

(3) Assistant Chief Financial Officer for Accounting.

(4) Assistant Chief Financial Officer for Systems.

(5) Assistant Chief Financial Officer for Financial Management.

(6) Director, Fort Worth Accounting Center.

(7) Director, Funds Control Division, Fort Worth Accounting Center.

(8) Director, Payments and Collection Division, Fort Worth Accounting Center.

(9) Branch Chief, Intragovernmental, Collection and General Ledger Reconciliation Branch, Payments and Collection Division, Fort Worth Accounting Center.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose positions titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office. No individual who is serving in an office listed above in an acting capacity shall act as the Chief Financial Officer pursuant to this Order of Succession.

Section B. Authority Superseded

This Order of Succession supersedes any prior Orders of Succession for the Chief Financial Officer.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 12, 2019.

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2019–20226 Filed 9–18–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2019–N131; FXES11130500000–190–FF05E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before October 21, 2019.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TE123456):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Gelb, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Gelb, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application number	Applicant	Species	Location	Activity	Type of take	Permit action
TE53603D	West Virginia Division of Natural Resources.	Candy darter (*Etheostoma osburni*).	West Virginia	Capture, survey, and monitor via electrofishing; Translocate; Release.	Capture, handle, hold more than 45 days, wound, kill.	New.
TE53724D	Auburn University, Auburn, AL.	Kemp's ridley sea turtle (*Lepidochelys kempii*).	Massachusetts	Parasitological research; Necropsy.	Collect	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martin Miller,

Chief, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2019–20243 Filed 9–18–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1120]

Certain Human Milk Oligosaccharides and Methods of Producing the Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties

are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless after considering the public interest factors listed in 19 U.S.C. 1337(d)(1), it finds such articles should not be prevented from entry.

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically whether the Commission should issue a limited exclusion order (''LEO'') against certain human milk oligosaccharides that are imported, sold for importation, and/or sold after importation by respondent Jennewein Biotechnologie GmbH of Rheinbreitbach, Germany.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on September 9, 2019. Comments should address whether issuance of an LEO in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on Wednesday, October 23, 2019.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1120'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR part 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 13, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20217 Filed 9–18–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0031]

Nationally Recognized Testing Laboratories; Revised Fee Schedule and Adoption of New Application Acceptance and Review Procedures

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

ACTION: Notice.

SUMMARY: In this notice, OSHA revises the schedule of fees that the agency charges to Nationally Recognized Testing Laboratories (NRTLs) and NRTL applicants. In addition, OSHA adopts new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL recognition.

DATES: The revised NRTL Fee Schedule and New Application Acceptance and Review Procedures become effective on October 21, 2019.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice

On September 22, 2015, OSHA published a notice proposing the adoption of new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL

recognition, and the revision of the existing NRTL Program fee schedule pursuant to the NRTL Program regulation, 29 CFR 1910.7(f) (80 FR 57222). The agency received one comment in response to this notice, available on *www.regulations.gov* under docket number OSHA–2007–0031. OSHA addresses this comment, *infra,* in section III of this notice.

OSHA now is proceeding with this notice and hereby adopts the proposed streamlined procedures for accepting and reviewing applications, with one minor, non-substantive change, as discussed *infra,* in section III of this notice. OSHA also adopts the proposed NRTL Program fee schedule, without change, as discussed *infra,* in section IV of this notice.

II. Background on the NRTL Program

Many of OSHA's safety standards (*e.g.,* 29 CFR part 1910, subpart S) require that equipment and products be tested and certified to help ensure their safe use in the workplace. To implement these requirements, OSHA established the NRTL Program and the agency generally requires NRTLs to perform this testing and certification.

The NRTL Program regulation, 29 CFR 1910.7, requires that, to obtain and retain OSHA recognition as a NRTL, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements and manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures (29 CFR 1910.7(b)). OSHA requires organizations applying for NRTL recognition to provide, in their applications, detailed and comprehensive information about their programs, processes, and procedures, in writing. When an organization makes an initial application to be recognized as a NRTL, OSHA reviews the written information contained in the organization's application and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when a NRTL applies for expansion or renewal of its recognition, although the type and amount of information in some areas can differ significantly from those of initial applications. In addition, the agency conducts annual assessments [1] of NRTLs to ensure that the recognized laboratories adequately maintain their programs and continue to meet the recognition requirements.

To support these core functions, OSHA also performs a number of ancillary activities. For example, OSHA investigates complaints filed against NRTLs to ensure that the laboratories are performing their testing and certification functions adequately; represents the NRTL Program in a variety of forums related to conformity assessment products used in the workplace; and maintains a detailed website that both explains the program and lists all the laboratories currently recognized under the NRTL Program, the products each laboratory can test, and registered certification marks used by each laboratory.

III. Revision of Existing Application Acceptance and Review Procedures

OSHA currently has a number of initiatives underway to improve the operations of the NRTL Program. This section of the notice discusses one such initiative, under which OSHA adopts new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL recognition. OSHA will follow these new procedures in lieu of those contained in the agency's existing NRTL Program Directive (CPL 01–00–004, NRTL Program Policies, Procedures, and Guidelines, September 5, 2019) (''Directive'' or ''NRTL Program Directive'') and the additional practices OSHA has routinely followed in accepting applications.

OSHA adopts the new streamlined procedures to eliminate delays caused by multiple revisions by an applicant during the application-acceptance and -review process. In addition, OSHA simplifies the application process to make it clearer when the application acceptance process ends and the substantive application review process begins. This streamlined application process will also reduce NRTL Program fees, as OSHA will discuss later in this notice.

The existing procedures for application acceptance and review are contained in both Appendix A to the NRTL Program regulations, (''Appendix A'') and the NRTL Program Directive, CPL–01–00–004. OSHA does not, in this notice, revise Appendix A; instead, OSHA has updated the NRTL Program Directive to include the revised application acceptance and review procedures made final by this notice.

A. Existing Procedures in Appendix A That Were Not Subject to Revision

Per Appendix A, the burden is generally ''on the applicant to establish by a preponderance of the evidence that it is entitled to recognition as an NRTL'' (App. A. Introduction). Thus, in its application, an applicant must ''provide sufficient information and detail demonstrating that it meets the requirements set forth in § 1910.7, in order for an informed decision concerning recognition to be made'' by the Assistant Secretary for Occupational Safety and Health (''Assistant Secretary''), and must also ''identify the scope of the NRTL-related activity for which the applicant wishes to be recognized'' (*i.e.,* the test standards the applicant will use for testing products) (App. A.I.A.2.b). To meet its burden, the applicant may include any documentation (*i.e.,* enclosures, attachments, or exhibits) it deems appropriate (App. A.I.A.2.c).

Also under Appendix A, ''[a]pplications submitted by eligible testing agencies will be accepted by OSHA, and their receipt acknowledged in writing'' (App. A.I.B.1.a). Moreover, ''[a]fter receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition has been omitted'' (Id.). In addition, ''OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant's administrative and technical practices, and, if necessary, review any additional documentation underlying the application'' (App. A.I.B.1.b).

Appendix A provides the responsible OSHA staff with two options following review of the application, and any additional information and on-site review report. On the one hand, if ''the applicant appears to have met the requirements for recognition,'' responsible OSHA staff must make a ''positive finding'' to the Assistant Secretary, which consists of ''a written recommendation . . . that the application be approved, accompanied by a supporting explanation'' (App. A.I.B.2). Once this recommendation is made, OSHA follows the procedures in the Appendix for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6).

On the other hand, if ''the applicant does not appear to have met the requirements for recognition,'' responsible OSHA staff must make a

[1] OSHA uses the term ''assessments'' to mean those activities described by the term ''audits'' under 29 CFR 1910.7(f). OSHA uses the term ''assessments,'' rather than ''audits'' because it better reflects the overall purpose of the program's activities, *i.e.,* conformity assessments.

''negative finding'' to the ''applicant in writing, listing the specific requirements of § 1910.7 and [Appendix A] which the applicant has not met, and allow[ing] a reasonable period for response'' (App. A.I.B.3.a). After the applicant receives ''a notification of negative finding (*i.e.,* for intended disapproval of the application), and within the response period provided,'' the applicant may either (1) ''[s]ubmit a revised application for further review, which could result in a positive finding'' (the procedures for which are explained in the previous paragraph), or (2) ''[r]equest that the original application be submitted to the Assistant Secretary with an attached statement of reasons, supplied by the applicant of why the application should be approved'' (App. A.I.B.3.b.i). In either case (*i.e.,* if a positive finding is made on a revised application or if the applicant requests that the original application be submitted to the Assistant Secretary), OSHA would follow the procedures in the Appendix for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6). The ''procedure for applicant notification and potential revision shall be used only once during each recognition process'' (App. A.I.B.3.b.ii).

B. OSHA Will No Longer Follow Existing NRTL Program Directive Procedures for Accepting and Reviewing Applications

Existing policies contained in the NRTL Program Directive expand on the application procedures contained in Appendix A, as follows. Per the Directive, OSHA staff ''formally accept or reject the application'' based on a review of the application for ''completeness and for adequacy'' (Directive Ch. 2.V.B, Ch. 3.II.B.1). The procedures for this review are contained in Appendix D to the Directive (Directive Ch. 3.II.B.1). An application is considered complete ''if it contains all necessary documents, and sufficient information for all relevant items,'' and is considered adequate ''if the information submitted sufficiently demonstrates that the requirements for recognition can be met, and where relevant, if at least one test standard requested can be approved'' (Directive App. D) (emphasis in original).

In reviewing the application, OSHA staff will return and ''take[ ] no further action'' on an application ''[i]f [the] application is frivolous or grossly incomplete or inadequate.'' In such circumstances, ''any future application from the applicant'' will be processed ''as a new application'' (Directive Ch. 3.II.A).

If the application is not ''frivolous or grossly incomplete or inadequate,'' OSHA staff discusses its review with the applicant, ''noting any deficiencies found or clarifications needed'' (Directive Ch. 3.II.B.2). If the ''application is determined to be complete and adequate,'' OSHA ''sends a letter to the applicant to accept the application'' (Directive Ch. 3.II.C).

If the application is determined to be incomplete or inadequate, the Directive provides two opportunities for applicants to correct deficiencies before rejection of an application (Directive Ch. 3.II.C). In practice, however, OSHA has given applicants three such opportunities. Per the Directive, OSHA ''sends a letter to the applicant, detailing the deficiencies and the additional information needed and requesting a response by an appropriate deadline,'' and if ''the response does not adequately resolve the deficiencies,'' OSHA ''provides the applicant a [second] opportunity to respond within a given period.'' (Directive Ch. 3.II.C.) If deficiencies remain after the second opportunity, OSHA, in practice, gives applicants a third, but relatively limited, opportunity to make corrections before the effective date of the rejection. This limited duration is sufficient for applicants to correct deficiencies if only a few critical deficiencies remain.

If an applicant's timely response cures the deficiencies in its application, OSHA ''sends an acceptance letter to the applicant'' (Directive Ch. 3.II.C). However, ''[i]f the applicant does not respond adequately or fails to reply by any deadline(s) provided or an approved extension of these deadline(s),'' OSHA ''sends a letter notifying the applicant that the application is not accepted and the Case File is closed'' (Directive Ch. 3.II.C.2).

Finally, the Directive provides that, after an application is accepted, ''the assigned staff determines whether an on-site review is necessary'' (Directive Ch. 3.II.D). However, the Directive also provides for non-acceptance during the on-site review process, if an applicant fails to respond adequately to the findings of an on-site review (Directive Ch.4.IV.C).

OSHA proposed that it will no longer follow the existing procedures, described above, to afford applicants three opportunities to modify their applications before acceptance or non-acceptance. These existing procedures are inefficient and cause delays because, in some cases, these multiple opportunities cause the process to take years. OSHA also proposed that it will also not follow its existing procedure for accepting an application only when it is found to be complete and adequate. This existing procedure has caused confusion as to when the application acceptance process ends and the substantive application review process begins. OSHA received no comments objecting to its proposed decision to no longer follow the above-described existing procedures. OSHA therefore adopts its proposed decision, without change.

C. OSHA Adopts New Streamlined Procedures for Accepting and Reviewing Applications, as Proposed, With One Minor, Non-Substantive Change

In lieu of the existing NRTL Program Directive procedures, described above, OSHA proposed to follow streamlined procedures for accepting and reviewing applications. OSHA received one comment in response to the proposal, from Curtis-Strauss, LLC, a NRTL (available on *www.regulations.gov* under Docket Number OSHA–2007–0031). Curtis-Strauss was generally supportive of the proposed streamlined procedures *for accepting and reviewing applications, and of the* proposed revised NRTL Program fee schedule, *discussed below, but suggested two additions to the proposed procedures:*

- Curtis-Strauss suggested that ''OSHA provide updates to applicants every 60 days because ''[t]his would keep applicants informed and could also enhance OSHA's management of the agency's application queue as grouped by applicant,'' and because ''[t]his may help OSHA to realize other process efficiencies when scheduling on-site audits or performing technical reviews.''
- Curtis-Strauss suggested that ''OSHA offer an opportunity to the applicant to have a conference call or an in-person meeting with the relevant OSHA staff promptly after the notice of intent to recommend a negative finding'' because ''[t]his would give applicants the ability to ask questions and better understand the application's deficiencies while still leaving enough time to correct them prior to the deadline.''

OSHA supports keeping lines of communication open during the application process. However, OSHA does not believe that formalizing rules for open dialogue, as suggested by Curtis-Strauss, will make the application process more effective. Each application is different and requires different levels and types of communication. The degree and types of communication suggested by Curtis-Strauss may be too little in some cases and too much in others. Therefore,

OSHA is not adopting the suggestions made by Curtis-Strauss.

OSHA hereby adopts the streamlined procedures, as proposed, with one minor, non-substantive change, discussed, *infra.* These streamlined procedures will reduce delays, fees, and confusion associated with application processing. Under these streamlined procedures, OSHA will review an application for completeness, but not adequacy, in deciding whether to accept the application. OSHA's review for adequacy, and any on-site review, will occur only after OSHA accepted the application. Furthermore, OSHA will permit the applicant one opportunity only, rather than three, to resolve deficiencies in the completeness of its application before deciding whether to accept it. OSHA describes the new streamlined procedures it adopts in this notice in more detail, immediately below.

1. Initial Review and Acceptance

OSHA proposed that, when OSHA receives an application, it will acknowledge its receipt, establish (for initial applications) or update (for expansion and renewal applications) the docket for the organization, and upload the application materials to the docket.[2] For this notice, OSHA decided that it will not establish or update a docket for an organization in connection with an application upon receipt. Instead, OSHA will establish a docket for an application only in connection with the preparation of a **Federal Register** notice announcing a preliminary finding on the application. Establishing dockets for applications at this later point in the application process will further streamline the application acceptance and review process, as many applications are withdrawn or amended before the applications reach the preliminary determination stage.

After it receives an application, OSHA will perform an administrative review of the application to determine whether it is complete (*i.e.,* has sufficient information to determine whether the applicant meets the requirements for recognition). If not complete, OSHA will notify the applicant, in writing, that it has 30 days from the date of the notice to provide the missing or additional information. OSHA will also inform the applicant, in the notice, that it is unable to review the merits of the application because the application itself does not contain sufficient information to show that the requirements for recognition can be met. Finally, OSHA will inform the applicant, in the notice, that this review involved no technical determination, only an administrative one of whether the application has all of the necessary documentation. If the applicant does not respond by the 30-day deadline, or does not adequately respond, and the application remains incomplete, OSHA will inform the applicant that OSHA cannot accept the application, and the applicant must reapply. If the applicant provides a complete application within the 30 days, or provided a complete application when it was first received, OSHA will accept the application.

2. Determination of Adequacy

After accepting the application, OSHA will review the merits of the application to determine whether the application is adequate. OSHA will first conduct a technical review of the application (*i.e.,* a detailed review of all of the application's administrative and technical procedures and content). Following this technical review, OSHA will determine whether to conduct an on-site assessment as part of evaluating the management system and technical capabilities of the organization. OSHA will generally conduct an on-site review for initial applications and for expansion applications that involve new areas of testing for the NRTL or areas of concern to OSHA. If OSHA finds deficiencies during the technical review or during the on-site assessment, OSHA will provide the applicant with an explanation of deficiencies and needed corrections, and a 90-day opportunity to respond. Failure to respond by the 90-day deadline will constitute a withdrawal of the application, and OSHA will take no further action on it. If the applicant or NRTL responds, it will need to demonstrate it corrected all deficiencies found in its application and/or during the assessment, and provide evidence to OSHA that the corrections have been implemented into the applicant's or NRTL's management systems. In that case, OSHA will conclude the application is adequate. On the other hand, if OSHA finds that deficiencies remain, OSHA will conclude the application is not adequate.

If OSHA staff determines an application is adequate, OSHA will follow existing procedures, and recommend a positive finding, per Appendix A.I.B.2. Otherwise, OSHA staff will notify the applicant in writing that they intend to recommend a negative finding. In that case, the applicant has two options under Appendix A.I.B.3. First, the applicant has one additional chance to revise its application within 30 days of receipt of OSHA's written notice. Second, the applicant may request that its original application (as supplemented in response during the review for adequacy) be submitted to the Assistant Secretary (also within 30 days of receipt of OSHA's written notice). In this case, the applicant must attach a statement of reasons to the application explaining why the application should be approved. OSHA would consider the failure to submit a revised application or a request that the original application be submitted to the Assistant Secretary within the 30-day deadline to be a withdrawal of the application.

If the applicant opts to revise its application, OSHA will invoice the applicant for the fee to review its revised submission. This fee would equal the estimated hours for the review multiplied by the hourly rate for the applicable Miscellaneous Fee in the NRTL Program's fee schedule. Like other application fees, this review fee will not be refundable. The applicant will need to pay this fee before OSHA performs the review of the revised application. OSHA will consider a failure to pay the fee within 30 days of receipt of the invoice as a withdrawal of the application. When OSHA receives the fee, OSHA will review the revised application to determine whether to sustain the negative finding or change it to a positive one. If OSHA staff decides to sustain the recommendation for a negative finding, they will first afford the applicant the opportunity to withdraw the application. If the applicant does not withdraw it, OSHA will proceed with the preliminary finding.

Once OSHA staff recommends a positive finding on either an original or revised application, sustains its recommendation for a negative finding after a review of a revised application, or the applicant requests that the original application be submitted to the Assistant Secretary, OSHA will follow the procedures in Appendix A for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6).

OSHA will no longer follow the existing NRTL Program Directive procedures for accepting and reviewing applications, as described in section III.B. of this notice. Instead, OSHA adopts the proposed streamlined procedures for accepting and reviewing applications, with one minor non-substantive change, as described above.

[2] As currently used by OSHA, the term ''docket'' means an electronic file folder containing documents that pertain to an official action taken by the agency. OSHA generally makes these documents available to the public.

IV. Revision of the NRTL Program Fee Schedule

A. Background

OSHA revises the existing NRTL Program fee schedule pursuant to the NRTL Program regulation, 29 CFR 1910.7(f). That regulation requires NRTLs and applicants to ''pay fees for services provided by OSHA in advance of the provision of those services'' (29 CFR 1910.7(f)(1)). OSHA assesses fees for core service activities, that is, for ''[p]rocessing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices;'' and ''[a]udits of sites'' (Id.). OSHA's fee schedule ''reflects the full cost of performing the activities'' for these services (29 CFR 1910.7(f)(2)).

OSHA calculates fees ''based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved'' (Id.). Thus, the formula for calculating a fee for an activity is the ''[Average (or Actual) Hours to Complete the Activity x Staff Costs per Hour] + Average (or Actual) Travel Costs'' (Id.).

OSHA periodically reviews the full costs of performing core services and, if warranted, will propose a revised fee schedule in the **Federal Register** (29 CFR 1910.7(f)(3), (f)(4)). If OSHA approves the proposed fee schedule (after giving the public an opportunity to comment), it ''publish[es] the final fee schedule in the **Federal Register,** making the fee schedule effective on a specific date'' (29 CFR 1910.7(f)(3), (f)(4)).

To ensure that its fees for core services reflect the full cost of those services, OSHA's existing fee schedule (which OSHA adopted in 2011) takes into account both the direct and indirect costs it incurs in performing those services (76 FR 10501–10504). Direct costs include staff costs (*i.e.* the applicable portion of the salaries and fringe benefits of the applicable staff) incurred for application processing and assessment (Id.). Ancillary (or indirect) costs include staff costs incurred for the administration and support of the program, including legal support, budgeting, policy matters, intragency and international coordination, responses to requests for information related to the program, handling complaints, website development and maintenance, and participation in meetings with stakeholders and outside interest groups (Id.). OSHA refers to the sum of its direct costs and ancillary costs as the total program costs (TPC) for the purpose of this notice. TPC does not include travel expenses, which are assessed separately (29 CFR 1910.7(f)(2), 76 FR 10504 n.5).

In the existing fee schedule, OSHA calculates the fee for each core service activity by multiplying an equivalent average cost per hour rate (ECR) by the time it takes to perform that activity: Fee for Activity = ECR × Time for Activity (76 FR 10504). In 2000, when OSHA began assessing fees for services, OSHA explained that it derived that fee schedule's ECR by dividing TPC by the total available annual work hours of the NRTL Program and legal staff that perform the services (TAW) (Id.). Accordingly, ECR2000 = TPC2000/TAW2000. The approach used in 2000 resulted in fees that recouped the costs only of the time spent actually performing individualized audits and application processing, which is only a portion of TAW, and did not recoup the costs of the time associated with running the program and providing other benefits shared among all NRTLs (*Id.*).

To account for the costs associated with these shared benefits, OSHA adopted a new approach in 2011 for calculating ECR (ECR2011) in the existing fee schedule (Id.). Under the new approach, OSHA divides the estimated total cost of the NRTL Program (TPC2011) by the total annual service hours (TAS2011) (*Id.*). This latter term equals the total estimated work hours that the NRTL Program staff spend on the core service activities for which OSHA would bill NRTLs; accordingly, ECR2011 = TPC2011/TAS2011 (Id.). By way of comparison with the 2000 fee schedule, TAS equals TAW minus estimated hours spent on ancillary activities (AH) and leave (LH) (*i.e.,* TAS = TAW–AH–LH) (*Id.*). By continuing to include the full program costs in the numerator (TPC2011), but including in the denominator (TAS2011) only the amount of time spent on providing ''billable'' core services, OSHA believed the revised ECR would more accurately represent the total work hours spent on those core activities than the 2000 equation [3] (*Id.*).

B. Explanation of Revised Fee Schedule

OSHA reviewed its existing fee schedule and, based on that review, proposed to revise its fee schedule. OSHA received one comment in response to the proposal, from Curtis-Strauss, LLC, a NRTL (available on *www.regulations.gov* under Docket Number OSHA–2007–0031). Curtis-Strauss was generally supportive of the proposed NRTL Program fee schedule. OSHA hereby adopts the proposed NRTL Program fee schedule, without change. The revised fee schedule more accurately reflects the full cost of performing the activities for which OSHA charges fees. OSHA explains the details of the revised fee schedule, as follows:

1. OSHA adopts a new grouping of fees for each of the core activities for which OSHA charges fees to NRTLs (*i.e.,* ''[p]rocessing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices;'' and ''[a]udits of sites'' (29 CFR 1910.7(f)(1)). Under the existing fee schedule, OSHA groups these activities under the terms Application Processing, Audits, and Miscellaneous (76 FR 10508). Under OSHA's revised fee schedule, shown below in Table 6, OSHA groups these activities under the terms: Administrative Evaluation, Technical Evaluation, Assessments, **Federal Register** Notices, and Miscellaneous (which includes late fees and other activities not specifically described). OSHA adopts these new groupings to align its fee schedule with the newly-adopted streamlined procedures for accepting and reviewing applications, described above. OSHA also believes that the times it now estimates for completion of these activities (see Tables 2 thru 5, below) more accurately represent the actual time it takes to complete the core activities for which OSHA charges fees. Therefore, adoption of the groupings more accurately reflects the full cost of the services for which fees are assessed.

2. OSHA revises the approach it uses to calculate ECR. Again, under the existing approach, OSHA calculates ECR by dividing TPC by the total estimated work hours that the NRTL Program staff and legal staff spend on the core service activities for which OSHA bills NRTLs (or TAS) (76 FR 10504).

[3] The existing fee schedule was supposed to have been phased in over a three-year phase-in period. (76 FR 10508). OSHA implemented the first phase on March 28, 2011. However, due to other priorities and factors, OSHA was unable to implement the second and third phases of the increase, as planned. This revised fee schedule renders moot the implementation of the second and third phases.

The existing approach depends, in large measure, on OSHA estimating an accurate TAS (*i.e.,* number of ''billable'' core hours). If this estimate is accurate, the ECR (*i.e.,* the hourly rate OSHA charges for services) will accurately reflect the full cost of services (because ECR = TPC/TAS). But OSHA's estimate has not been accurate in practice. Due in part to insufficient program staffing and other uncontrollable factors, the staff has been unable to work the number of estimated billable hours. This has resulted in an hourly rate charged by OSHA that results in fees that are far lower than the fees OSHA would be charging if its estimate had been accurate.

OSHA could reassess TAS on a regular basis to achieve a more accurate estimate. However, due to the changing nature of the staff's workload, OSHA likely would need to make such calculation adjustments, and thus publish fee schedules, more than once within a given year to ensure an accurate estimate. OSHA likely could not make such adjustments in a timely manner, largely due to the length of the process for issuing fee schedules.

Under the revised fee schedule, OSHA simplifies the existing calculation. For the purpose of the revised fee schedule, OSHA assumes that certain NRTL Program staff (which OSHA calls ''direct staff'' in this notice) work exclusively on core billable activities, and that other NRTL Program staff (which OSHA calls ''indirect staff'' in this notice) work exclusively on ancillary activities. OSHA calculates the ECR (ECR2015) by dividing TPC by total direct staff annual paid (*i.e.,* compensable) hours, or simply, direct staff annual hours (DSH).

Because of the difficulties of implementing the existing approach, OSHA believes the change in approach in the revised fee schedule (replacing TAS with DSH) will, on average *and* in practice, more accurately reflect the full cost of services for which OSHA charges fees than the existing approach. The accuracy of the DSH approach also does not depend on the variable workload of staff, and will therefore be simpler to implement than the existing approach.

OSHA estimates for the revised fee schedule that four full-time NRTL Program staff members are direct staff and the other full-time NRTL Program staff member is indirect staff. OSHA believes the estimate of four full-time direct staff is reasonable because OSHA projects a significant increase in the number of applications the NRTL Program will process and audits the NRTL Program will perform (*i.e.,* a significant increase in the time NRTL Program staff will spend on core activities).

For the purposes of the revised fee calculation, DSH equals 8,352 hours. This was derived by multiplying 2,088, the regular annual paid hours for one full-time staff, by the number of full-time direct staff[4] (again, currently four).

As explained more fully in the notice of proposed decision, the proposed (now revised) fees for individual core service activities are often significantly less than the analogous existing fees for such services. These changes arise from the change in the way that OSHA will calculate the ECR (which excludes some previously included indirect costs but increases the number of direct staff hours) and streamlined review procedures (which decrease the amount of staff hours needed for some tasks in the process). OSHA nonetheless estimates that fees collected under the revised fee schedule will, *in toto,* approximate the full costs of administering the NRTL Program because, as stated above, OSHA estimated a significant increase in the number of applications the NRTL Program will process and audits the NRTL Program will perform (*i.e.,* a significant increase in the time NRTL Program staff will spend on core service activities).

3. Under the revised fee schedule, OSHA breaks out the fees for the legal review of **Federal Register** notices associated with initial, renewal, and expansion applications from the general fees it charges for preparation of these **Federal Register** notices by NRTL Program staff. Under the existing fee structure, OSHA charges one general fee that covers both preparation and legal review of a Final Report and **Federal Register** notice (76 FR 10505–10511).[5]

The revision more accurately reflects the portion of the fees attributed to legal review. Under the existing fee structure, OSHA charges a single hourly rate for core activities, regardless of whether the time charged is attorney time or NRTL Program staff time (76 FR 10505). Under the revised fee structure, OSHA calculates a separate hourly rate for core activities performed by legal staff to reflect that certain ancillary costs, such as website development and maintenance, which are properly incorporated into the hourly rate for NRTL Program staff, should not be incorporated into the hourly rate for legal services. OSHA continues to incorporate in the hourly rate for legal costs those indirect costs that tie directly into the salary of legal staff, such as fringe benefits. As a result of the revision, the hourly rate for legal fees, shown in Table 5, is less than the rate for NRTL Program staff fees, shown in Table 1.

OSHA notes that the Department of Labor incurs legal costs in connection with the NRTL Program other than costs associated with the legal review of **Federal Register** notices associated with initial, renewal, and expansion applications. These other legal costs are included in the existing fee schedule (See 76 FR 10504 n.5), and continue to be included in the revised fee schedule, as elements in TPC, and therefore, as elements of the calculation of the hourly rate for NRTL Program staff.

4. OSHA revises the manner it calculates the salaries of NRTL Program staff and Solicitor of Labor staff for the purpose of calculating TPC. For the existing fee schedule, OSHA calculates staff costs using actual staff salaries, which can vary, sometimes significantly, over time due to changes in personnel and positions. Under the revised fee schedule, OSHA calculates salaries using midpoint salaries. These midpoint salaries are the Step 5 amounts shown for a particular grade (*e.g.,* grade 13) in the Office of Personnel Management (OPM) General Schedule (GS) salary table for 2015, called the ''Salary Table 2015–DCB,'' which pertains to federal workers who have duty stations located mostly in Washington, DC, Maryland, and Virginia. (See Office of Personnel Management 2015 General Schedule (GS) Locality Pay Tables at *www.opm.gov.*) These midpoint salaries may differ from actual staff salaries, which depend on the actual grade and step for each staff. However, using these midpoint figures simplifies the calculation of the staff costs and provides a consistent fee that OSHA expects will reflect, on average, actual staff salaries over time. Because OPM adjusts its salary tables annually, OSHA will monitor the adjustments to determine if their magnitude requires modification of the fee schedule.

Also, to include an amount for regular fringe benefits, OSHA multiplies the midpoint salaries by a fringe benefit rate. Under the revised fee schedule,

[4] This figure is the number of compensable hours in a fiscal year, which is used to determine full-time equivalents (FTE) (*i.e.,* full-time staffing levels) for purposes of the Federal Budget. See Office and Management and Budget (OMB) Circular A–11, Preparation, Submission, and Execution of the Budget, Section 85—Estimating Employment Levels and the Employment Summary (Schedule Q), 2015 (available at the time of publication of the proposal at *http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s85.pdf).*

[5] Although OSHA did not state explicitly in the 2011 notice that the Final Report and **Federal Register** notice fee included legal review, the hours used for calculating this fee did in fact include the legal staff's time for this review.

OSHA uses a 29% rate, and based this rate on the one the agency uses to estimate fringe costs of other OSHA activities.

5. OSHA revises the manner in which it calculates ancillary (or indirect) costs. Under the existing fee schedule, OSHA includes, in its calculation of ancillary (or indirect) costs, equipment, training, and space of the staff. Under the revised fee schedule, OSHA does not include these items in its calculation of ancillary costs because NRTLs do not derive a special benefit from these cost items. For example, training costs for the program staff currently consist of general training available to all employees. OSHA will include such costs in future fee schedules if it determines that NRTLs do derive special benefits from the items. OSHA believes the revision to the fee schedule more accurately reflects the full costs of performing the activities for which OSHA charges fees.

6. Under the revised fee schedule, OSHA does not charge fees for determining whether proposed test standards are appropriate test standards under the NRTL Program. OSHA charges such fees under the existing fee schedule. However, OSHA recently updated its process whereby it incorporates new test standards into the NRTL Program's list of appropriate test standards (the scope of an appropriate test standard must cover products for which OSHA requires NRTL approval and must meet the requirements of 29 CFR 1910.7(c)(1)). Under the updated policy, OSHA adds new test standards when it is made aware of new test standards and determines them appropriate (79 FR 17188). It is therefore no longer necessary to charge NRTLs specific fees in connection with the incorporation of standards into the list of appropriate test standards. OSHA notes, however, that the costs associated with the incorporation of test standards will be ancillary costs under the revised fee schedule, and will therefore be an element in the calculation of the fees OSHA assesses.

C. Basis and Derivation of Revised Fee Amounts

Table 1, below, shows the direct and indirect program costs (TPC), direct staff annual hours (DSH), and hourly rate OSHA uses to calculate the revised fees.

TABLE 1—NRTL PROGRAM STAFF—HOURLY RATE CALCULATION

Description	
OSHA Direct Costs	$579,383
OSHA Ancillary Costs	287,541
OSHA Total Costs of NRTL Program, excluding travel (TPC)	*866,924*
OSHA Direct Staff Annual Hours (DSH)	*8,352*
OSHA Hourly rate (TPC divided by DSH)	**104**

Tables 2 to 5, below, describe the fees OSHA adopts in conjunction with the core services for which OSHA charges fees. OSHA calculates each fee (with the exception of fees for legal review of **Federal Register** notices) by multiplying the NRTL Program staff hourly rate of $104 (see Table 1, above) by the time OSHA estimates it takes NRTL Program staff to perform the activity at issue, on average (*i.e.,* fee for activity = NRTL Program staff hourly rate ($104) × estimated time for activity). OSHA calculates the fees for legal review of **Federal Register** notices by multiplying the hourly rate for legal services of $89 (see Table 5, below) by the time OSHA estimates its takes legal staff to perform the activity at issue, on average (*i.e.,* fee for activity = legal staff hourly rate ($89) × estimated time for activity). OSHA notes that it rounds the revised fees down to the lower multiple of ten.

OSHA's revised (and existing) fee for travel related to assessments is based on actual travel expenses, and thus OSHA does not derive a fee to charge for travel.

TABLE 2—FEES FOR ADMINISTRATIVE EVALUATION

Program component	Average hours	Fee
Initial Application—Limited review (per application)	40	$4,160
Expansion Application—Limited review (per application)	24	2,490
Renewal request review	16	1,660

TABLE 3—FEES FOR TECHNICAL EVALUATION

Program component	Average hours	Fee
Initial Application—Management Procedures review (per application)	80	$8,320
Initial or Expansion Application—Testing capability review (per standard)	24	2,490
Initial or Expansion Application—Site capability review (per site)	24	2,490

TABLE 4—FEES FOR ASSESSMENTS

Program component	Average hours	Fee
Assessment preparation and close out (per lead auditor)	54	$5,610
Assessment preparation and close out (per assistant auditor)	32	3,320
Each day on-site or at office (per auditor)	8	830

TABLE 5—FEES FOR **Federal Register** NOTICES

Program component	Average hours	Fee
Initial Application **Federal Register** notice preparation (per application) **	20	$4,080

TABLE 5—FEES FOR **Federal Register** NOTICES—Continued

Program component	Average hours	Fee
Initial Application **Federal Register** notice legal review (per application)	16	1,420
Total for Initial Application **Federal Register** notices	36	5,500
Renewal or Expansion Application **Federal Register** notice preparation (per application)**	16	2,470
Renewal or Expansion Application **Federal Register** notice legal review (per application)	8	710
Total for Renewal or Expansion Application **Federal Register** notices	24	3,180

** Includes estimated Office of Federal Register (OFR) processing fees: $2,000 per initial application notice, or $810 per expansion and renewal notice, as applicable.[6]

D. Revised Fee Schedule and Description of Fees

OSHA adopts the revised fee schedule shown below in Table 6.

TABLE 6—REVISED NRTL PROGRAM FEE SCHEDULE

Fee category	Fee activity	Fee*
Administrative Evaluation	Initial application—Limited review	$4,160.
	Expansion application—Limited review	$2,490.
	Renewal request review	$1,660.
Technical Evaluation	Initial application—Detailed management procedures review	$8,320.
	Initial or Expansion application—Testing capability review (per standard)	$2,490.
	Initial or Expansion application—Site capability review (per site)	$2,490.
Assessment	Assessment preparation and close out (per lead auditor, per site)	$5,610.
	Assessment preparation and close out (per assistant auditor, per site)	$3,320.
	Assessment—per day at office, on-site, or on travel (per auditor, per site)	$830 plus travel expenses.
Federal Register Notices	**Federal Register** notices—initial application	$5,500.
	Federal Register notices—renewal or expansion application	$3,180.
Miscellaneous	Late Fees	$210.
	Other activities or services not specifically described (per hour)	$104.

* All fees must be paid in advance of activity or service.

General Information Regarding the Fees

1. Explanation of Fees

• The Administrative Evaluation fee covers an administrative review of the application packet to ensure completeness. It also covers creating the docket and addition of the application to the docket. An applicant must submit this fee with the application.

• The Technical Evaluation fee covers a detailed examination of the application packet to determine the applicant's ability to meet the requirements of the requested recognition/expansion. An applicant must submit this fee with the application.

• On-site or office assessment fees are calculated based on estimated staff time and, if applicable, actual travel expenses. Travel expenses include expenses for hotel, air transportation, ground transportation, and per diem. The assessment preparation and close-out fees (per lead and assistant auditor, as applicable) include staff time to make travel arrangements and file travel reimbursement claims. At the conclusion of the assessment, actual travel expenses are calculated based on the government per diem and other travel rules. OSHA will bill or refund the difference between the prepaid and the actual travel amounts.

• The fees for ''Other activities or services not specifically described'' cover application- or assessment-related activities that are not specifically covered by the other fee categories. One example would be the technical review of a revised application that an applicant submits to OSHA in response to OSHA's negative finding on an applicant's original application.

2. Refunds

• If an application is withdrawn before OSHA commences the Technical Evaluation, or the application is rejected after OSHA completes the Administrative Evaluation, OSHA will refund the Technical Evaluation fee.

• If an application is withdrawn before OSHA commences travel to a site to perform an on-site assessment, the agency will refund any prepaid assessment fees.

3. Late Fees/Failure to Pay. If an invoice is not paid in full by the due date, the Late Payment fee will be assessed. If payment for an application is not received within 30 days of the invoice's original due date, the application will be rejected. If payment for an assessment is not received within 30 days of the invoice's original due date, OSHA will commence the process to revoke the NRTL's recognition (see 29 CFR 1910.7, App. A.II.E). OSHA notes that NRTLs or applicants may be subject to collection procedures under U.S. Federal law for unpaid fees.

[6] The OFR charges Federal agencies a per column rate for publishing **Federal Register** notices. See *http://www.archives.gov/federal-register/write/conference/publishing-billing.pdf.* OSHA derived an estimated average processing fee based on the number of columns in typical **Federal Register** notices published for the NRTL Program.

4. Changes to Fee Schedule. The effective date of this fee schedule is thirty days after the publication of the Assistant Secretary's notice in the **Federal Register**. A NRTL or applicant pays fees according to the fee schedule in effect on the date the agency receives an application or commences an on-site assessment.

V. Paperwork Reduction Act Requirements

The revisions adopted in this notice contains collections of information (also referred to as ''paperwork'' requirements) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and OMB's regulations at 5 CFR part 1320. The purposes of the PRA include enhancing the quality and utility of information the Federal government requires and minimizing the information collection burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. The PRA defines ''collection of information'' to mean, ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format'' (44 U.S.C. 3502(3)(A)).

Under the PRA, a Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

As required by 5 CFR 1320.8(d), OSHA published a **Federal Register** notice on December 28, 2016 (81 FR 95650, Docket No. OSHA–2010–0007) requesting comments from the public and other interested parties on proposed revisions to the Information Collection Requirements approved by OMB as part of the NRTL Program's Paperwork Package. The notice was part of a preclearance consultation program that provided interested parties with an opportunity to comment on the current request for OMB approval of modification of the existing Paperwork Reduction Act package by the Office of Management and Budget (OMB). The previous approval of the existing information collection requirements by OMB and the request for modification of that approval both addressed the information collection requirements found in the NRTL Program requirements (29 CFR 1910.7) (OMB Control Number 1218–0147).

The **Federal Register** notice generated two comments from the public. Both comments are available on *regulations.gov* under docket number OSHA–2010–0007. OSHA responded to these comments in a Supporting Statement for the Revised Information Collection Requirements. A copy of the revised Information Collection Requirements, with applicable supporting documentation, including a description of the likely respondents, 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=1218-0147.*

On June 29, 2018, the Department of Labor submitted to OMB for approval the proposed revisions to the Information Collection Requirements (83 FR 30779). OMB provided approval of this submission on November 29, 2018.

Agency: DOL—OSHA.

Title of Collection: Definition and Requirements of a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Control Number: 1218–0147.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 140.

Total Estimated Annual Time Burden: 1,523 hours.

Total Estimated Annual Other Costs Burden: $718,836.

VI. Final Decision

OSHA will no longer follow the existing NRTL Program Directive procedures for accepting and reviewing applications, as described in section III.B. of this notice. Instead, OSHA adopts the proposed streamlined procedures for accepting and reviewing applications, with one minor, non-substantive change, as described in section III.C. of this notice.

OSHA also adopts the proposed revised fee schedule, as described in sections IV.B, IV.C, and IV.D of this notice, without change. Moreover, as described in sections IV.B, IV.C, and IV.D of this notice, the revised fee schedule adopted herein replaces OSHA's existing fee schedule.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 12, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–20212 Filed 9–18–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Comment Request: VETS' Competitive Grant Program Reporting

ACTION: Notice of availability; request for comments.

SUMMARY: VETS is announcing an opportunity for public comment on the proposed revision of certain information the agency collects from grant recipients. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice.

DATES: Consideration will be given to all written comments received by November 18, 2019.

ADDRESSES: A copy of this Information Collection Request (ICR) with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Rebekah Haydin by telephone at (972) 850–4720 (this is not a toll-free number) or by email at *Haydin.Rebekah@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Veterans' Employment and Training Service, 525 S. Griffin Street, #858, Dallas, TX 75202; by email: *Haydin.Rebekah@dol.gov;* or by fax: (972) 850–4716.

FOR FURTHER INFORMATION CONTACT: Rebekah Haydin, by telephone at (972) 850–4720 (this is not a toll-free number) or by email at *Haydin.Rebekah@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Department of Labor's VETS administers funds for the Homeless Veterans' Reintegration Program grants to state, local, and tribal governments; businesses and other for-profit and not-for-profit organizations on an annual program year basis. These competitive grants are codified under 38 U.S.C. 2021, 2021A, and 2023.

VETS provides funds to competitively-awarded grantees through annual Funding Opportunity Announcements and option year funding. The total number of grantees varies based on the amount of available funds, awarded in grants up to $500,000 each.

The Assistant Secretary for Veterans' Employment and Training monitors and supervises the distribution and use of those funds as required by 38 U.S.C. 2021 (b). Additionally, and in accordance with 38 U.S.C. 2021 (d), the Secretary reviews performance and provides a biennial report to Congress on the program, including an evaluation of the services furnished to veterans and an analysis of the information we have collected. VETS intends to request approval for this information collection that streamlines the annual funding request process for grantees, reports the use of grantee funds in sufficient detail to allow interim adjustments that ensure all appropriated funding is expended properly, and provides data needed for VETS' biennial report to Congress.

The forms and reports collect required programmatic and financial data from grantees. The continued use of standardized formats for collecting this information helps to ensure that requested data is provided in a uniform way, reporting burdens are minimized, the impact of collection requirements on respondents are properly assessed, collection instruments are clearly understood by respondents, and the information is easily consolidated for posting in accordance with statutory requirements.

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 it is approved by the Office of Management and Budget (OMB) under the PRA 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.

As previously noted this request has been classified as a revision. More specifically, VETS intends to add the VETS–704 Applicant Summary form that will allow VETS to timely make informed decisions about grant awards, and to request certain additional information on the VETS–701 Technical Performance Report about the participants grantees serve and the services provided to those participants.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1293–0014. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. VETS encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments. VETS 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–VETS.

Type of Review: Revision.

Title of Collection: VETS' Competitive Grant Program Reporting.

Forms:

1. VETS–700, Competitive Grants (CG) Planned Goals Chart;
2. VETS–701, CG Technical Performance Report (TPR);
3. VETS–702, CG Technical Performance Narrative (TPN);
4. VETS–703, Stand Down After Action Report (SDAAR) and;
5. VETS–704, Applicant Synopsis.

OMB Control Number: 1293–0014.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Estimated Number of Respondents: 1,078.

Frequency: On occasion.

Total Estimated Annual Responses: 2,662.

Estimated Total Annual Burden Hours: 11,004.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: Signed in Washington, DC, this 12th day of September, 2019.

Joseph S. Shellenberger,

Acting Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2019–20213 Filed 9–18–19; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Wage and Hour Division

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2020

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), beginning January 1, 2020. Beginning on that date, the Executive Order minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $10.80 per hour, while the required minimum cash wage that generally must be paid to

tipped employees performing work on or in connection with covered contracts will increase to $7.55 per hour.

DATES: These new rates shall take effect on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Acting Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

The Executive Order was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to $10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the Order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

The Executive Order and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of $0.05.

Section 2(b) of the Executive Order further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI–W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI–W for the preceding year, ''to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.'' 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, the Executive Order and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site; [1] on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)–(iv).

Section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least $4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. *Id.* At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order minimum wage and the cash wage required for tipped employees are currently $10.60 and $7.40 per hour, respectively. The Department announced these rates on September 4, 2018, 83 FR 44906, and the rates took effect on January 1, 2019.

II. The 2020 Executive Order Minimum Wage Rate

Using the methodology set forth in the Executive Order and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI–W, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four

[1] Earlier this year, *WDOL.gov* moved to *beta.SAM.gov* and is now known as Wage Determinations. The *beta.SAM.gov* website is the authoritative and single location for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of $0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2020, the Department therefore calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2019 and the last two quarters of 2018 (*i.e.,* July 2018 through June 2019). The Department then compared that data to the average CPI–W for the preceding year, which consists of the first two quarters of 2018 and the last two quarters of 2017 (*i.e.,* July 2017 through June 2018). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 2.036 percent. The Department then applied that annual percentage increase of 2.036 percent to the current Executive Order hourly minimum wage rate of $10.60, which resulted in a wage rate of $10.816 (($10.60 × 0.02036) + $10.60); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of $0.05.

The new Executive Order minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2020 is therefore $10.80 per hour.

III. The 2020 Executive Order Minimum Cash Wage For Tipped Employees

As noted above, section 3 of the Executive Order provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order minimum wage beginning on January 1, 2018 (*i.e.,* $7.25 per hour compared to $10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order minimum wage. Seventy percent of the new Executive Order minimum wage rate of $10.80 is $7.56. Because the Executive Order provides that the rate must be rounded to the nearest $0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2020 is therefore $7.55 per hour.

IV. Appendices

Appendix A to this notice provides a comprehensive chart of the CPI–W data published by BLS that the Department used to calculate the new Executive Order minimum wage rate based on the methodology explained herein. Appendix B to this notice sets forth an updated version of the Executive Order poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2020. *See* 79 FR 60732–33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in Appendix B in a prominent or accessible place at the worksite.

Dated: September 4, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

Appendix A: Data Used To Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2020

Data Source: Consumer Price Index for Urban wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted)

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual average
2017Q3 to 2018Q2	238.617	239.448	240.939	240.573	240.666	240.526	241.919	242.988	243.463	244.607	245.770	246.196	242.1427
2018Q3 to 2019Q2	246.155	246.336	246.565	247.038	245.933	244.786	245.133	246.218	247.768	249.332	249.871	249.747	247.0735
Annual Percentage Increase	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2.036%

Appendix B: Updated Version of the Executive Order 13658 Poster

BILLING CODE 4510–27–P

WORKER RIGHTS
UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.80 PER HOUR

EFFECTIVE JANUARY 1, 2020 – DECEMBER 31, 2020

The law requires certain employers to display this poster where employees can readily see it.

MINIMUM WAGE

Executive Order 13658 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) $10.10 per hour beginning January 1, 2015, and (2) beginning January 1, 2016, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 1, 2020 through December 31, 2020 is $10.80.

TIPS

Covered tipped employees must be paid a cash wage of at least $7.55 per hour effective January 1, 2020 through December 31, 2020. If a worker's tips combined with the required cash wage of at least $7.55 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- Some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Workers employed on contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands, except when the workers are performing associated lodging and food services, are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at https://www.dol.gov/whd/local/.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: www.dol.gov/whd/flsa/eo13658.

WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

WH1289 REV 02/20

[FR Doc. 2019–19673 Filed 9–18–19; 8:45 am]

BILLING CODE 4510–27–C

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Tuesday, September 24, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Board Appeal. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–20421 Filed 9–17–19; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, and 50–72; NRC–2019–0179]

Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to provide comments, request a hearing and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–51 and NPF–6, issued to Entergy Operations, Inc. (Entergy, the licensee), for Arkansas Nuclear One (ANO), Units 1 and 2 (ANO–1 and ANO–2), respectively. The proposed amendments would extend the implementation dates for License Amendment Nos. 264 and 314 for ANO–1 and ANO–2, respectively, from October 30, 2019, to January 14, 2020. These amendments, which were issued on January 17, 2019, approved an update to the ANO Emergency Plan to adopt a revised Emergency Action Level scheme.

DATES: Submit comments by October 21, 2019. Requests for a hearing or petition for leave to intervene must be filed by November 18, 2019.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0179. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Thomas Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–4037; email: *Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0179 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0179.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2019–0179 in your comment submission.

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

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

II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–51 and NPF–6, issued to Entergy Operations, Inc. (Entergy, the licensee), for Arkansas Nuclear One (ANO), Units 1 and 2 (ANO–1 and ANO–2), located in Pope County, Arkansas, as outlined in Entergy's request dated September 5, 2019 (ADAMS Accession No. ML19248C601).

The proposed amendments would amend the renewed facility operating licenses for ANO–1 and ANO–2. In its license amendment request, Entergy requested to extend the implementation dates for License Amendment Nos. 264 and 314 for ANO–1 and ANO–2, respectively (ADAMS Accession No. ML18337A247), from October 30, 2019, to January 14, 2020. License Amendment Nos. 264 and 314, which were issued on January 17, 2019, approved an update to the ANO Emergency Plan to adopt the Nuclear Energy Institute (NEI) revised emergency action level scheme described in NEI 99–01, ''Development of Emergency Action Levels for Non-Passive Reactors,'' Revision 6.

Entergy explained that the implementation date extensions are needed because the recent unexpected and extended ANO–2 forced outage inhibited completion of personnel training necessary to support implementation of the revised ANO Emergency Plan. In its application, the licensee stated, in part, that, ''. . . delaying the implementation of the NEI 99–01, Revision 6—based ANO Emergency Plan until January 14, 2020 will not affect the health and safety of the public or challenge nuclear safety in any manner.''

Before issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an

accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

An Emergency Plan provides mitigative and recovery efforts associated with certain station events that could impact the health and safety of the public. The ANO Emergency Plan is unrelated to any accident or event initiator. The ANO Emergency Plan currently in use is based on Revision 5 of the aforementioned NEI guidance, as previously approved by the NRC. An Emergency Plan based on either Revision 5 or Revision 6 of the NEI guidance is effective and acceptable for establishing all necessary actions necessary to mitigate the consequences of an accident previously evaluated and have been previously endorsed by the NRC. Therefore, the proposed NEI 99–01, Revision 6—based ANO Emergency Plan implementation does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As stated previously, an Emergency Plan is not associated with any accident initiator but acts only to limit the consequences of an accident. The proposed amendment does not alter any plant equipment or otherwise affect the accident analyses of either ANO unit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

As stated previously, an Emergency Plan based on either Revision 5 or Revision 6 of the NEI guidance is effective and acceptable for establishing all necessary actions necessary to mitigate the consequences of an accident previously evaluated and have been previously endorsed by the NRC. ANO will continue to utilize the station Emergency Plan based on NEI 99–01, Revision 5, until Revision 6 of the NEI guidance is fully implemented. Therefore, delaying implementation of the NEI 99–01, Revision 6—based ANO Emergency Plan does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no

significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the

document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 5, 2019.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, this 16th day of September 2019.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–20240 Filed 9–18–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0142]

Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Final Interim Staff Guidance (ISG) NMSS–ISG–02, ''Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions.'' The purpose of this final ISG is to assist the staff in conducting the Section 106 consultation process of the National Historic Preservation Act of 1966 (NHPA) for uranium recovery licensing actions. This ISG is primarily intended for the NRC staff and does not impose new or changes to regulatory requirements. The ISG, however, provides useful information to participants in the Section 106 process of the NHPA for uranium recovery licensing actions.

DATES: This guidance takes effect on October 21, 2019.

ADDRESSES: Please refer to Docket ID NRC–2014–0142 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://regulations.gov* and search for Docket ID NRC–2014–0142. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.*
- *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: Diana Diaz-Toro, Office of the Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0930 or email: *Diana.Diaz-Toro@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is responsible for regulating the civilian use of nuclear materials and facilities in a manner that protects public health and safety from radiological hazards and protects common defense and security. The NRC has statutory authority to regulate and license uranium recovery activities through the Atomic Energy Act of 1954, as amended, and also through the Uranium Mill Tailings Radiation Control Act of 1978, which established programs for the stabilization and control of mill tailings at uranium or thorium mill sites. In addition to the NRC staff's safety review of a license application submittal, the NRC staff conducts an environmental review, as required under the National Environmental Policy Act of 1969, as amended, and the Section 106 process in accordance with the NHPA.

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and allow the Advisory Council on Historic Preservation an opportunity to review and comment on the undertaking. Federal agencies carry out the Section 106 process in consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, other federal, state, and local governmental agencies, tribal governments, additional consulting parties, and the public. In accordance with the NHPA-implementing regulations in section 800.1(c) of title 36 of the *Code of Federal Regulations,* the NRC must complete the Section 106 process prior to making its decision on the request for the licensing action.

Between 2007 and 2017, the NRC experienced an increase in the number of licensing actions for in situ uranium recovery facilities that resulted in an increase in the NRC staff's efforts and activities related to the NHPA Section 106 reviews. Several factors contributed to the increase in the scope and complexity of the Section 106 reviews. Therefore, the NRC took a number of steps to improve the Section 106 process for uranium recovery licensing actions. One of these steps was the development of this ISG.

On June 18, 2014 (79 FR 34792), the NRC published the ISG in draft form for public review and comment. The public

comment period was extended through November 17, 2014 (79 FR 52374). The NRC then considered the public comments on the draft ISG in preparing the final report (ADAMS Accession No. ML19212A753). The responses to the comments can be found in the comment response appendix (Appendix B of the ISG; ADAMS Accession No. ML19212A752).

This ISG is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated at Rockville, Maryland, this 13th day of September, 2019.

For the Nuclear Regulatory Commission.

Cinthya I. Román,

Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Reviews, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2019–20228 Filed 9–18–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–197 and CP2019–220; MC2019–198 and CP2019–221; MC2019–199 and CP2019–222]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 20, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–197 and CP2019–220; *Filing Title:* USPS Request to Add Priority Mail Contract 550 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 12, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 20, 2019.

2. *Docket No(s).:* MC2019–198 and CP2019–221; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 118 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 12, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 20, 2019.

3. *Docket No(s).:* MC2019–199 and CP2019–222; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 65 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 12, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 20, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–20219 Filed 9–18–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86969; File No. SR–NASDAQ–2019–049]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Change To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director

September 13, 2019.

I. Introduction

On May 29, 2019, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of ''Family Member'' for purposes of determining the independence of directors under Exchange Listing Rule 5605(a)(2). The proposed rule change was published for comment in the **Federal Register** on June 18, 2019.[3] On August 1, 2019, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86095 (June 12, 2019), 84 FR 28379 (''Notice'').

proceedings to determine whether to approve or disapprove the proposed rule change, to September 16, 2019.[4] The Commission has received no comment letters on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposal

Nasdaq has proposed to amend the definition of Family Member in Nasdaq Rule 5605(a)(2), which is used for purposes of determining whether a director of a listed company qualifies as an Independent Director, to exclude stepchildren of directors from the Family Member definition.

Nasdaq listing rules have certain requirements for Independent Directors, including that a majority of the board of the directors of the company (the ''Board'') be Independent Directors, and that the company's audit, compensation and nominating committees[5] be comprised solely of Independent Directors.[6] ''Independent Director'' is defined in Nasdaq Rule 5605(a)(2) to mean a person other than an executive officer or employee of the company or any other individual having a relationship which, in the opinion of the company's Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Rule 5605(a)(2) also provides a list of certain relationships that preclude a Board finding of independence, including the following:

- A director who accepted or who has a Family Member who accepted any compensation from the company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence (with certain exceptions, including a Family Member who is an employee other than an executive officer);[7]
- A director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company as an executive officer;
- A director who is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more (with certain exceptions);
- A director of the company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the company serve on the compensation committee of such other entity; and
- A director who is, or has a Family Member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.[8]

Nasdaq Rule 5605(a)(2) currently defines Family Member as ''a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' As Nasdaq noted in its proposal, this definition includes stepchildren, as they are ''children by . . . marriage.''[9] Nasdaq proposes to re-define Family Member as ''a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.'' The same definition is used in the corresponding listing rules of the New York Stock Exchange (''NYSE'').[10] Nasdaq assumes, without elaboration, that the term ''children'' excludes stepchildren.[11] Nasdaq also proposes to exclude domestic employees who share a director's home, on the ground that the term is intended to capture familial, not commercial, relationships.[12]

Nasdaq acknowledges that Independent Directors over time have become a linchpin in American corporate governance and that it is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed company that would impair their independence. In support of its proposal, Nasdaq indicates that including stepchildren within the definition of Family Member could capture attenuated relationships, such as where a director marries a person who has an adult child, and so has never acted in any capacity as a parent of that child. Nasdaq believes that, rather than prohibiting all stepchildren from being deemed independent, it would be appropriate for the Board to review these relationships on a facts and circumstances basis as contemplated by general provisions of the Independent Director definition. Nasdaq also states that it has heard from listed companies and their legal counsel that it can be burdensome to analyze potential differences in the meaning of the Nasdaq and NYSE definitions. Finally, Nasdaq asserts that its proposal is consistent with SEC Rule 10A–3, which addresses director independence for audit committee service, and which focuses only on payments to minor children or stepchildren, or stepchildren sharing a home with the director.

III. Proceedings To Determine Whether To Disapprove SR–NASDAQ–2019–049 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under

[4] *See* Securities Exchange Act Release No. 86545 (August 1, 2019), 84 FR 38704 (August 7, 2019).

[5] If the company does not have a nominating committee, under Nasdaq Rule 5605(e)(1) nominees for directors must be selected or recommended by Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate.

[6] *See* Nasdaq Rule 5605(b)–(e).

[7] Nasdaq states in its rules that this criterion is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. *See* Nasdaq Rule IM–5605.

[8] Additional criteria of independence apply with respect to Board members and members of the audit and compensation committees, but are not relevant here. *See* Nasdaq Rule 5605.

[9] *See* Notice, *supra* note 3, at 28379.

[10] *See* Section 303A.02 of the NYSE Listed Company Manual. For clarity, note that NYSE Section 303A.02 uses, and defines, the term ''immediate family member'', which corresponds to Nasdaq's term ''Family Member''. *See also* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (File Numbers SR–NYSE–2002–33 and SR–NASD–2002–141) (Commission order approving the current texts of the NYSE and Nasdaq definitions (''2003 Approval Order'')).

[11] Nasdaq stated in its proposal that the category of ''children . . . by marriage'' was added to the definition of a Family Member inadvertently in the context of changes it adopted in 2003. *See* Notice, *supra* note 3, at 28379. *See also* 2003 Approval Order. According to Nasdaq, those changes were meant to simplify the existing definition of Family Member while not introducing any substantive differences, but did not succeed in doing so and resulted in an unwarranted expansion of the definition. *See* Notice at 28380.

[12] *See id.*

consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act, and, in particular, 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 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.

Nasdaq is proposing to define a Family Member, for purposes of determining whether a director of a listed company qualifies as an Independent Director, as ''a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home,'' and to interpret the term ''children'' as excluding stepchildren. Nasdaq provides an example where the stepchild relationship could be attenuated, namely where a person has become a stepchild of a director as an adult. In such cases, where there has never been a parental relationship, Nasdaq believes the blanket exclusion from a finding of independence is unwarranted. Nasdaq, however, does not address other scenarios captured by its proposal where the relationship between a director and the stepchild may be less attenuated, such as where the stepchild has been raised by the director from a young age but no longer shares the same home, or explain why those closer relationships no longer continue to be appropriate for the blanket exclusion.

Nasdaq also expresses concern that the differences between the Nasdaq and NYSE rules create unnecessary burdens on listed companies attempting to analyze potential differences in their meaning. Accordingly, Nasdaq is proposing to make the language of its definition of Family Member identical to the corresponding definition in NYSE rules. Nasdaq notes that, prior to the time it proposed its current definition of Family Member in 2003, the Nasdaq definition of Family Member and its NYSE counterpart were nearly identical. Nasdaq states that its current rule was intended to simplify the prior definition of Family Member without introducing any substantive changes from the prior rule.[14]

Nasdaq further takes the position that the inclusion of stepchildren in its current rule was inadvertent and unwarranted, and this is the basis for its proposed interpretation that the term ''children'' excludes stepchildren. As noted above, however, Nasdaq also affirms the fact that the current Nasdaq rule (which includes stepchildren in the definition of Family Member) was not intended to differ substantively from the NYSE rule, which uses the same language Nasdaq is proposing to adopt. This would appear to lead to the conclusion that the term ''children'' should be interpreted as including stepchildren, rather than excluding them. Nasdaq does not explain this apparent contradiction, or the basis for its view that the express inclusion of stepchildren in its current rule was inadvertent. Nasdaq also does not address why its proposal that the term ''children'' be interpreted as excluding stepchildren, which potentially would create a situation where the Nasdaq and NYSE rules use identical language but have different interpretations, would not increase confusion and burdens on listed companies seeking to assess potential differences in the meanings of the Nasdaq and NYSE rules, rather than alleviate those burdens.

Finally, as noted above, Nasdaq asserts that its proposal is consistent with SEC Rule 10A–3, which addresses director independence for audit committee service, and which focuses only on payments to minor children or stepchildren, or stepchildren sharing a home with the director. The Commission notes that Nasdaq's proposal in fact is more permissive than SEC Rule 10A–3, as it would permit a finding of independence if there is a company relationship with a minor stepchild of a director who is not sharing his or her home.

The Commission notes that, under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [15] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[16] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[17]

For the reasons discussed above, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by November 4, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 18, 2019.

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

[13] 15 U.S.C. 78f(b)(5).

[14] In approving the current NYSE and Nasdaq rules in 2003, the Commission noted that they were intended to ''conform the Nasdaq and NYSE proposals more closely'' and ''harmonize more closely various provisions of their proposals to reduce the possibility of differing regulatory treatment.'' *See* 2003 Approval Order, *supra* note 10, at 64176.

[15] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[16] *See id.*

[17] *See id.*

[18] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–049 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–2019–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–049 and should be submitted on or before October 10, 2019. Rebuttal comments should be submitted by October 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20220 Filed 9–18–19; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86961; File No. SR–NYSEArca–2019–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

September 13, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 30, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') by revising the Options Regulatory Fee (''ORF'') and notice language related to the ORF, effective August 30, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the Fee Schedule to revise the ORF charged solely for the August 30, 3019 trading day and to modify language regarding notice requirements for any changes to the ORF, effective August 30, 2019.

Background Regarding the ORF

As a general matter, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of OTP Holders and OTP Firms (the ''OTP Regulatory Costs''). The majority of the OTP Regulatory Costs are direct expenses, such as the costs related to in-house staff, third-party service providers, and technology. The direct expenses support the day-to-day regulatory work relating to the OTP Holders or OTP Firms, including surveillance, investigation, examinations and enforcement. Such direct expenses represent approximately 91% of the Exchange's total OTP Regulatory Costs. The indirect expenses include human resources and other administrative costs.

The ORF is assessed on OTP Holders or OTP Firms for options transactions that are cleared by the OTP Holder or OTP Firm through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder or OTP Firm clearing firms by the OCC on behalf of NYSE Arca,[6] the

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06.

[5] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[6] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An OTP Holder or OTP Firm is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. *See id.*

Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders or OTP Firms. In addition, the Exchange notes that the regulatory costs relating to monitoring OTP Holders or OTP Firms with respect to Customer trading activity are generally higher than the regulatory costs associated with OTP Holders or OTP Firms that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders or OTP Firms that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's or OTP Firm's relationship with its Customers via more labor-intensive exam-based programs.[7] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder or OTP Firm proprietary transactions) of its regulatory program.

ORF Revenue and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[8]

Because the ORF is based on options transactions volume, ORF revenue to the Exchange is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from OTP Holders or OTP Firms will increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from OTP Holders or OTP Firms will decrease as well. Accordingly, the Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

OIP and Current Proposal

In July 2019, the Exchange filed to lower the ORF to $0.0054 (from $0.0055) per contract side for the remainder of 2019 in response to increased options transaction volumes in 2018, which reverted (in part) in the first half of 2019 (the ''July ORF Filing'').[9] However, on August 30, 2019, the Commission issued the Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Modify the Options Regulatory Fee (the ''OIP'').[10] As a result of the OIP, on August 30, 2019, the last trading day of the month, the ORF reverted back to $0.0055 (from $0.0054).

To ensure consistency of ORF assessments for the full month of August 2019, the Exchange proposes to modify the Fee Schedule to specify that the amount of ORF that will be collected by the Exchange for the trading day of August 30, 2019 will be $0.0054 per contract side (the ''August 30th ORF Rate'').[11] The Exchange believes that revenue generated from the ORF, including the August 30th ORF Rate, will continue to cover a material portion, but not all, of the Exchange's regulatory costs.

Per the current Fee Schedule, the Exchange is required to notify participants via a Trader Update of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change;[12] however, given the OIP, the Exchange proposes to modify this requirement with the following caveat: ''except in the case of the August 30th ORF rate change.''[13]

For avoidance of doubt, the Exchange notes that the August 30th Rate applies for that day only and as a result of the OIP, the ORF effective September 3, 2019 will be $0.0055—the rate in place prior to the (now suspended) July ORF Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[14] of the Act, in general, and Section 6(b)(4) and (5)[15] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed August 30th ORF Rate is reasonable because it would help maintain fair and orderly markets and benefit investors and the public interest because it would ensure transparency and consistency of ORF for August 2019. Specifically, the proposal would ensure that the amount of ORF collected by the Exchange for the trading day of August 30, 2019 will be the same rate collected on every other trading day in August (*i.e.,* $0.0054 per contract side). The Exchange believes this will avoid disruption to its OTP Holders and OTP Firms that are subject to the ORF. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[16]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed August 30th ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder or OTP Firm clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders or OTP Firms. In addition, the

[7] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 61588 (February 25, 2010).

[8] *See* Fee Schedule, *supra* note 5.

[9] *See* Securities Exchange Act Release No. 86390 (July 16, 2019), 84 FR 35169 (July 22, 2019) (SR–NYSEArca–2019–49).

[10] *See* Securities and Exchange Release No. 86832 (August 30, 2019) (SR–NYSEArca–2019–49).

[11] *See* proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee. This proposal is not intended to be responsive to the issues raised in the OIP, but to instead address the immediate issue of billing for August 30th.

[12] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee.

[13] *See* proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See supra* note 4.

Exchange notes that the regulatory costs relating to monitoring OTP Holders or OTP Firms with respect to Customer trading activity are generally higher than the regulatory costs associated with OTP Holders or OTP Firms that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders or OTP Firms that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's or OTP Firm's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder or OTP Firm proprietary transactions) of its regulatory program. Thus, the Exchange believes the August 30th ORF (like the rate assessed for every other trading day in August 2019) would be equitably allocated in that it is charged to all OTP Holders or OTP Firms on all their transactions that clear in the Customer range at the OCC.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed August 30th ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder or OTP Firm clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders or OTP Firms. In addition, the Exchange notes that the regulatory costs relating to monitoring OTP Holders or OTP Firms with respect to Customer trading activity are generally higher than the regulatory costs associated with OTP Holders or OTP Firms that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders or OTP Firms that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's or OTP Firm's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder or OTP Firm proprietary transactions) of its regulatory program. Thus, the Exchange believes the August 30th ORF Rate (like the rate assessed for every other trading day in August 2019), is not unfairly discriminatory because it is charged to all OTP Holders or OTP Firms on all their transactions that clear in the Customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed fee change would not impose an undue burden on competition as it is charged to all OTP Holders or OTP Firms on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from OTP Holder or OTP Firm clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders or OTP Firms.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2019–64 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 No. SR–NYSEArca–2019–64. 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

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

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 No. SR–NYSEArca–2019–64, and should be submitted on or before October 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20221 Filed 9–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86960; File No. SR–NYSEAMER–2019–35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the NYSE American Options Fee Schedule by Revising the Options Regulatory Fee

September 13, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 30, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') by revising the Options Regulatory Fee (''ORF'') and notice language related to the ORF, effective August 30, 2019. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to revise the ORF charged solely for the August 30, 2019 trading day and to modify language regarding notice requirements for any changes to the ORF, effective August 30, 2019.

Background Regarding the ORF

As a general matter, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of ATP Holders (the ''ATP Regulatory Costs''). The majority of the ATP Regulatory Costs are direct expenses, such as the costs related to in-house staff, third-party service providers, and technology. The direct expenses support the day-to-day regulatory work relating to the ATP Holders, including surveillance, investigation, examinations and enforcement. Such direct expenses represent approximately 91% of the Exchange's total ATP Regulatory Costs. The indirect expenses include human resources and other administrative costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American,[6] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.[7] As a result, the costs

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Twelfth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 79114 (October 18, 2016), 81 FR 73117 (October 24, 2016) (SR–NYSEMKT–2013–93).

[5] *See* Fee Schedule, Section VII, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[6] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. *See id.*

[7] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange

Continued

associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program.

ORF Revenue and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[8]

Because the ORF is based on options transactions volume, ORF revenue to the Exchange is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will decrease as well. Accordingly, the Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

OIP and Current Proposal

In July 2019, the Exchange filed to lower the ORF to $0.0054 (from $0.0055) per contract side for the remainder of 2019 in response to increased options transaction volumes in 2018, which reverted (in part) in the first half of 2019 (the ''July ORF Filing'').[9] However, on August 30, 2019, the Commission issued the Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Modify the Options Regulatory Fee (the ''OIP'').[10] As a result of the OIP, on August 30, 2019, the last trading day of the month, the ORF reverted back to $0.0055 (from $0.0054).

To ensure consistency of ORF assessments for the full month of August 2019, the Exchange proposes to modify the Fee Schedule to specify that the amount of ORF that will be collected by the Exchange for the trading day of August 30, 2019 will be $0.0054 per contract side (the ''August 30th ORF Rate'').[11] The Exchange believes that revenue generated from the ORF, including the August 30th ORF Rate, will continue to cover a material portion, but not all, of the Exchange's regulatory costs.

Per the current Fee Schedule, the Exchange is required to notify participants via a Trader Update of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change;[12] however, given the OIP, the Exchange proposes to modify this requirement with the following caveat: ''except in the case of the August 30th ORF rate change.''[13]

For avoidance of doubt, the Exchange notes that the August 30th Rate applies for that day only and as a result of the OIP, the ORF effective September 3, 2019 will be $0.0055—the rate in place prior to the (now suspended) July ORF Filing.

Finally, The Exchange proposes to delete obsolete language in the ORF rule text, regarding Mini Options, which was inadvertently not eliminated when the Exchange filed a ''clean up'' fee filing to remove all such references.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[15] of the Act, in general, and Section 6(b)(4) and (5)[16] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed August 30th ORF Rate is reasonable because it would help maintain fair and orderly markets and benefit investors and the public interest because it would ensure transparency and consistency of ORF for August 2019. Specifically, the proposal would ensure that the amount of ORF collected by the Exchange for the trading day of August 30, 2019 will be the same rate collected on every other trading day in August (*i.e.,* $0.0054 per contract side). The Exchange believes this will avoid disruption to its OTP Holders and OTP Firms that are subject to the ORF. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[17]

The Exchange believes that the proposal deleting outdated reference to products no longer traded (*i.e.,* Mini Options) is reasonable as it would streamline the Fee Schedule by removing superfluous language thereby making the Fee Schedule easier for market participants to navigate.[18]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed August 30th ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater

to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 61588 (February 25, 2010).

[8] *See* Fee Schedule, *supra* note 5.

[9] *See* Securities Exchange Act Release No. 86391 (July 16, 2019), 84 FR 35165 (July 22, 2019) (SR–NYSEAMER–2019–27).

[10] *See* Securities and Exchange Release No. 86832 (August 30, 2019) (SR–NYSEAMER–2019–27).

[11] *See* proposed Fee Schedule, Section VII, Regulatory Fees, ORF. This proposal is not intended to be responsive to the issues raised in the OIP, but to instead address the immediate issue of billing for August 30th.

[12] *See* Fee Schedule, Section VII, Regulatory Fees, ORF.

[13] *See* proposed Fee Schedule, Section VII, Regulatory Fees, ORF.

[14] *See id. See also* Securities Exchange Act Release No. 84603 (November 14, 2018), 83 FR 58795 (November 21, 2018) (NYSEAmer–2018–48) (filing to eliminate obsolete charges, including removing obsolete references to fees for Mini Options).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See supra* note 4.

[18] *See supra* note 14.

expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the August 30th ORF (like the rate assessed for every other trading day in August 2019) would be equitably allocated in that it is charged to all OTP Holders or OTP Firms on all their transactions that clear in the Customer range at the OCC.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed August 30th ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the August 30th ORF Rate (like the rate assessed for every other trading day in August 2019), is not unfairly discriminatory because it is charged to all OTP Holders or OTP Firms on all their transactions that clear in the Customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed fee change would not impose an undue burden on competition as it is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

Finally, the Exchange does not believe that the proposed deletion of obsolete references to Mini Options would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as these changes are not intended to address any competitive issues and would instead add more specificity, clarity and transparency regarding this functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEAMER–2019–35 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 No. SR–NYSEAMER–2019–35. 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

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

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 No. SR–NYSEAMER–2019–35, and should be submitted on or before October 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20222 Filed 9–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86959; File No. SR–Phlx–2019–33]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Specialists and Registered Options Traders

September 13, 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 September 10, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1000, titled ''Applicability, Definitions and References,'' Rule 1014, titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders,'' Rule 1020, titled ''Registration and Functions of Options Specialists,'' Rule 1082, titled ''Firm Quotations,'' Rule 1087, titled ''Price Improvement XL (''PIXL''), Options 8, Section 2, titled ''Definitions,'' Section 11, titled ''Specialist Appointment,'' Section 39, titled ''Options Minor Rule Violations and Order and Decorum Regulations'' at E–16, titled ''Communications and Equipment.'' The Exchange also proposes to relocate Rule 1064, titled ''Crossing Facilitation and Solicited Orders'' to Options 8, Section 30. The Exchange also proposes to relocate other rules, update cross-references and make various other technical amendments.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to: (1) Amend certain descriptions within Rule 1000, titled ''Applicability, Definitions and References''; (2) amend Rule 1014, titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' to amend the bid/ask differentials within current Rule 1014(c), relocate rule text within the rule and delete certain obsolete rule text; (3) amend Rule 1020, ''Registration and Functions of Options Specialists'' so that a Specialist is not required to be appointed to an option series; (4) relocate other rules, update cross references in various rules, and make other technical amendments. Each change will be described below.

Rule 1000

The Exchange proposes to amend Rule 1000, titled ''Applicability, Definitions and References'' in several ways. First, the Exchange proposes some technical amendments to Rule 1000 to format the rule consistently by placing a title prior to each description where no title appears. This is a non-substantive change to make the rule consistent. The Exchange also proposes to update the name of The Options Clearing Corporation to add a ''The'' before the name. Second, the Exchange proposes to add a definition for ''Public Customer'' within the Rule 1000(b)(56) to provide, ''Public Customer shall mean a person or entity that is not a broker or dealer in securities and is not a professional as defined within Phlx Rule 1000(b)(14).'' With the addition of this definition, the Exchange proposes to amend the description of a Professional within Rule 1000(b)(14) to remove the following rule text, ''A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g), 1033(e), 1064, Commentary .02 (except professional orders will be considered customer orders subject to facilitation), 1087 and 1098, as well as Options Floor Procedure Advices B–6 and F–5.'' Because the Exchange will be separately utilizing the terms ''Public Customer'' and ''Professional'' [3] throughout the Rulebook, the Exchange believes that the citations to other rules within the definition of ''Professional'' in Rule 1000(b)(14) are not necessary because each rule will distinguish whether it pertains to a Public Customer or a Professional. Today, the professional rule distinguishes where professional orders will be treated as an off-floor broker-dealer's orders and other instances where professional orders will be considered customer orders. The Exchange proposes, similar to other Rulebooks,[4] to make clear within the

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The following rules add both the terms ''Public Customer'' and ''Professional'' in place of ''customer'' or ''public customer'': Rule 1017, 1087, 1093 and Options 8, Section 28.

[4] Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX''), Nasdaq BX, Inc.(''BX'') and NOM Rules separately define Professional and Priority Customer and Public Customer, respectively within Options 1, Section

rule text whether the reference to customer is to a Professional, Public Customer or both. This proposal is technical in nature because it more specifically explains how the term ''customer'' or ''public customer'' is applied today. Where the terms ''customer'' or ''public customer'' are utilized the Exchange is proposing to replace those terms with more specific defined terms such as Public Customer, as that definition is proposed, or Professional, as that term in defined instead of citing applications of the term Professional in Rule 1000. The Exchange believes that a market participant reading a rule would benefit from the term ''customer'' or ''public customer'' being more specifically denoted within the actual rule text of each rule to make clear which type of participant applies today. The Exchange is not proposing to amend its rules or functionality with this change of terms, rather the Exchange is proposing to add defined terms within the rule text and eliminating the cross references within the Professional definition. Today, the term ''customer'' or ''public customer'' are not defined. The Exchange proposes the actual defined terms as they are utilized within the System.

As noted, the Exchange is adopting the term ''Public Customer'' at proposed Rule 1000(b)(56) and already has the term ''professional'' defined in the Rulebook. The Exchange is not amending any functionality, rather the Exchange is substantively retaining the same meaning as today for the term ''customer'' but substituting the proper defined term.[5] The Exchange proposes to specifically amend the term ''customer'' in certain rules to the defined term ''Public Customer.''[6]

The Exchange proposes to define ''Registered Options Trader'' or ''ROT'' within proposed Rule 1000(b)(57). The Exchange will continue to describe how a ROT is permitted to transact business within Rule 1014. Rule 1014 is described below in more detail. Since, the term ROT is utilized throughout the options Rules, it is being defined within Rule 1000 for ease of reference. Currently, Rule 1014(b) provides, ''A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. For purposes of this Rule 1014, the term ''ROT'' shall include a Streaming Quote Trader, and a Remote Streaming Quote Trader, as defined below.'' The Exchange proposes to provide that a Registered Options Trader ''shall mean a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System.'' Phlx no longer has a separate ''foreign currency options participation.'' Those participations were eliminated.[7] Today, the Exchange has separately defined a ''Floor Market Maker'' within Options 8, Section 2(7) as a ROT who is neither an SQT or an RSQT so the reference to the floor is no longer necessary. This rule change also updates references to ''non-SQT ROTs'' to the ''Floor Market Maker.''[8] Finally, this definition of ROT is utilized throughout the Rules, not simply for Rule 1014, so it is better placed among the other definitions.

The Exchange proposes to define a Specialist within Rule 1000(b)(58). Phlx Rule 1020 provides for the registration and functions of option specialists, however the term is not defined for purposes of the Rulebook, The Exchange proposes to state that a Specialist is ''. . . a member who is registered as an options Specialist pursuant to Rule 1020(a). A Specialist includes a Remote Specialist which is defined as a Specialist in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Rule 501.'' Phlx Rule 1020(a)(ii) provides, ''A Remote Specialist is an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.'' The Exchange proposes to define a Specialist within Rule 1000 for ease of reference.

The Exchange proposes to relocate current Rule 1014(b)(ii)(A) which provides, ''An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned.'' The Exchange proposes to relocate this description to proposed Rule 1000(b)(59) without amendment. The Exchange proposes to relocate current Rule 1014(b)(ii)(B) which provides, ''An RSQT is an ROT that is a member affiliated with and RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval.'' The Exchange proposes to relocate this description to proposed Rule 1000(b)(60) and add the following reference to certain acronyms that are utilized in the Rulebook, ''A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Rule 507.'' Today, Phlx Rule 507 provides that RSQTOs may also be referred to as Remote Market Maker Organizations (''RMOs'') and RSQTs may also be referred to as Remote Market Markers (''RMMs''). The Exchange proposes to add these terms to the definition for ease of reference in understanding the acronyms. The Exchange believes that relocating these definitions from Rule 1014 to Rule 1000 will bring greater transparency to the Rules. Also, adding a definition for a Specialist and describing an RSQTO and RMO within Rule 1000 will make it easier for market participants to understand the various registrations that exist on Phlx. The Exchange also proposes to amend Rule 501(f) to add a reference to the definition for ease of

1(a)(36) and (39) (see definitions for Professional and Priority Customer).

[5] The Exchange defined the term Public Customer and is now removing that definition. *See* Phlx Rules 1087, 1089 and 1093.

[6] The Exchange proposes to capitalize the term ''professional'' in Rule 1000(b)(14) and 1093. The Exchange proposes to capitalize the term ''public customer'' in Rules 1000(b)(41), 1010, 1087, 1088 and Options 8, Sections 24, 28. relocated rule 30 and 34. The Exchange proposes to amend the term ''customer'' within Rule 1017, 1087 and Options 8, Section 22 to refer to ''Public Customer'' and ''Professional.'' The Exchange proposes to replace the term ''non-broker-dealer customers'' with the terms ''Public Customer'' and/or ''Professional.'' The current definition of Professional, which is proposed to be deleted, states that Professionals would be treated like broker-dealers for the rules cited. The Exchange proposes to capitalize the term ''customer'' within the term ''Public Customer'' within Rule 1098, Options 8, Sections 24, 28, 33 and 34. Further Rules 1087, 1089, 1093 define a Public Customer today. With the introduction of the defined term ''Public Customer'' within Phlx Rule 1000, these definitions, which are the same as the new defined term, are being deleted because the Phlx Rule 1000 definition will apply to the options rules.

[7] *See* Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) (SR–Phlx–2011–13) (Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to NASDAQ OMX PHLX LLC's Limited Liability Company Agreement, By-Laws, Rules, Advices and Regulations).

[8] *See* Securities Exchange Act Release No. 85740 (April 29, 2019), 86 FR 19136 (May 3, 2019) (SR-Phlx-2019–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Floor Trading Rules to Options 8). This rule change proposes to replace the term ''non-SQT ROT'' with ''Floor Market Maker.'' The Exchange is replacing that term in Phlx Rules 1087 and 1098. Options 8 contains all Floor related rules including definitions.

reference as this rule discusses an RSQT.

The Exchange proposes to add a new term ''Non-Public Customer'' into the Rulebook. The Exchange proposes to define the term ''Non-Public Customer'' as a person or entity that is a broker or dealer in securities, or is a Professional.'' This term is utilized within Phlx Rule 1089, ''Electronic Execution Priority and Processing in the System.'' The Exchange believes that defining this term will bring greater transparency to the term's usage. Defining this term does not substantively amend the meaning of the term within Phlx Rule 1089 but further provides context to the current usage of the term.

The Exchange is deleting Rule 1000(e), which is reserved.

Rule 1014

The Exchange proposes to amend the title of Rule 1014 from ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' to ''Obligations of Market Makers.'' The Exchange proposes to relocate text from Rule 1014 to Rule 1000 as described herein. The Exchange proposes to relocate descriptive terms of market participants in order to describe each type of market participant within the definition section of Rule 1000. The Exchange proposes to retain text within Rule 1014 which describes the manner in which a ROT or Specialist may transact options on the Exchange.

The Exchange proposes to add an ''(i)'' before the current text which provides, ''Each ROT electing to engage in Exchange options transactions shall be assigned by the Exchange one or more classes of options, and Exchange options transactions initiated by such ROT on the Floor for any account in which he had an interest shall to the extent prescribed by the Exchange be in such assigned classes.'' The Exchange proposes to relocate Commentary .04 of Rule 1014 to the end of proposed Rule 1014(a)(i), without amendment.[9] The Exchange proposes to relocate the second paragraph of Commentary .01 of Rule 1014 to proposed Rule 1014(a)(i)(A), without amendment. The Exchange proposes to modify the current paragraph at Rule 1014(b)(ii)(B) which provides,

Notwithstanding the provisions of sub-paragraph (b)(i) above, an RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT shall not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist.

The Exchange proposes to remove the words ''Notwithstanding the provisions of sub-paragraph (b)(i) above'' and ''such'' as unnecessary terms that related to rule text that existed previously but is no longer part of the rule text.

The Exchange proposes to relocate rule text from Commentary .05 of Rule 1014 to proposed Rule 1014(a)(iii), without amendment. The Exchange proposes to relocate the rule text of Commentary .06 to Rule 1014 to proposed Rule 1014(a)(iv), without amendment. The Exchange proposes to relocate rule text from the first paragraph of Commentary .01 of Rule 1014 to proposed Rule 1014(a)(v). The Exchange notes that the word ''similarly'' was removed as unnecessary. As noted herein, the Exchange proposes to relocate the second paragraph of Commentary .01 of Rule 1014 to proposed Rule 1014(a)(i)(A), without amendment.

Bid/Ask Differential

The Exchange proposes to amend the title of Rule 1014(c) from ''*In Classes of Option Contracts to Which Assigned—Affirmative*'' to ''Appointment.'' The Exchange proposes to amend the current requirements for quoting which provides,

(1) Options on equities (including Exchange-Traded Fund Shares), and on index options may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 bid/ask differentials only apply to electronic quotations and only following the opening rotation in each security (*i.e.,* the bid/ask differentials specified in sub-paragraph (c)(i)(A)(1) above shall apply during opening rotation).

(2) Options on U.S. dollar-settled FCO may be quoted electronically with a difference not to exceed $5.00 between the bid and offer regardless of the price of the bid. The bid/ask differentials set forth in this subparagraph (c)(i)(A)(2) (b) only apply to electronic quotations and only following the opening rotation in each security (*i.e.,* the bid/ask differentials specified in sub-paragraph (c)(i)(A)(1) above shall apply during opening rotation).

The Exchange also proposes to amend current Options 8, Section 27, Quoting Obligations and Required Transactions, which provides at Section 27(c)(1)(A),

(A) Quote Spread Parameters (Bid/Ask Differentials)—

(i) Options on equities and index options bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

(ii) Options on U.S. dollar-settled FCO. With respect to all U.S. dollar-settled FCO bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2.00; no more than $.40 where the prevailing bid is $2.00 or more but less than $5.00; no more than $.50 where the prevailing bid is $5.00 or more but less than $10.00; no more than $.80 where the prevailing bid is $10.00 or more but less than $20.00; and no more than $1.00 where the prevailing bid is $20.00 or more. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to align the bid/ask requirements for in-the-money series for the trading floor with electronic bid/ask differentials for in-the-money series. Within Rule 1014(c), the Exchange proposes to capitalize ''Opening Process'' and remove rule text relating to rotations to make the rule text clear that the reference to differentials in Rule 1014(c) are intra-day differentials. Phlx has separate Valid Width Quote requirements for the Opening Process within Rule 1017.

Further, the Exchange proposes to align in-the-money[10] bid/ask differentials for options on equities (including Exchange-Traded Fund Shares), index options and options on U.S. dollar-settled FCOs within Rule 1014(c) and Options 8, Section 27(c). The Exchange proposes within Rule 1014(c) to provide for in-the-money series, where the market for the underlying security is wider than the differentials currently set forth, the bid/ask differentials may be as wide as the

[9] Commentary .04 to Rule 1014 provides, ''The obligations of an ROT with respect to those classes of options to which he is assigned shall take precedence over his other ROT activities.''

[10] The term ''in-the-money'' shall mean the following: For call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of quoting obligations in Rules 1014 and 1017. *See* Rule 1000(b)(51).

spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.[11] The Exchange is proposing a similar change to Options 8, Section 27(c)(1)(A)(ii) for U.S. dollar-settled FCOs. The Exchange proposes to align the language to make clear that options on equities applies to Exchange-Traded Fund Shares within Options 8, Section 27(c)(1)(A)(i). The Exchange believes that aligning the bid/ask differentials for all in-the-money options would cause the Exchange to have a single standard regardless of the product. Today, Options 8, Section 27(c)(1)(A)(i) provides, ''the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment.'' The Exchange is amending Options 8, Section 27(c)(1)(A)(i) to expand the provision to apply to equities (including Exchange-Traded Fund Shares) and index options. The Exchange also proposes to amend Options 8, Section 27(c)(1)(A)(ii), which applies to U.S. dollar-settled FCOs, similar to Rule 1014(c). Aligning the requirements for all in-the-money options across the Exchange will avoid confusion for Specialists and ROTs in submitting quotes on both the trading floor and electronically on Phlx. The Exchange is not amending bid/ask differentials for options which are not in-the-money.

The Exchange believes that amending the bid/ask differentials for in-the-money series for options on equities (including Exchange-Traded Fund Shares), index options and options on U.S. dollar-settled FCOs on the trading floor and electronically, to a spread which may be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment, where the market for the underlying security is wider than the $5 allowance already provided for within the rule, will allow Specialists and ROTs to obtain the same flexibility in quoting as they experience on other options markets today.[12] A Specialist or ROT quoting an in-the-money options series can hedge its position by trading in the underlying security at the NBBO, which may be narrower than the quotation on the primary market.

The Exchange also proposes to note that it may establish differences other than the above for one or more series or classes of options. The Exchange proposes to add the following rule text to Rule 1014(c)(1), ''The Exchange may establish differences other than the above for one or more series or classes of options.'' The Exchange is proposing this amendment to align the in-the-money intra-day bid/ask differentials with the requirements for the trading floor.[13] Today, the Exchange establishes differences as do all options markets.[14] The Exchange previously had rule text which allowed the difference.[15] In relocating text to Options 8 as part of the floor relocation, which stated, ''The Exchange may establish differences other than the above for one or more series or classes of options'' the Exchange inadvertently did not amend the text for electronic markets. The floor rule text was part of the Rule 1014 initially before the relocation.

The Exchange also proposes to amend Rule 1014(d) to amend the title from ''*In Classes of Option Contracts Other Than Those Which Appointed*'' to ''Classes of Options To Which Not Appointed.'' The Exchange proposes to add the following sentence, ''With respect to classes of options to which an ROT is not appointed, it should not engage in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (c) above with respect to those classes of options to which it is appointed,'' before the phrase ''an ROT should not.'' The Exchange believes that adding this sentence will provide more context to the information which follows. This rule text is similar to rule text within ISE Options 2, Section 5(d).

The Exchange proposes to amend some lettering within Rule 1014(d) and amend Rule 1014(d)(ii) from ''Be conspicuous in the general market or in the market in a particular option'' to ''effect purchases or sales on the Exchange except in a reasonable and orderly manner'' which is the same rule text within ISE Rules at Options 2, Section 5(d). The Exchange believes that the current rule text is ambiguous. The Exchange proposes to revise the requirements for market makers similar to other options markets.[16] The Exchange proposes to delete Rule 1014(f) as the rule is unnecessary. Rule 1014(f)(1) provides that Rule 1014(d), which applies to classes of options in which a Specialist is not appointed in, shall not apply to ''any transaction by a registered Specialist in an option in which he is so registered to contribute to the maintenance of a fair and orderly market in an option, or any purchase or sale to reverse any such transaction; or any transaction to offset a transaction made in error.'' The Exchange notes that Rule 1014(d) does not govern options in which the Specialist is registered. The caveat does not need to be noted within the Rule. Specialists may transact options in classes in which they are appointed to contribute to the maintenance of a fair and orderly market in an option, or any purchase or sale to reverse any such transaction; or any transaction to offset a transaction made in error. Further, the Exchange proposes to delete Rule 1014(f)(ii) which provides, ''. . . any transaction, other than a transaction for an account in which an ROT has an interest, made with the prior approval of an Options Exchange Official to permit a member to contribute to the maintenance of a fair and orderly market in an option, or any

[11] The Exchange is proposing to combine Rule 1014(c)(1) and (2) into one paragraph.

[12] *See* ISE, GEMX and MRX Options 2, Section 4. Options 2, Section 4 provides, ''(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than $5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options. (i) The bid/offer differentials stated in subparagraph (b)(4) of this Rule shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.''

[13] Phlx Options 8, Section 27(c) which states, ''Options on equities and index options bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.''

[14] *See* ISE and GEMX at Options 2, Section 5, Miami International Securities Exchange LLC Rule 503(e)(2), BOX Exchange LLC Rule 8040 and NYSE American LLC Rule 925NY(b)(5) and (c).

[15] *See* note 8 above.

[16] *See* ISE, GEMX and MRX Rules at Options 2, Section 5(d) and NOM and BX Chapter VII, Section 5(b).

purchase or sale to reverse any such transaction''. The Exchange proposes to remove this exception because it is no longer necessary. The Exchange would not approve a market making transaction that is not done by a Specialist or ROT because these are the only two types of market participants that may act in a market making capacity on Phlx. No other market participant may submit quotes on Phlx or is subject to the requirements to contribute to the maintenance of a fair and orderly market as provided for in Rule 1014. This rule has been in existence for some time and the Exchange does not believe it has relevance.

The Exchange is deleting Rule 1014(g), which is currently reserved.

The Exchange proposes to delete Commentary .02 [17] of Rule 1014 which refers to a paragraph (c)(i)(B) which was deleted in a prior filing.[18] The Exchange proposes to renumber Commentary .03 [19] of Rule 1014 as ''.01.''

The Exchange proposes to renumber Commentary .07 [20] to Rule 1014 as ''.02.'' The Exchange also proposes to revise the second sentence to state, ''A Specialist shall also not charge a commission or fee for the handling, execution or processing of an order delivered through the Exchange's System, whether the Specialist is acting as principal or agent for the order.'' The Exchange is capitalizing the proposed defined term ''Specialist'' and utilizing the defined term ''System.'' [21]

Commentary .08 [22] to Rule 1014 was superseded by the Phlx Rule 1017 which governs the Opening Process and provides for the price at which an option series may open. The rule text within Commentary .08 is no longer applicable and thus is proposed to be deleted.

Commentary .09 to Rule 1014 is obsolete and thus is proposed to be deleted. The Exchange notes that trading hours and ability to set them for foreign currency options are handled within Phlx Rule 101. Also, Phlx Rule 1014(e) no longer exists. Commentary .10 to Rule 1014 is being deleted because the Exchange requires ROTs to submit orders electronically similar to all other market participants. This rule text is not necessary. The deletion of these rules will bring greater clarity to the Rulebook.

Rule 1020

The Exchange proposes to amend Rule 1020 to provide that a Specialist is not required to be assigned to an options series. The Exchange permits one Specialist per options series. There is no limitation on the number of ROTs that may be assigned to an options series. The Exchange notes that if a Specialist cannot be acquired for an options series it may list the option series nonetheless for ROTs to quote and provide liquidity. The Exchange notes that a Specialist is not required to list an option series. Today, The Nasdaq Options Market LLC (''NOM'') does not have such a Specialist and lists and trades option series.

Other Amendments

In addition to the amendments already noted herein, the Exchange proposes to relocate Rule 1064, ''Crossing, Facilitation and Solicited Orders'' into Options 8, Section 30. At the time the Exchange relocated rules it reserved Section 30 to relocate this floor rule at a later date. The Exchange now proposes to relocate this rule and update internal cross-references to other rules. This amendment is purely a technical relocation of the rule (and related cross-reference changes) and the rule is otherwise unchanged.

The Exchange proposes a technical amendment to Rule 1082, ''Firm Quotations'' to rename Risk Monitor Mechanism to its current name ''Automated Quotation Adjustment'' which rule is located within Rule 1099(c)(2). This is only a name change and therefore this amendment is non-substantive. Also, the Exchange proposes to update Rule 1087, ''Price Improvement XL (''PIXL'')'' to amend ''TOPO Plus Orders'' to simply ''TOPO data feed'' as provided for in Rule 1070(a)(1) and note the location of the description of the Specialized Quote Feed within Rule 1080(a)(i)(B). This is only a name change and therefore this amendment is non-substantive.

The Exchange proposes to amend Options 8, Section 2, ''Definitions'' to add a sentence to Rule 2(7) Floor Market Maker to provide, ''A Floor Market Maker may provide a quote in open outcry.'' Today, a Floor Market Maker is permitted to provide a quote in open outcry. This sentence merely makes clear that this type of market participant may submit quotes on the floor, similar to the electronic market. A Floor Market Maker is a ROT as noted within Options 8, Section 2(7), who is neither an SQT or RST, so they may not stream quotes electronically, rather they submit quotes in open outcry on the trading floor.

The Exchange proposes to relocate the text of Rule 2(7), except for the current first sentence to Options 8, Section 11, ''Specialist Appointment'' and retitle that rule ''Floor Market Maker and Specialist Appointment.'' The Exchange proposes to renumber this rule and relocate the text from Options 8, Section 2(7) to proposed Section 11(b).

Finally, the Exchange proposes to correct cross-references to current rules within Rules 1000, 1082, 1087, 1098 and Options 8, Section 30 and also capitalize the word ''floor'' before ''Broker'' within Options 39, E–16 ''Communications and Equipment.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

[17] Commentary .02 to Rule 1014 provides, ''The Exchange has determined that the limitations of paragraph (c)(i)(B) of this Rule should not be carried over from one day to the next and, therefore, are not applicable to the opening of stock or Exchange-Traded Fund Share option contracts on the Exchange.''

[18] *See* Securities Exchange Act Release No. 76441 (November 16, 2015), 80 FR 72773 (November 20, 2015) (SR–Phlx–2015–91).

[19] Commentary .03 to Rule 1014 provides, ''.03 The Exchange has determined for purposes of paragraph (c) of this Rule that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) at the request of a member of the Exchange in non assigned classes of options shall not be deemed trading in non assigned option contracts.

The Exchange may, in computing the percentage specified herein, assign a weighting factor based upon relative inactivity to one or more classes or series of option contracts.''

[20] Commentary .07 to Rule 1014 provides, ''A Specialist acting in the course of his lead market making function, as agent or principal, on the Exchange is prohibited from charging a commission or fee for the execution of an order. A specialist shall also not charge a commission or fee for the handling, execution or processing of an order delivered through the Exchange's automated trading system, Phlx XL II, whether the specialist is acting as principal or agent for the order.''

[21] *See* Phlx Rule 1000(b)(45).

[22] Commentary .08 to Rule 1014 provides, ''The price of an opening transaction in an option series must be within an acceptable range (as determined by the Exchange and announced to Exchange members and member organizations on the Exchange's website) compared to the highest offer and the lowest bid (*e.g.,* the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid).''

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

Rule 1000

The Exchange's proposal to amend Rule 1000, titled ''Applicability, Definitions and References'' to conform the formatting of the rule, update the name of The Options Clearing Corporation to add a ''The'' before the name, and relocate definitions from Rule 1014 to Rule 1000 are non-substantive amendments. The Exchange's proposal to add a definition for ''Public Customer'' within the Rule 1000(b)(56), amend the description of a Professional within Rule 1000(b)(14), and add the terms ''Public Customer'' and ''Professional'', where appropriate, throughout the Rulebook, is consistent with the Act because these amendments will bring greater transparency to the Rulebook. The Exchange desires to make clear where a customer order means a Public Customer order or both a Public Customer and a Professional order. By distinguishing the use of these terms, market participants will better understand Exchange Rules.

Relocating and amending the term ''Registered Options Trader'' within proposed Rule 1000(b)(57) is consistent with the Act because it will make the description of this market participant clear. Phlx no longer has a separate ''foreign currency options participation.'' Those participations were eliminated.[25] The Exchange has separately defined a ''Floor Market Maker'' within Options 8, Section 2(7) as an ROT who is neither an SQT or an RSQT so the reference to the floor is no longer necessary. Finally, this definition of ROT is utilized throughout the Rules, not simply for Rule 1014, so it is better placed among the other definitions. The proposed new description will bring greater clarity to the term ''ROT''.

The Exchange's proposal to add a sentence to the description of an RSQT, which is being relocated to proposed Rule 1000(b)(60), which provides, ''A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Rule 507'' is consistent with the Act because the proposed definition will makes clear that the usage of the terms RSQTO and RMO in relation to an RSQT. Finally, the Exchange's proposal to define a Specialist within Rule 1000 will make it easier for market participants to understand the various registrations that exist on Phlx which would all be available within Rule 1000.

[25] *See* note 7 above.

Rule 1014

The Exchange's proposal to amend the title of Rule 1014 from ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' to ''Obligations of Market Makers,'' relocate text from Rule 1014 to Rule 1000, retitle certain sections within Rule 1014(c), renumber Rule 1014, and modify the current paragraph at Rule 1014(b)(ii)(B) are non-substantive amendments.

The Exchange's proposal to add the following sentence to Rule 1014(d) ''With respect to classes of options to which an ROT is not appointed, it should not engage in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (c) above with respect to those classes of options to which it is appointed,'' before the phrase ''an ROT should not'' is consistent with the Act. The Exchange believes that adding this sentence will provide more context to the information which follows. This rule text is similar to rule text within ISE Rules at Options 2, Section 5(d).

The Exchange's proposes to amend Rule 1014(d)(ii) from ''Be conspicuous in the general market or in the market in a particular option'' to ''effect purchases or sales on the Exchange except in a reasonable and orderly manner'' is consistent with the Act in that it protects investors and the public interest by providing a standard that is understandable. The Exchange notes that the quoting requirements within Rule 1081 require ROTs to be quoting a certain amount of the trading day. The new rule text is clear and unambiguous. It is the same requirement for market makers on other options markets.[26]

The Exchange's proposal to delete Rule 1014(f) is consistent with the Act because the provisions in this rule are no longer necessary. The rule text does not provide additional information to the current rule and additionally, the Exchange would not approve a market making transaction that is not done by a Specialist or ROT. This rule has been in existence for some time and the Exchange does not believe it has relevance. The Exchange's deletion of Commentary .02 of Rule 1014 is consistent with the Act because this rule text related to paragraph (c)(i)(B), which was deleted.[27]

[26] *See* GEMX and MRX Rules at Options 2, Section 5(d) and NOM and BX Chapter VII, Section 5(b).

[27] *See* Securities Exchange Act Release No. 76441 (November 16, 2015), 80 FR 72773 (November 20, 2015) (SR–Phlx–2015–91).

The Exchange's proposal to make minor amendments to Commentary .07 is consistent with the Act because the changes are not substantive. The Exchange's proposal to delete Commentary .08 is consistent with the Act as Phlx Rule 1017 governs the Opening Process and Specialists may not circumvent that process. The Exchange's proposal to delete Commentary .09 to Rule 1014 is consistent with the Act because the provision is redundant. Trading hours and ability to set them for foreign currency options are handled within Phlx Rule 101. Also, Phlx Rule 1014(e) no longer exists. The Exchange's proposal to delete Commentary .10 to Rule 1014 is consistent with the Act because the Exchange requires ROTs to submit orders electronically similar to all other market participants. This rule text is not necessary. The Exchange believes these proposed rule changes will bring greater transparency and clarity to the regulation of ROTs and Specialists on Phlx.

Bid/Ask Differential

The Exchange proposes to amend its bid/ask differential requirements within Rule 1014(c) and Options 8, Section 27 for in-the-money series for options on equities (including Exchange-Traded Fund Shares), index options and options on U.S. dollar-settled FCOs, to a quote spread allowance which may be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment, provided the market for the underlying security is not wider than the differentials set forth above is consistent with the Act. The Exchange believes the proposed bid/offer differentials allow market makers greater flexibility with respect to their quoting obligations. Aligning the bid/ask differentials for all in-the-money options would cause the Exchange to have a single standard regardless of the product. Phlx believes that measuring the permissible width of a market maker's quote against the NBBO more accurately reflects the current trading environment where multiple trading venues contribute to the prevailing market price of a security underlying an options series traded on Phlx. Applying this standard only when the market for the underlying security is wider than the differentials set forth allows Specialists and ROTs to submit quotations that may be more reflective of the market for the security. Specialists and ROTs take into consideration market conditions, including trading and liquidity when

quoting. Further, the Exchange also notes that Specialists and ROTs are consistently incentivized through allocation models, pricing, and rules enforcement of market maker obligations to submit quotes which reflect a quality market and are representative of the Specialist's or ROT's best quote.

With this proposal, Specialists and ROTs would obtain the same flexibility in quoting as they experience on other options markets today.[28] Aligning the requirements for all in-the-money options across the Exchange will avoid confusion for Specialists and ROTs in submitting quotes on both the trading floor and electronically on Phlx. The Exchange is not amending quote width allowances for options which are not in-the-money. Further, a Specialist or ROT quoting an in-the-money options series can hedge its position by trading in the underlying security at the NBBO, which may be narrower than the quotation on the primary market.

The Exchange also proposes to note that it may establish differences other than the above for one or more series or classes of options. The Exchange's proposal to amend its rule to permit intra-day discretion to conform to current practice is consistent with the Act because such discretion is necessary to permit the Exchange the ability to attract liquidity from Specialists and ROTs while also maintaining a fair and orderly market. Specialists and ROTS accept a certain amount of risk when quoting on the Exchange. The Exchange imposes quoting and other obligations on ROTs.[29] The Exchange notes that these risks which ROTs accept each trading day are calculated risks. The Exchange notes that it considers certain factors, which are likely unforeseen, in determining whether to grant relief either in individual options classes or for all option classes based upon specific criteria. Specifically, the Exchange considers, among other factors, the following: (i) Pending corporate actions with undisclosed or uncertain terms; (ii) company or industry news with anticipated significant market impact; (iii) government news of a sensational nature. The Exchange believes that it is necessary to grant quote relief in certain circumstances where an ROT may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.[30] The Exchange is proposing this amendment to align the in-the-money bid/ask differentials with the requirements for the Trading Floor. The Exchange believes that the in-the-money bid/ask requirements for electronic quoting should align with floor trading.

Rule 1020

The Exchange's proposal to amend Rule 1020 to provide that a Specialist is not required to be assigned to an options series is consistent with the Act because this provision will allow the Exchange to list options series without the need to assign a Specialist. Today, the Exchange permits one Specialist per options series. There is no limitation on the number of ROTs that may be assigned to an options series. The Exchange notes that if a Specialist cannot be acquired for an options series it proposes to list the option series nonetheless for ROTs to quote and provide liquidity. Today, NOM does not have such a Specialist and lists and trades option series. The Exchange believes that this provision will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will permit Phlx to competitively list all options series for which it has rules.

Other Amendments

The Exchange's relocation of Rule 1064, ''Crossing, Facilitation and Solicited Orders'' into Options 8, Section 30 and retitling of that rule are non-substantive.

The Exchange's proposed technical amendments to Rule 1082, ''Firm Quotations'' to rename Risk Monitor Mechanism and its proposal to update Rule 1087, ''Price Improvement XL (''PIXL'')'' to amend ''TOPO Plus Orders'' to simple and provide a citation are non-substantive rule changes.

The Exchange's proposal to amend Options 8, Section 2, ''Definitions'' to add a sentence to Rule 2(7) Floor Market Maker to provide, ''A Floor Market Maker may provide a quote in open outcry'' is consistent with the Act as this provision will further distinguish floor and electronic trading and bring greater clarity to the Rules.

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.

Rule 1000

The Exchange's proposal to amend Rule 1000, titled ''Applicability, Definitions and References'' to conform the formatting of the rule, update the name of The Options Clearing Corporation to add the ''The'' before the name, and relocate definitions from Rule 1014 to Rule 1000 are non-substantive amendments. The Exchange's proposal to add a definition for ''Public Customer'' within the Rule 1000(b)(56), amend the description of a Professional within Rule 1000(b)(14), and add the terms ''Public Customer'' and ''Professional'', where appropriate, throughout the Rulebook, does not impose an undue burden on competition because these definitions will bring greater transparency to the Rulebook. The Exchange is not amending any provision of the rules, rather the Exchange is making clear where a Public Customer order is intended and where the term Professional is intended to avoid confusion.

Amending the term ''Registered Options Trader'' within proposed Rule 1000(b)(57) does not impose an undue burden on competition because it will make the description of this market participant clear. Phlx no longer has a separate ''foreign currency options participation.'' Those participations were eliminated.[31]

The Exchange's proposal to add a sentence to the description of an RSQT also does not impose an undue burden on competition because the proposed definition will makes clear that the usage of the terms RSQTO and RMO in relation to an RSQT. Finally, the Exchange's proposal to add a definition for a Specialist within Rule 1000 will make it easier for market participants to understand the various registrations that

[28] *See* ISE, GEMX and MRX Options 2, Section 4. Options 2, Section 4 provides, ''(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than $5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options. (i) The bid/offer differentials stated in subparagraph (b)(4) of this Rule shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.''

[29] *See* Phlx Rules 1017 and Rule 1081.

[30] NOM does not require NOM Market Makers to quote during the opening, however if a NOM Market Maker decided to quote during the opening, the Market Maker would be permitted to submit a bid/ask differential with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than $5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. *See* NOM Rules at Chapter VII, Section 6(d)(ii).

[31] *See* Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) (SR–Phlx–2011–13).

exist on Phlx which would all be available within Rule 1000.

Rule 1014

The Exchange's proposal to amend titles, relocate text, renumber sections of Rule 1014 from ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' to ''Obligations of Market Makers,'' relocate text from Rule 1014 to Rule 1000, retitle certain sections within Rule 1014(c), renumber Rule 1014, and modify the current paragraph at Rule 1014(b)(ii)(B) are non-substantive amendments.

The Exchange's proposal to add the following sentence to Rule 1014(d) ''With respect to classes of options to which an ROT is not appointed, it should not engage in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (c) above with respect to those classes of options to which it is appointed,'' before the phrase ''an ROT does not'' does not impose an undue burden on competition. This rule will apply to all ROTs uniformly and does not apply to other market participants.

The Exchange's proposes to amend Rule 1014(d)(ii) from ''Be conspicuous in the general market or in the market in a particular option'' to ''effect purchases or sales on the Exchange except in a reasonable and orderly manner'' does not impose an undue burden on competition in that it protects investors and the public interest by providing a standard that is understandable. This rule will apply to all ROTs uniformly and does not apply to other market participants.

The Exchange's proposal to delete Rule 1014(f) does not impose an undue burden on competition because the provision is no longer necessary. The Exchange's deletion of Commentary .02 of Rule 1014 does not impose an undue burden on competition because this rule text related to paragraph (c)(i)(B), which was deleted.[32]

The Exchange's proposal to amend Commentary .07 to Rule 1014 does not impose an undue burden on competition because the amendment is non-substantive. The Exchange's proposal to delete Commentary .08 to Rule 1014 does not impose an undue burden on competition because all members are subject to the Opening Process described within Rule 1017 and the elimination of the rule text within Commentary .08 will remove confusion. The Exchange's proposal to delete Commentary .09 to Rule 1014 does not impose an undue burden on competition because the provision is redundant. Trading hours and ability to set them for foreign currency options are handled within Phlx Rule 101. Also, Phlx Rule 1014(e) no longer exists. The Exchange's proposal to delete Commentary .10 to Rule 1014 does not impose an undue burden on competition because the Exchange requires ROTs to submit orders electronically similar to all other market participants. This rule text is not necessary. The Exchange believes these proposed rule changes will bring greater transparency and clarity to the regulation of ROTs and Specialists on Phlx.

Bid/Ask Differential

The Exchange's proposal to amend the bid/ask differentials within Rule 1014(c), for in-the-money series, from $5 for electronic quotations to be as wide as the spread between the national best bid and offer in the underlying security, or its decimal equivalent rounded down to the nearest minimum increment does not impose an undue burden on competition as this requirement applies to all ROTs and Specialists today and the proposal will align the in-the-money quoting requirements for ROTs and Specialists transacting business electronically and on the trading floor. Today, this is the requirement for in-the-money bid/ask differentials on the trading floor as well as on other markets.[33]

The Exchange's proposal to amend its rule to permit intra-day discretion to conform to current practice because ROTs are the only market participants subject to quoting requirements and the proposal specifically considers the need for ROTs to have information to make informed decisions to make calculated risks in the marketplace so that they may provide liquidity while maintaining fair and orderly markets. The proposed amendments do not create an undue burden on inter-market competition because other options markets have the same intra-day requirements.[34]

Rule 1020

The Exchange's proposal to amend Rule 1020 to provide that a Specialist is not required to be assigned to an options series does not impose an undue burden on competition because the Exchange will continue to send notices for each new options series requesting interested Specialists to express interest. In the event that it is unable to locate an interested Specialist, the Exchange proposes to list the option series nonetheless for ROTs to quote and provide liquidity. Today, the Exchange permits one Specialist per options series. There is no limitation on the number of ROTs that may be assigned to an options series. Today, NOM does not have such a Specialist and lists and trades option series.

Other Amendments

The Exchange's relocation of Rule 1064 and technical amendments to Rule 1082 and 1087 are non-substantive.

The Exchange's proposal to amend Options 8, Section 2, ''Definitions'' to add a sentence to Rule 2(7) Floor Market Maker does not impose an undue burden on competition, rather this provision will further distinguish floor and electronic trading and bring greater clarity to the Rules.

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[35] and subparagraph (f)(6) of Rule 19b–4 thereunder.[36]

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

[32] *See* Securities Exchange Act Release No. 76441 (November 16, 2015), 80 FR 72773 (November 20, 2015) (SR–Phlx–2015–91).

[33] *See* ISE, GEMX and MRX Options 2, Section 4.

[34] *See* Miami International Securities Exchange LLC Rule 604(b)(4), Cboe Exchange, Inc. Rule 8.7(d), NYSE American LLC Rule 925NY(b)(4), NYSE Arca, Inc. 6.37–O(b)(4).

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 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.

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–33 and should be submitted on or before October 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20223 Filed 9–18–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16113 and #16114; Arkansas Disaster Number AR–00107]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4460–DR), dated 09/13/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 06/23/2019 through 06/24/2019.

DATES: Issued on 09/13/2019.

Physical Loan Application Deadline Date: 11/12/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Madison, Newton, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 161136 and for economic injury is 161140.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–20331 Filed 9–18–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 10885]

Designation of Hatib Hajan Sawadjaan as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Hatib Hajan Sawadjaan, also known as Hatib Hajjan Sawadjaan, also known as Pah Hajan, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

[37] 17 CFR 200.30–3(a)(12).

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20254 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10886]

Designation of Hurras al-Din as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Hurras al-Din, also known as Guardians of Religion, also known as Tanzim Hurras al-Din, also known as Tandhim Hurras al-Deen, also known as Hurras al-Deen, also known as Sham al-Ribat, also known as Al-Qaida in Syria, also known as AQ–S, is a foreign person who has committed or has attempted to commit, or poses a significant risk of committing, or has participated in training to commit, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20251 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10892]

Designation of Ibrahim 'Aqil as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Ibrahim 'Aqil, also known as Ibrahim Mohamed Akiel, also known as Ibrahim Mohamed Akil, also known as Abd al-Qadr 'Aqil, also known as 'Abd-al-Qadir, also known as Ghosn Ali Abdel Mehdi, also known as Tahsin, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20271 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice:10878]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Certain Maritime Issues

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss the development of a possible international convention to address cross-border issues related to the judicial sale of ships at the United Nations Commission on International Trade Law (UNCITRAL). Views will also be sought on whether or not ratification of the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the ''Rotterdam Rules'') would benefit the United States. The public meeting will take place on Wednesday, October 16, 2019 from 2 p.m. until 4:30 p.m. EDT. This is not a meeting of the full Advisory Committee.

UNCITRAL's Working Group VI is currently working on a potential instrument to address cross-border issues related to the judicial sale of ships. The first meeting to discuss this project was held in New York from May 13–17, 2019, and the relevant documents from that meeting are available at *https://uncitral.un.org/en/working_groups/6/sale_ships.*

The purpose of the public meeting is to obtain the views of concerned stakeholders on (1) what issues the Working Group should concentrate on in the area of the judicial sale of ships; (2) what, if any, other matters should be considered in relation to this topic; and (3) whether ratification of the Rotterdam Rules would serve U.S. interests.

Time and Place: The meeting will take place on Wednesday, October 16, 2019, from 2 p.m. until 4:30 p.m. via a teleconference. Those who cannot participate but wish to comment are welcome to do so by email to Sharla Draemel at *DraemelS@state.gov.*

Public Participation: This meeting is open to the public. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Authority: Federal Advisory Committee Act, 5 U.S.C. Appendix, and 41 CFR part 102–3.

Sharla Draemel,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2019–20231 Filed 9–18–19; 8:45 am]

BILLING CODE 7410–08–P

DEPARTMENT OF STATE

[Public Notice: 10893]

Designation of Marwan Issa as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby

determine that the person known as Marwan Issa, also known as Marwan 'Issa, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20272 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10881]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Claude Monet: The Truth of Nature" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Claude Monet: The Truth of Nature,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Denver Art Museum, Denver, Colorado, from on or about October 21, 2019, until on or about February 2, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–20235 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10888]

Designation of Ali Karaki as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Ali Karaki, also known as Muhammad 'Ali Karaki, also known as Abu al-Fadl, also known as Muhammad Karaki, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20280 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10895]

Designation of Muhammad Haydar as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known Muhammad Haydar, also known as Muhammad Ali Haydar, also known as Mohamad Ali Haidar, also known as Abu Ali Haydar, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20274 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10889]

Designation of Baha' Abu al-'Ata as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order

13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Baha' Abu al-'Ata, also known as Baha'a Abu al-Ata, also known as Baha' Salim Hasan Abu al-'Ata, also known as Abu-Salim, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20279 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10883]

Designation of Hajji Taysir as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Hajji Taysir, also known as Mu'taz Numan 'Abd Nayf al-Jaburi, also known as Mutazz Numan Abid Nayif al-Jaburi, also known as Mutaaz Numan 'Abd Naif, also known as Mutaz Nuaman Abed Nayif, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Signed September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20253 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10894]

Designation of Muhammad al-Hindi as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Muhammad al-Hindi, also known as Muhammad Sa'id Muhammad Yusuf al-Hindi, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20273 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10884]

Designation of Fu'ad Shukr as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Fu'ad Shukr, also known as Fu'ad Chakar, also known as Al-Hajj Mohsin Chakar, also known as Fouad Ali Chakar, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224. Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20252 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 10890]

Designation of Faruq al-Suri as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the

Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Faruq al-Suri, also known as Samir Hijazi, also known as Samir 'Abd al-Latif Hijazi, also known as Abu Hammam al-Shami, also known as Abu Humam al-Shami, also known as Abu Hammam al-'Askari, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20277 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10887]

Designation of Abu Abdullah ibn Umar al-Barnawi as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Abu Abdullah ibn Umar al-Barnawi, also known as Ba Idrisa, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20282 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10896]

Designation of Noor Wali as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and the Executive Order titled ''Modernizing Sanctions to Combat Terrorism'' effective September 10, 2019, I hereby determine that the person known as Noor Wali, also known as Mufti Noor Wali Mehsud, also known as Mufti Noor Wali, also known as Mufti Abu Mansoor Asim, is a foreign person who is a leader of an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 10, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–20276 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10882]

Notice of Determinations; Culturally Significant Object Imported for Exhibition—Determinations: ''Edith Halpert and the Rise of American Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be exhibited in the exhibition ''Edith Halpert and the Rise of American Art,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Jewish Museum, New York, New York, from on or about October 18, 2019, until on or about February 9, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–20236 Filed 9–18–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Solicitation of applications.

SUMMARY: By **Federal Register** notice on June 3, 2019 the Federal Aviation Administration (FAA) and the National Park Service (NPS) invited interested persons to apply to fill one existing and two upcoming vacancies on the National Parks Overflights Advisory Group (NPOAG). This notice informs the public of the selections made for the vacancies representing air tour operator and environmental concerns. No selection was made for the existing opening representing Native American tribal concerns so this notice also invites persons interested in that opening to apply. Persons previously submitting applications for the Native American tribal representative opening will need to resubmit their application.

DATES: Persons interested in applying for the NPOAG opening representing Native American concerns will need to apply by October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 777 S Aviation Boulevard, Suite 150, El Segundo, CA 90245, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG are as follows:

Melissa Rudinger representing general aviation; Alan Stephen and Eric Lincoln representing commercial air tour operators with one current opening; Dick Hingson, Les Blomberg, and John Eastman representing environmental interests with one current opening; and Carl Slater represents Native American tribes with one current opening.

Selections

Matt Zuccaro of Helicopter Association International has been chosen for the air tour operator representative and Robert Randall, a member of the National Parks Conservation Association, has been chosen for the environmental representative. NPOAG members' 3-year terms commence on the publication date of this **Federal Register** notice. No selection was made for the additional opening to represent Native American concerns. The FAA and NPS invite persons interested in applying for this remaining opening on the NPOAG to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the NPOAG must be made to Mr. Lusk in writing and postmarked or emailed on or before October 31, 2019. The request should indicate whether or not you are a member of a Native American tribe. The request should also state what expertise you would bring to the NPOAG as related to issues and concerns with aircraft flights over national parks and/or tribal lands. The term of service for NPOAG members is 3 years. Current members may re-apply for another term.

On August 13, 2014, the Office of Management and Budget issued revised guidance regarding the prohibition against appointing or not reappointing federally registered lobbyists to serve on advisory committees (79 FR 47482).

Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in El Segundo, CA, on September 11, 2019.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2019–20326 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2019–59]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 9, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0730 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *Deana.Stedman@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on September 13, 2019.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2019–0730

Petitioner: The Boeing Company

Section(s) of 14 CFR Affected: §§ 25.785(h)(2), 25.785(j), 25.791(a), 25.795, 25.807(f)(4), 25.813(e), 25.815, 25.853(d), 25.853(e), 25.1450(b)(3)

Special Conditions Affected: 25–368–SC, 25–430–SC

Description of Relief Sought: The Boeing Company is seeking relief from the listed airplane design requirements in order to support a supplemental type certificate (STC) application for the Model 747–8 airplane. The proposed STC is for the installation of an executive-style interior with multiple rooms.

[FR Doc. 2019–20203 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0347]

Commercial Driver's License Standards: Application for Exemption; Navistar, Inc. (Navistar)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Navistar, Inc. (Navistar) has requested an exemption for five commercial motor vehicles (CMVs) drivers from the Federal requirement to hold a U.S. commercial driver's license (CDL). The requested exemption will cover five Swedish Project Engineers who will test-drive commercial motor vehicles (CMVs) for Navistar within the United States. All five engineers work for Scania AB in Sweden (part of the Volkswagen Group), which is partnering with Navistar to develop improved fuel economy and emissions reductions. The Scania drivers all hold valid Swedish commercial licenses and need to test-drive Navistar vehicles on U.S. roads to better understand product requirements in ''real world'' environments and to verify results. Navistar believes the requirements for a Swedish commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption. FMCSA requests public comments on Navistar's application for exemption.

DATES: Comments must be received on or before October 21, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0347 using any of the following methods:

• *Federal eRulemaking Portal: 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@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

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0347), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0347'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

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 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 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. Request for Exemption

Navistar has applied for an exemption for five drivers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Navistar requests the exemption because these drivers are all citizens of Sweden and therefore cannot apply for a CDL in any of the U.S. States due to their lack of residency in this country. A copy of the individual applications is in Docket No. FMCSA–2018–0347.

The exemption would allow five drivers to operate CMVs in interstate or intrastate commerce as part of Navistar field tests designed to meet future vehicle safety and environmental requirements and to promote the development of new and advanced emissions reduction systems and fuel efficiency improvements. According to Navistar, the drivers will typically drive for no more than 8 hours per day for 2 consecutive days, and that 50 percent of the test driving will be on two-lane State highways, while 50 percent will be on interstate highways. The driving for each driver will consist of no more than 300 miles per day, and in all cases the drivers will be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

The drivers are Jonas Hellstrom, Sofie Svanstrom, Erik Holma, Jonas Udd, and Mikael Oun. The drivers hold valid Swedish commercial licenses and, as explained by Navistar in its exemption request, the requirements for that license ensure that, operating under the exemption, the drivers would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. Navistar requests that the exemptions cover a five-year period for each driver.

Copies of Navistar's applications for exemption for these five drivers are available in the docket for this notice.

Issued on: September 10, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–20237 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2019–0031]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt ten individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 21, 2019. The exemptions expire on August 21, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0031* 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., ET, Monday through Friday, except Federal holidays.

B. 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.*

II. Background

On July 15, 2019, FMCSA published a notice announcing receipt of applications from ten individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84 FR 33805). The public comment period ended on August 14, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy

or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. This comment supported granting the exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the July 15, 2019, **Federal Register** notice (84 FR 33805) and will not be repeated in this notice.

These ten applicants have been seizure-free over a range of 15 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the ten exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Aaron Ashford (MI)
Elton Behnken (MN)
Tina Farmer (PA)
Elizabeth Galvin (GA)
Roderick Haslip (NY)
Brian Kinkade (MO)
Barbara Miller (TX)
Ryan Moore (NC)
Roger Prynn (NY)
Jerel Sayers (ID)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–20238 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0097]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 2, 2019, NJ TRANSIT Rail Operations (NJT) petitioned the Federal Railroad Administration (FRA) to renew its waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 218.29, *Alternate methods of protection.* FRA assigned the petition Docket Number FRA–2008–0097.

Specifically, NJT requests relief from § 218.29(c)(1), regarding the alternate requirement to provide a derail capable of restricting access to a track positioned no less than 150 feet from the end of such equipment; when workers are on, under, or between rolling equipment, when a manually operated switch as required by § 218.29(b)(2) is not feasible. NJT seeks to utilize § 218.29(a)(4) to provide protection for workers by restricting the speed to not more than 5 miles per hour and permitting the location of locked derails no less than 50 feet from the end of the equipment under conditions that would normally require protection under § 218.27, *Workers on track other than main track.* A transportation department employee (yardmaster) is present to control train

movements and coordinate maintenance activities with the mechanical department employees.

NJT states that since 2009, when the waiver first went into effect, no accidents, incidents, or injuries occurred at the Morrisville facility due to the practice of using such alternate blue signal protection. Because no changes have been made to the nature of the equipment servicing facility in the last five years, NJT seeks to extend the waiver for an additional five years.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 4, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–20234 Filed 9–18–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–DIV

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1099–DIV, Dividends and Distributions.

DATES: Written comments should be received on or before November 18, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.vandyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Dividends and Distributions.

OMB Number: 1545–0110.

Form Number: 1099–DIV.

Abstract: Form 1099–DIV is used by the IRS to ensure that dividends are properly reported as required by Internal Revenue Code section 6402, that liquidation distributions are correctly reported as required by Internal Revenue Code section 6403, and to determine whether payees are correctly reporting their income.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 78,339,500.

Estimated Time per Respondent: 24 minutes.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–20317 Filed 9–18–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory

Committee Act that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on October 8, 2019 at 20F Conference Center, 20 F Street NW, Washington, DC 20001. The meeting will begin at 8:30 a.m. and end at 3:15 p.m.

The Committee advises the Chief Research and Development Officer on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will not accept oral comments from the public for the open portion of the meeting. Those who plan to attend or wish additional information should contact Grant Huang, MPH, Ph.D., Director, Cooperative Studies Program (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov.* Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: September 16, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–20239 Filed 9–18–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 182 September 19, 2019

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0416; FRL–9999–14–OAR]

RIN 2060–AU22

National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is conducting the residual risk and technology review (RTR) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Paper and Other Web Coating (POWC) source category that is required under the Clean Air Act (CAA). We are proposing to find the risks due to emissions of air toxics to be acceptable from this source category and that the current NESHAP provides an ample margin of safety to protect public health. Further, we identified no new cost-effective controls under the technology review that would achieve significant further emissions reductions, and, thus, are proposing to find that no revisions are necessary based on developments in practices, processes, or control technologies. In addition to performing the RTR, we are proposing certain amendments to the POWC NESHAP. Specifically, the EPA is proposing to add a compliance demonstration equation that accounts for retained volatiles in the web coating; to amend provisions addressing periods of startup, shutdown, and malfunction (SSM); to add repeat testing and electronic reporting requirements; and to make technical and editorial changes. The EPA is proposing these amendments to improve the effectiveness of the NESHAP.

DATES: *Comments.* Comments must be received on or before November 4, 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 October 21, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before September 24, 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/paper-and-other-web-coating-national-emission-standards-hazardous-0.* 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–2018–0416, 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–2018–0416 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2018–0416.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2018–0416, 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 Dr. Kelley Spence, Sector Policies and Programs Division (Mail Code E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3158; fax number: (919) 541–0516; and email address: *spence.kelley@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. James 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 Mr. Barrett Parker, Sector Policies and Programs Division (Mail Code D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5635; fax number: (919) 541–4991; and email address: *parker.barrett@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2221A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. 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–2018–0416. 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–2018–0416. 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–2018–0416.

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:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ANSI American National Standards Institute
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
DGME diethylene glycol monoethyl ether
ECHO Enforcement and Compliance History Online
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ERT Electronic Reporting Tool
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.5.5
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICR Information Collection Request
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NRDC Natural Resources Defense Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bioaccumulative in the environment
PDF portable document format
POM polycyclic organic matter
POWC paper and other web coating
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
QA quality assurance
RBLC Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TCE trichloroethylene
TOSHI target organ-specific hazard index
tpy tons per year
TRI Toxics Release Inventory
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
U.S.C. United States Code
USGS U.S. Geological Survey
VCS voluntary consensus standards
VOC volatile organic compound(s)

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
A. What is the statutory authority for this action?
B. What is this source category and how does the current NESHAP regulate its HAP emissions?
C. What data collection activities were conducted to support this action?
D. What other relevant background information and data are available?
III. Analytical Procedures and Decision-Making
A. How do we consider risk in our decision-making?
B. How do we perform the technology review?
C. How do we estimate post-MACT risk posed by the source category?
IV. Analytical Results and Proposed Decisions
A. What are the results of the risk assessment and analyses?
B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?
C. What are the results and proposed decisions based on our technology review?

D. What other actions are we proposing?
E. What compliance dates are we proposing?
V. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
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VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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D. Regulatory Flexibility Act (RFA)
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G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is 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. This proposed action will not affect federal, state, local, and tribal government entities. 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 POWC source category is any facility engaged in the coating of paper, plastic film, metallic foil, and other web surfaces. The category may include, but is not limited to, decorative coatings on gift wraps or packaging. The source category does not include printing operations covered under the Printing and Publishing NESHAP (40 CFR part 63, subpart KK).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Paper and Other Web Coating	Paper and Other Web Coating	322220, 322121, 326113, 326112, 325992, 327993.

[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/paper-and-other-web-coating-national-emission-standards-hazardous-0.* 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–2018–0416).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the 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, or control technologies'' that may be appropriate to incorporate into the standards. 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 *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 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 or determine that the standards being reviewed provide an ample margin of safety without any revisions. 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.

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. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The POWC source category includes new and existing facilities that coat paper and other web substrates that are major sources of HAP emissions. For purposes of the regulation, a web is defined as a continuous substrate that is capable of being rolled at any point during the coating process. Further, a web coating line is any number of work stations, of which one or more applies a continuous layer of coating material along the entire width of a continuous web substrate or any portion of the width of the web substrate, and any associated curing/drying equipment between an unwind (or feed) station and a rewind (or cutting) station. Web coating operations covered by other MACT standards (*i.e.,* Printing and Publishing, 40 CFR part 63, subpart KK; Magnetic Tape, 40 CFR part 63, subpart EE; Metal Coil Coating, 40 CFR part 63, subpart SSSS; Fabric Coating, 40 CFR part 63, subpart OOOO), and research and development lines are excluded. In addition, specific process exclusions include lithography, screen printing, letterpress, and narrow web flexographic printing.

All the coating lines at a subject facility are defined as one affected source. An existing source means any affected source of which the construction or reconstruction commenced on or before September 13, 2000, and has not since undergone reconstruction. Generally, an additional line at an existing facility is considered part of the existing affected source. New affected sources are new lines installed at new facilities or at a facility with no prior POWC operations. Affiliated operations such as coating formulation, mixing, handling, and storage of coatings and solvent, and conveyance and treatment of wastewater are defined as ''affiliated equipment'' and are part of the POWC source category but have no requirements in the existing rule.

This proposal includes both a residual risk assessment and a technology review of the emission sources subject to the POWC NESHAP. Facilities subject to the POWC NESHAP must utilize low-solvent coatings, add-on controls, or a combination of both to meet the organic HAP emission limits described below:

- No more than 5 percent of the organic HAP applied for each month (95-percent reduction) at existing affected sources, and no more than 2 percent of the organic HAP applied for each month (98-percent reduction) at new affected sources;
- No more than 4 percent of the mass of coating materials applied for each month at existing affected sources, and no more than 1.6 percent of the mass of coating materials applied for each month at new affected sources;
- No more than 20 percent of the mass of coating solids applied for each month at existing affected sources, and no more than 8 percent of the coating solids applied for each month at new affected sources; or
- If an oxidizer is used to control organic HAP emissions, the oxidizer must be operated such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved and the efficiency of the capture system is 100 percent.

The NESHAP also includes various operating limits, initial and continuous

[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.

compliance requirements, and recordkeeping and reporting requirements for the POWC source category. We reviewed these requirements and are proposing to update them as part of this action in conjunction with conducting the RTR for this source category.

C. What data collection activities were conducted to support this action?

The EPA collected data from several environmental databases that included information pertaining to POWC facilities in the United States. The primary databases were the EPA's Enforcement and Compliance History Online (ECHO) database, Toxics Release Inventory (TRI), and National Emissions Inventory (NEI) for 2011 and 2014 (versions 1 and 2). Title V operating permits were obtained from states that have facilities subject to 40 CFR part 63, subpart JJJJ. See the memorandums titled *Determination of Facilities Subject to 40 CFR part 63, subpart JJJJ, Paper and Other Web Coating* and *Preparation of POWC Risk Inputs File,* in the docket for this rulemaking for more information on the review of these databases (Docket ID No. EPA–HQ–OAR–2018–0416). Additionally, the EPA conducted several site visits to better understand POWC processes and how the NESHAP is implemented. Trip reports drafted from these site visits are available in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416). EPA did not use its authority under CAA section 114 to request additional information from POWC facilities.

D. What other relevant background information and data are available?

In addition to the ECHO, TRI, and NEI databases, the EPA reviewed the additional information sources listed below and consulted with stakeholders regulated under the POWC NESHAP to determine if there have been developments in practices, processes, or control technologies. These include:

- Permit limits and selected compliance options from permits collected from state agencies;
- Information on air pollution control options in the POWC industry from the Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse (RBLC);
- Information on the most effective ways to control emissions of volatile organic compounds (VOC) and volatile organic HAP from sources in various industries, including the POWC industry;
- Communication with trade groups and associations representing industries in the affected NAICS categories and their members; and
- Review of on-line information on trade group and association sites and sites of relevant publications.

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 action.

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.[2] 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 that:

> [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 non-cancer 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 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 ''an MIR of approximately one 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 an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. 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 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

[2] 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.

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.'' [3]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this action. 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 seven 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 Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*. The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB

[3] Recommendations of the SAB Risk and Technology Review Methods 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.*

in 2009;[4] 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 facilities subject to the POWC NESHAP were identified primarily by using the ECHO and TRI databases. Review of title V permits and discussions with state agencies and stakeholders helped to refine the preliminary list to the final list of 168 facilities subject to the regulation. The effort to identify facilities subject to the POWC NESHAP is described in detail in the memorandum titled *Determination of Facilities Subject to 40 CFR part 63, subpart JJJJ, Paper and Other Web Coating,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416). As described in the memorandum, *Preparation of POWC Risk Inputs File,* eight of the identified facilities had source category HAP emissions of zero. These facilities are subject to the POWC NESHAP because they are major sources of HAP for another source category, even though their web coating operations do not utilize any HAP-containing coatings. For example, a paper towel core production line might use a glue the does not contain any HAP, but the operation is co-located at a pulp mill, which is a major source of HAP, therefore, the coating operations are subject to the POWC NESHAP. As a result of the eight facilities without HAP emissions, a total of 160 facilities were included in the source-category risk assessment modeling input file. The communications with state agencies and stakeholders regarding development of the facility list and the risk input file are documented in the memorandum titled *Communications Regarding the Development of the Subpart JJJJ Facility List and Risk Modeling File,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416).

Emissions data for facilities subject to the POWC NESHAP were gathered primarily from the 2011 and 2014 NEI (versions 1 and 2), supplemented by the TRI. The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The NEI database includes estimates of actual annual air pollutant emissions from point and volume sources; emission rate characteristic data such as emission release height, temperature, stack diameter, exit gas velocity, and exit gas flow rate; and locational latitude/longitude coordinates. We compared the NEI data for each facility to title V permits to determine which emission points listed in the NEI were subject to the POWC NESHAP. We then performed quality assurance (QA) checks and made corrections when data were missing from the NEI or appeared to be incorrect. For example, if the exit gas flow rate for an emission point was missing, we calculated this release characteristic using the stack velocity and cross-sectional area of the stack. Each correction we made is discussed in the memorandum, *Preparation of POWC Risk Inputs File,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416). The QA procedures and tools used are described in the memorandum titled *QA Procedures and Criteria Used in Residual Risk Modeling Input File Development,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416).

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.)

Initially, we reviewed permits for available allowable HAP emissions information, and two facilities were found to have allowable HAP emissions limits specified for POWC NESHAP emission sources. For these two facilities, MACT-allowable emissions were assumed to be equal to the allowable HAP emissions limits contained in the permits. Allowable emissions were not available for the remainder of the emission units in the POWC dataset. Although some permits listed overall plant HAP emission limits, most did not break down allowable HAP emissions by process. Therefore, we developed a POWC category allowable emissions multiplier to estimate allowable emissions based on actual emissions.

Allowable emissions are emissions that can be emitted from an emission unit and still comply with the POWC NESHAP. Because the format of the POWC NESHAP emission standards are in a HAP-percent of mass of coating applied, it is difficult to determine the allowable HAP emissions without production and coating HAP content information for each facility. Coatings sales information and industry capacity utilization were the only information readily available to estimate allowable emissions for this source category. A description of the methodology used to estimate allowable emissions follows.

According to chapter 18 of the *American Coatings Association 9th Edition Market Analysis (2014–2019),* the volume of paper, paperboard, film, and foil coating shipments are forecast to increase at an annual rate of 2 percent per year. This implies that the demand for paper and other web coated products, as well as the capacity utilization at the facilities producing the materials, continues to increase. For the primary NAICS codes associated with the facilities in the risk input file, the capacity utilization rate was obtained from the U.S. Census Bureau's *Quarterly Survey of Plant Capacity Utilization* for 5 years (2013–2017). All POWC NAICS codes and years were utilized to determine a 5-year average plant capacity utilization rate (71.3 percent). Because the sector continues to grow, and additional production information is not available, we estimate that the maximum allowable emissions will occur at 100-percent production capacity utilization. A ratio of the maximum possible capacity utilization (100 percent) to the 5-year average capacity utilization (71.3 percent) results in an allowable multiplier of 1.4. Thus, allowable emissions for the majority of emission points in the risk input file were estimated by multiplying the actual emissions by 1.4. A more detailed description of the estimation of allowable emissions for the POWC source category is described in the memorandum, *Preparation of POWC*

[4] 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.*

Risk Inputs File, in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416).

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 action were estimated using the Human Exposure Model (HEM–3).[5] 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.[6] 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[7] 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 (μg/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 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[8] 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

[5] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[6] 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).

[7] A census block is the smallest geographic area for which census statistics are tabulated.

[8] 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=205338&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,[9] 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 Paper and Other Web Coating 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,[10] reasonable worst-case air 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.'' [11] 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.[12] 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.'' [13] *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.

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

[9] 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*).

[10] 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 Paper and Other Web Coating 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.

[11] 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*.

[12] 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*).

[13] *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*.

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, no short-term emissions data were readily available for the majority of the sources subject to the POWC NESHAP. The EPA assumed that a facility's peak 1-hour emission rate could exceed its annual average hourly emission rate by as much as a factor of 10, under worst-case meteorological conditions and the presence of a person at the facility boundary. This peak-to-mean emissions ratio was used as an acute multiplier for all facilities except one. The permit for one facility contained allowable short-term VOC emission rates for POWC NESHAP sources. The acute emissions for this facility were determined using the allowable short-term VOC emission rate using the assumption that the VOC emission rate is equal to the HAP emission rate. For more details, see the memorandum, *Preparation of the POWC Risk Inputs File,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416).

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 the site-specific data to ensure that the acute HQ is at an off-site location. For this source category, the data refinements employed consisted of ensuring that the locations where the maximum HQ occurred were off facility property and where the public could potentially be exposed. These refinements are discussed more fully in the *Residual Risk Assessment for the Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this source category (Docket ID No. EPA–HQ–OAR–2018–0416).

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 HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the POWC source category, we identified PB–HAP emissions of arsenic, cadmium compounds, mercury compounds, polycyclic organic matter (POM), and lead, so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. The POWC source category only required the completion of Tier 1 for the multipathway screening assessment. For Tier 1, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against 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 POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants 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. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

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 and assume the fisher only consumes fish from lakes within that 50 km zone. 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 lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption of fish [14]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [15]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a

[14] Burger, J. 2002. Daily consumption of wild fish and game: Exposures of high end recreationists. *International Journal of Environmental Health Research* 12:343–354.

[15] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

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, locating residential/garden locations for urban and/or rural settings, 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 (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[16] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

5. 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 Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the POWC source category emitted any of the environmental HAP. For the POWC source category, we identified emissions of arsenic, cadmium compounds, mercury compounds, POM, and lead. Because one or more of the environmental HAP evaluated are 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. The POWC source category only required the completion of Tier 1 for the multipathway ecological 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

[16] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

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 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 Paper and Other Web Coating Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

6. 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 a dataset compiled from the 2014 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble: What data collection activities were conducted to support this action? Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. 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 compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this action. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* available through the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416), provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. 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 Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416). 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 QA/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.[17] 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.[18] 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,[19] 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.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is

[17] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[18] 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.

[19] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

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.[20]

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, 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

[20] 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.

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. Chronic Inhalation Risk Assessment Results

Table 2 of this preamble provides an overall summary of the inhalation risk results. The results of the chronic baseline inhalation cancer risk assessment indicate the maximum individual lifetime cancer risk (MIR) posed by the POWC source category was estimated to be 6-in-1 million based on actual emissions and 7-in-1 million based on allowable emissions. The risk driver is formaldehyde emissions from web coating processes. The total estimated cancer incidence from POWC emission sources based on actual emission levels is 0.005 excess cancer cases per year, or one case in every 200 years, with emissions from web coating operations representing 80 percent of the modeled cancer incidence. Emissions of formaldehyde contributed 90 percent to this cancer incidence. Based upon actual emissions, 4,300 people were exposed to cancer risks greater than or equal to 1-in-1 million compared to 9,900 people from allowable emissions.

The maximum chronic noncancer HI (TOSHI) values for the source category, based on actual and allowable emissions, were estimated to be less than 1 (0.8 based on allowable emissions). Based on actual and allowable emissions, respiratory risks were driven by acrylic acid emissions from web coating processes.

TABLE 2—POWC INHALATION RISK ASSESSMENT RESULTS [1]

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (in 1 million) [3]	Estimated population at increased risk of cancer ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Actual Emissions						
Source Category	160	6	4,300	0.005	0.6	3 (REL).
Facility-Wide [6]	168	300	161,000	0.03	30	
Baseline Allowable Emissions						
Source Category	160	7	9,900	0.007	0.8	

[1] Based on actual and allowable emissions.
[2] As discussed in section III.C.1 of this preamble, 168 facilities were identified as subject to the POWC NESHAP. Additionally, eight facilities did not emit any HAP from their POWC processes, resulting in 160 facilities being modeled for the source-category risk assessment and 168 modeled for the facility-wide risk assessment.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category except for risks from facility-wide emissions.
[4] Maximum TOSHI. The target organ with the highest TOSHI for the POWC source category is the respiratory system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. The risk driver for acute risks were emissions of formaldehyde from web coating processes and affiliated operations.
[6] The facility-wide risk value estimate of 300-in-1 million and the HI equal to 30 was from trichloroethylene (TCE) emissions from a production process outside the source category.

2. Screening Level Acute Risk Assessment Results

Reasonable worst-case acute HQs were calculated for every HAP for which there is an acute health benchmark using actual emissions. The maximum refined off-site acute noncancer HQ values for the source category were equal to 3 from formaldehyde emissions and 3 from diethylene glycol monoethyl ether (DGME) emissions based on the acute (1-hour) REL for these pollutants. The formaldehyde and DGME maximum HQ values were at separate facilities and no facilities have an HQ based on AEGL or ERPG greater than 1. No other acute health benchmarks were exceeded for this source category. For DGME, no other acute dose benchmark was available besides the 1-hour REL. The acute risks for these pollutants were from web coating processes with an acute hourly multiplier of 10 times the annual average hourly emissions rate.

3. Multipathway Risk Screening Results

Results of the worst-case Tier 1 screening analysis indicate that PB–HAP emissions (based on estimates of actual emissions) from the source category did not exceed the screening value of 1 for any carcinogenic PB–HAP (arsenic and POM compounds). Emissions of dioxins were not reported by any facilities within the source category.

The Tier 1 screening analysis for the noncarcinogenic PB–HAP (cadmium and mercury) was below a screening value of 1. Further screening or multipathway analysis was not required for any of the reported PB–HAP based upon our Analytical Procedures discussed in section III.C.4 of this preamble. Based on this upperbound Tier 1 screening assessment for carcinogens (arsenic and POM) and non-carcinogens (cadmium and mercury), the emission rates for all facilities and scenarios were below levels of concern.

In evaluating the potential for multipathway effects from emissions of

lead, we compared modeled annual lead concentrations to the secondary NAAQS for lead (0.15 μg/m³). The highest annual average lead concentration, of 0.001 μg/m³, is below the NAAQS for lead, indicating a low potential for multipathway impacts of concern due to lead.

4. Environmental Risk Screening Results

We conducted an environmental risk screening assessment for the POWC source category for the following pollutants: Arsenic, cadmium, lead, mercury (methyl mercury and mercuric chloride) and POM.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic, cadmium, mercury (methyl mercury and mercuric chloride), and POM emissions had no Tier 1 exceedances for any ecological benchmark.

For lead, we did not estimate any exceedances of the secondary lead NAAQS. Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

Results of the assessment of facility-wide emissions indicate that of the 168 facilities, 42 facilities have a facility-wide MIR cancer risk greater than 1-in-1 million. The maximum facility-wide cancer risk is 300-in-1 million, driven by TCE emissions from emissions outside the source category. The total estimated cancer incidence from the whole facility is 0.03 excess cancer cases per year, or one case in every 33 years. Approximately 161,000 people are estimated to have cancer risks greater than or equal to 1-in-1 million with approximately 30 people with excess cancer risks greater than or equal to 100-in-1 million. The maximum facility-wide chronic noncancer TOSHI is estimated to be equal to 30, driven by emissions of TCE from non-category emission sources.

6. What demographic groups might benefit from this regulation?

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 POWC source category across different demographic groups within the populations living near facilities.[21]

The results of the demographic analysis are summarized in Table 3 below. 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—POWC DEMOGRAPHIC RISK ANALYSIS RESULTS

[POWC: 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	4,331	0
	White and Minority by Percent		
White	62	86	0
Minority	38	14	0
	Minority by Percent		
African American	12	8	0
Native American	0.8	0.2	0
Hispanic or Latino (includes white and nonwhite)	18	3	0
Other and Multiracial	7	3	0
	Income by Percent		
Below Poverty Level	14	17	0
Above Poverty Level	86	83	0
	Education by Percent		
Over 25 and without a High School Diploma	14	14	0
Over 25 and with a High School Diploma	86	86	0
	Linguistically Isolated by Percent		
Linguistically Isolated	6	1	0

[21] 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.

The results of the POWC source category demographic analysis indicate that emissions from the source category expose approximately 4,300 people to a cancer risk at or above 1-in-1 million and zero people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population in the demographic groups, White and people below poverty level, are greater than their respective nationwide percentages.

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 Paper and Other Web Coating Facilities,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section II.A 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.' '' See 54 FR 38045, September 14, 1989.

In this proposal, the EPA estimated risks based on actual and allowable emissions for 160 facilities in the POWC source category (*i.e.,* as discussed in section III.C.1 of this preamble, 168 facilities were determined to be subject to the POWC NESHAP, however eight facilities did not have POWC source category emissions, therefore, 160 facilities were modeled for source-category risks) In determining whether risks are acceptable, the EPA considered all available health information and risk estimation uncertainty, as described above. Table 2 summarizes the risk assessment results from the POWC source category. The risk results for the POWC source category indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are at least 14 times below the presumptive limit of acceptability of 100-in-1 million (*i.e.,* 1-in-10 thousand). The residual risk assessment for the POWC source category [22] estimated cancer incidence rate at 0.005 cases per year based on actual emissions. Approximately 4,300 people are exposed to a cancer risk equal to or above 1-in-1 million from the source category based upon actual emissions from 11 facilities.

The maximum chronic noncancer TOSHI due to inhalation exposures is less than 1 for actual and allowable emissions. The results of the acute screening analysis showed that acute risks were below a level of concern for the source category considering the conservative assumptions used that err on the side of overestimating acute risk (as discussed in section III.C.7.e of this preamble). Multipathway screen values were below a level of concern for both carcinogenic and non-carcinogenic PB–HAP as well as emissions of lead compounds.

Maximum cancer and noncancer risks due to ingestion exposures using health-protective risk screening assumptions are below the presumptive limit of acceptability. The maximum estimated excess cancer risk is below 1-in-1 million and the maximum noncancer HQ for mercury is less than 1 based upon the Tier 1 farmer/fisher exposure scenario.

Taking into account all of this information, the EPA proposes that the risks remaining after implementation of the existing MACT standard for the POWC source category are acceptable.

2. Ample Margin of Safety Analysis

Although the EPA is proposing that the risks from this source category are acceptable for both inhalation and multipathway, risk estimates for approximately 4,300 people in the exposed population are above 1-in-1 million, caused primarily by formaldehyde and acetaldehyde emissions from 11 POWC facilities. The maximum acute risk is an HQ of 3 from two facilities, one based on DGME emissions and the second, formaldehyde emissions. As a result, we further considered whether the MACT standards applicable to these specific emission points, as well as the current MACT standards applicable to this source category, provide an ample margin of safety to protect public health.

As directed by CAA section 112(f)(2), we conducted an analysis to determine if the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, the EPA considers all health factors evaluated in the risk assessment and evaluates 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 our 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 and are needed to provide an ample margin of safety to protect public health.

As discussed in section IV.C of this preamble and in the memorandum titled *Technology Review Analysis for the Paper and Other Web Coating Source Category,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416), we did not identify any development in practices, processes, or control technologies that could be applied industry-wide and would be expected to result in significant HAP emissions reductions. Although some facilities are using coatings with HAP formulations more stringent than MACT, we only have limited data and the data do not indicate where/when such coatings are most applicable. In addition, although some existing facilities using capture and control are achieving greater than 95-percent control, the available data are limited and do not clearly indicate that any one industry sector can readily achieve such control levels. Some POWC facilities use permanent total enclosures to capture emissions even though they are not required to do so, but conversion of an application area with a permanent total enclosure is site specific and would be prohibitively complicated and expensive in most cases.

Although some facilities are subject to permit conditions more stringent than the MACT requirements, the applicability of these coating reformulations and emission controls for the POWC industry as a whole is expected to be limited, and the associated potential risk reductions would be expected to be small because baseline risks are low. Because no cost-effective controls, technologies, processes, or work practices were identified that were widely applicable to the industry that would significantly reduce HAP emissions and the associated risk, and the risk assessment determined that the health risks associated with HAP emissions remaining after implementation of the POWC MACT were well below levels that we consider acceptable, we are proposing that the current standards protect public health with an ample margin of safety, and revision of the standards is not required.

[22] Residual Risk Assessment for the Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule, EPA–HQ–OAR–2018–0416.

3. Adverse Environmental Effect

The emissions data for this source category indicate the presence of several environmental HAP: Arsenic, cadmium compounds, mercury compounds, POM, and lead. Based on the results of our environmental risk screening assessment, we conclude that there is not an adverse environmental effect as a result of HAP emissions from the POWC source category. Thus, we are proposing that it is not necessary to set a more stringent standard to prevent an adverse environmental effect. For more details on the environmental risk screening assessment, see the *Residual Risk Assessment for the Paper and Other Web Coating Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

C. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for control of HAP emissions from POWC facilities. In conducting the technology review, we reviewed information on practices, processes, and control technologies that were not considered during the development of the POWC NESHAP, as well as searched for information on improvements in practices, processes, and control technologies that have occurred since the development of the POWC NESHAP. The review included a search of the RBLC database and reviews of title V permits for POWC facilities, site visits to facilities with POWC operations, and a review of relevant literature. We did not identify any developments in practices, processes, or control technologies that were widely applicable to the industry that would significantly reduce HAP emissions, and, therefore, we are not proposing any changes to the NESHAP based on our technology review. For more details on the technology review, see the *Technology Review Analysis for the Paper and Other Web Coating Source Category* memorandum, in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416).

D. What other actions are we proposing?

In addition to the proposed actions described above as part of the RTR, we are proposing certain revisions to the NESHAP. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing various other changes, including a compliance calculation to account for retained volatile organic content in the coated web; periodic emissions testing requirements; electronic submittal of initial notifications, notification of compliance status, semiannual compliance reports, performance test reports, and performance evaluation reports; temperature sensor calibration requirements, incorporation by reference (IBR) of several test methods; and various technical and editorial changes. Our analyses and proposed changes related to these issues are discussed below.

1. SSM

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 section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule, which is established by cross-reference to the General Provisions exemption in Table 2 (40 CFR 63.6(f)). Consistent with *Sierra Club* v. *EPA,* we are proposing that the current standards in the NESHAP apply at all times. We are also proposing several revisions to Table 2 (the General Provisions Applicability Table) as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

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 not proposed alternate emission standards for those periods.

As discussed in the memorandum titled *Startup, Shutdown, and Malfunction Review of the National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Coating,* we collected data regarding these periods to determine if separate standards for startup and shutdown were needed. It was determined that startups and shutdowns occur frequently at many of these facilities. It was also noted that 40 CFR part 60, subpart RR (Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations (Tape NSPS)), to which many POWC facilities are also subject, states that startup and shutdown are normal operations and emissions should be included when determining compliance. Because these events are considered to be normal operations, the EPA is not proposing alternative emission limits for these periods. As part of the data collection, it was found that thermal oxidizer temperature decreases were likely to happen during emission unit startup for a short period of time. To account for these swings and promote consistency between the POWC NESHAP and the Tape NSPS, we are proposing to add language to recognize that sources can demonstrate compliance with the standard as long as the 3-hour average firebox temperature does not drop lower than 50-degree Fahrenheit (°F) below the average combustion temperature established during the performance test.

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, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (definition of malfunction). 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). 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 Corp,* accounting for malfunctions in setting 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. *Id.* at 608 (''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.'') 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) (''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) (''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 could go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction could 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 malfunction 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, 75211–14 (December 1, 2015). The EPA will 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. We also encourage commenters to provide any such information.

The EPA anticipates that it is unlikely that a malfunction of a POWC emission unit would result in a violation of the standard. For example, some facilities using thermal oxidizers as pollution control equipment indicated during the EPA site visits that interlocks would shut the process down if an oxidizer malfunction occurred, and facilities may also have back-up oxidizers that could be used to treat the emissions. The MACT standards are based on a monthly average for each web coating line or grouping of lines, therefore, a malfunction on a single piece of equipment for a short period of time is unlikely to result in an exceedance of the standard.

The American Coatings Association provided a letter to the EPA on April 19, 2018, requesting that the EPA consider provisions covering periods of malfunctions at the same time as we conduct the RTR, and suggested two options. The first option would require a facility to discontinue the coating operation during periods of malfunctions, but the facility could continue the oven curing of any coating materials already applied onto the web without the control device for the period of the malfunction, so long as it continues to meet the emission limits for the compliance period. The second option would require a facility to initiate repairs immediately during the malfunction and complete them as expeditiously as possible, without ceasing operations, until it becomes apparent that the repairs will not be completed before exceeding the emission limit. Neither of these alternatives would allow the facility to exceed the emission limit.[23] We are requesting comment regarding the need to promulgate a special provision covering periods of malfunctions of a control device or capture system that is used to meet the emission limits for the POWC NESHAP. Specifically, we are requesting comment on best practices and the best level of emission control during malfunction events, and additionally, potential cost savings associated with potential malfunction work practices.

In the unlikely event that a source owner or operator 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 owner or operator'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

[23] Letter to the U.S. EPA from David Darling, American Coatings Association regarding *Start-up, Shut-down and Malfunction; American Coatings Association (ACA) Concerns,* dated April 19, 2018.

maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source owner or operator for violation of an emission standard is warranted, the source owner or operator 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, 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).

a. General Duty

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.6(e)(1)(i) and include a ''no'' in the applicability column. 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 63.3340(b) 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 63.3340(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.6(e)(1)(ii) and include a ''no'' in the applicability column. 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 63.3340(b).

b. SSM Plan

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.6(e)(3) and include a ''no'' in the applicability column. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, 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.

c. Compliance With Standards

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.6(f)(1) and include a ''no'' in the applicability column. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

d. Performance Testing

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.7(e)(1) and include a ''no'' in the applicability column. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.3360(e)(2). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions do 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. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to re-designate the entry to the General Provisions table (Table 2) for 40 CFR 63.8(c)(1)–(3) to be 40 CFR 63.8(c)(2)–(3) and remove the text in the explanation column. We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.8(c)(1) and 63.8(c)(1)(i) and (iii), and include a ''no'' in the applicability column. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). We are also proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.8(c)(1)(ii) and include a ''yes'' in the applicability column and to clarify in the explanation column that 40 CFR 63.8(c)(1)(ii) only applies if a capture and control system is in use.

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.8(d)(3) and include a ''no'' in the applicability column. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.3350(e)(5) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under § 63.8(d)(2).''

f. Recordkeeping

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(b)(2)(i) and include a ''no'' in the applicability column. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to

startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(b)(2)(ii) and enter a ''no'' in the applicability column. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.3410(c)(2) and (3). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions require 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 63.3410(c)(2) and (3) a requirement that source owners or operators keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source owner or operator failed to meet the standard, and a description of the method used to determine the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. 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 the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(b)(2)(iv) and enter a ''no'' in the applicability column. 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 63.3340.

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(b)(2)(v) and enter a ''no'' in the applicability column. 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 add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(c)(15) and enter a ''no'' in the applicability column. The EPA is proposing that 40 CFR 63.10(c)(15) no longer applies. 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.

g. Reporting

We are proposing to add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(d)(5)(i) and enter a ''no'' in the applicability column. 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 63.3400. 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 semiannual compliance 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), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to determine the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. 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 owner or operator 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. 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 add an entry to the General Provisions table (Table 2) for 40 CFR 63.10(d)(5)(ii) and enter a ''no'' in the applicability column. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, and malfunctions when a source failed to meet an applicable standard but did 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.

2. Method for Determining Volatile Matter Retained in the Coated Web

The EPA finalized an alternative compliance option as part of the Surface Coating of Wood Building Products RTR on March 4, 2019 (84 FR 7682), which would allow facilities to account for HAP retained in the product as a result of utilizing reactive coatings. Discussions between the EPA and industry trade associations elucidated the need for a similar compliance alternative in the POWC NESHAP. Particularly, the current NESHAP allows for the accounting of retained HAP in 40 CFR 63.3360(g), but the requirement to ''develop a testing protocol to determine the mass of volatile matter retained . . . and submit this protocol to the Administrator for approval'' was found to be vague and unworkable. To provide clarity and reduce regulatory burden, the EPA is proposing the utilization of an emission factor to account for volatile organic matter retained in the coated web. As discussed below, we are proposing to include new language in this

rulemaking to allow facilities to account for retained volatile organics in their compliance demonstration calculations without requiring the submittal of an alternative monitoring request to the EPA under the provisions of 40 CFR 63.8(f). The proposed amendment adds compliance flexibility and reduces regulatory burden but does not alter the emission standard. This approach quantifies emissions in a way that is representative of the actual emissions from the coating operations.

We are proposing language in 40 CFR 63.3360(g) that allows a facility to develop a site- and product-specific emission factor for use to calculate the amount of volatile organics retained in its coated web. This site- and product-specific emission factor is determined by performing an EPA Method 25A test and calculating the ratio of the mass of volatile organics emitted to the mass of volatile organics in the coating materials evaluated over a three-run test average. This site- and product-specific emission factor can be used for the production of similar products to the product tested during the performance test. A separate performance test must be performed for each different group of products for which a source owner or operator intends to account for the retained volatiles in the compliance demonstration calculations. The site- and product-specific emission factor is then used in Equation 4 to determine the amount retained for each group of products. The amount of volatile organics retained in the web can then be subtracted from the emissions calculated in the appropriate equations in 40 CFR 63.3370.

Facilities using the proposed equations in 40 CFR 63.3360(g) to account for volatiles retained in the coated web would be required to conduct an initial performance test to develop a site- and product-specific emission factor to demonstrate compliance. It is not clear how many POWC facilities may elect to use this approach and, therefore, be required to perform this initial air emissions performance test; therefore, we have not assessed a cost for this test. Additionally, facilities choosing to use this approach will also have associated recordkeeping and reporting requirements in 40 CFR 63.3410 and 40 CFR 63.3400, respectively. We have not assessed a cost for the additional recordkeeping and reporting requirements because it is unclear how many POWC facilities will elect to use this approach.

3. Periodic Emissions Testing

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the POWC NESHAP. Currently, if a source owner or operator chooses to comply with the standards using a non-recovery add-on control device, such as a thermal oxidizer, the results of an initial performance test are used to demonstrate compliance; however, the current rule does not require periodic performance testing for these emission capture systems and add-on controls. We are proposing a periodic emissions testing provision for sources using non-recovery add-on controls in 40 CFR 63.3360(a)(2), in addition to the one-time initial emissions and capture efficiency testing and ongoing parametric monitoring to ensure ongoing compliance with the standards.

Although ongoing monitoring of operating parameters is required by the POWC NESHAP, as the control device ages over time, the destruction efficiency of the control device can be compromised due to various factors. These factors are discussed in more detail in the memorandum titled *Periodic Testing of Control Devices Used to Comply with the Paper and Other Web Coating NESHAP,* in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2018–0416). Based on the need for vigilance in maintaining the control device equipment, we are proposing periodic testing of non-recovery add-on control devices once every 5 years.

Currently, there are an estimated 123 oxidizers at 81 facilities that are used to demonstrate compliance with the POWC NESHAP. Currently, 58 of those oxidizers are tested on at least a 5-year frequency due to state requirements to check destruction efficiency and re-establish operating parameters; therefore, 65 oxidizers are not currently tested on a regular basis. The repeat performance testing provision which the Agency is proposing would impact these 65 oxidizers if the provisions were finalized, with an estimated cost of $28,000 for each repeat performance test. The inclusion of a periodic repeat testing requirement would help demonstrate that emissions control equipment is continuing to operate as designed and that the facility remains in compliance with the standard. We specifically request comment on the proposed repeat testing requirements.

4. Electronic Reporting

Through this proposal, the EPA is proposing that owners and operators of POWC facilities submit electronic copies of required performance test reports (40 CFR 63.3400(f)), performance evaluation reports (40 CFR 63.3400(g)), initial notifications (40 CFR 63.3400(b)), notification of compliance status (40 CFR 63.3400(e)), and semiannual compliance reports (40 CFR 63.3400(c)) through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2018–0416. This proposed rule requirement would replace the current rule requirement to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. This proposed rule requirement does not affect submittals required by state air agencies as required by 40 CFR 63.13.

For the performance test reports required in 40 CFR 63.3400(f), the proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [24] 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. Similarly, performance evaluation results of continuous monitoring systems measuring relative accuracy test audit pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT.

For semiannual compliance reports required in 40 CFR 63.3400(c), the proposed rule requires that owners and operators use the final semiannual report template to submit information to CEDRI. The template will reside in CEDRI and is to be used on and after 180 days past finalization of this proposed action. A draft version of the proposed template for these reports is included in the docket for this

[24] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

rulemaking.[25] The EPA specifically requests comment on the format and usability of the template (*e.g.,* filling out and uploading a provided spreadsheet versus entering the required information into an on-line fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to 180 days after the final semiannual compliance report template has been made available in CEDRI, owners and operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. When the EPA finalizes the semiannual compliance report template, POWC sources will be notified about its availability via the CEDRI website. We plan to finalize the required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least 180 days.

For electronic submittal of initial notifications required in 40 CFR 63.3400(b), no specific form is available at this time, therefore, these notifications are required to be submitted in PDF using the attachment module of the ERT. If electronic forms are developed for these notifications, we will notify source owners and operators about their availability via the CEDRI website. For electronic submittal of notifications of compliance status reports required in 40 CFR 63.3400(e), the final semiannual report template discussed above, will also contain the information required for the notification of compliance status report. This will satisfy the requirement to provide the notifications of compliance status information electronically, eliminating the need to provide a separate notification of compliance status report. As stated above, the final semiannual report template will be available after finalizing this proposed action and source owners or operators will be required to use the form after 180 days. Prior to the availability of the final semiannual compliance report template in CEDRI, owners and operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. As stated above, we will notify sources about the availability of the final semiannual report template via the CEDRI website.

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. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.3400(i). 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 is addressed in 40 CFR 63.3400(j). 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 proposed 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. Moreover, electronic reporting is consistent with the EPA's plan[26] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy[27] developed in response to the White House's Digital Government Strategy.[28] For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2018–0416.

5. Temperature Sensor Calibration

Facilities with controlled sources subject to the POWC NESHAP that use regenerative thermal or catalytic oxidizers to comply with the standard are currently required to establish a minimum operating temperature during performance testing and subsequently maintain a 3-hour block average firebox temperature above the minimum temperature established during the performance test to demonstrate ongoing compliance. Temperature sensors are used to measure the temperature in the firebox. At 40 CFR 63.3350(e)(9), the POWC NESHAP currently requires conducting an electronic calibration of the temperature monitoring device every 3 months or the temperature sensor must be replaced. Facilities subject to the standard have explained to the EPA that they are not aware of a temperature sensor manufacturer that provides procedures or protocols for conducting electronic calibration of temperature sensors. Facilities have reported that because they cannot calibrate their temperature sensors, the alternative is to replace them and so they have requested that an alternative approach to the current requirement in 40 CFR 63.3350(e)(9) be considered.

The EPA is proposing to modify 40 CFR 63.3350(e) to allow multiple alternative approaches to temperature sensor calibration. The first alternative would allow use of a National Institute of Standards and Technology (NIST) traceable temperature measurement device or simulator to confirm the accuracy of any temperature sensor placed into use for at least one quarterly period, where the accuracy of the temperature measurement must be within 2.5 percent of the temperature measured by the NIST traceable device or 5 °F, whichever is greater. The second alternative would be to have the temperature sensor manufacturer certify

[25] See *POWC_Electronic_Reporting_Template.xlsx,* available at Docket ID No. EPA–HQ–2018–0416.

[26] *EPA's Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[27] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[28] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

the electrical properties of the temperature sensor. The third alternative would codify the common practice of replacing temperature sensors quarterly. The fourth alternative would be to permanently install a redundant temperature sensor as close as practicable to the process temperature sensor. The redundant sensors must read within 25 °F of each other for thermal and catalytic oxidizers. The EPA plans to maintain the option of allowing facilities to follow calibration procedures developed by the temperature sensor manufacturer when temperature sensor manufacturers develop calibration procedures for their products.

6. Operating Parameter Clarification

We are proposing to clarify language in 40 CFR 63.3370 which currently implies deviations in operating parameters result in non-compliance with the standard. Specifically, we are proposing a clarification that each 3-hour average operating parameter that is outside of the operating limit range established during a performance test should be assumed to have zero control and all HAP must be assumed to be emitted for that period in the monthly compliance calculation. Operating parameters were established in the POWC NESHAP to aid in determining a source's compliance, but they were not intended to constitute a violation of the emission standard. For example, one 3-hour average regenerative thermal oxidizer firebox temperature below the setpoint established in during the stack test would not necessarily indicate a violation of the emission standard for the month, but it is a deviation of the operating parameter limits.

7. IBR Under 1 CFR Part 51

The EPA is proposing regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following voluntary consensus standards (VCS) into 40 CFR 63.14:

- ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, IBR approved for 40 CFR 63.3360(c).
- ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for 40 CFR 63.3360(c).
- ASTM 3960–98, Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings, IBR approved for 40 CFR 63.3360(d).
- ASTM D6093–97, (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for 40 CFR 63.3360(c).
- ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, IBR approved for 40 CFR 63.3360(c).
- ASTM D1963–85 (1996), Standard Test Method for Specific Gravity of Drying Oils, Varnishes, Resins, and Related Materials at 25/25°C, IBR approved for 40 CFR 63.3360(c).

While ANSI/ASME PTC 19.10–1981 was incorporated by reference when 40 CFR part 63, subpart JJJJ was originally promulgated (67 FR 72347, December 4, 2002), the method has been updated, requiring a revision to the regulatory text addressing its IBR. All of the other above-referenced VCS, except for ASTM D2369–10 (Reapproved 2015)[e] are being incorporated by reference for 40 CFR part 63, subpart JJJJ for the first time under this rulemaking.

8. Technical and Editorial Changes

a. Removal of Occupational Safety and Health Administration (OSHA)-Defined Carcinogens Reference

We propose to amend 40 CFR 63.3360(c)(1)(i) and (3), which describe how to demonstrate initial compliance with the emission limitations using the compliant material option, to remove references to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We are proposing to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We are proposing to replace these references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 3 to 40 CFR part 63, subpart JJJJ) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We propose to include organic HAP in proposed Table 3 to 40 CFR part 63, subpart JJJJ if they were categorized in the EPA's Prioritized Chronic Dose-Response Values for Screening Risk Assessments (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[29] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

b. Clarification of Compliance Demonstration Options

An introductory paragraph and a new subsection are proposed in this action to clarify the compliance demonstration requirements in 40 CFR 63.3370. As promulgated, it is not clear that compliance can be demonstrated based on individual web coating lines, groups of web coating lines, or all of the web coating lines located at an affected facility. An introductory paragraph to 40 CFR 63.3370 is proposed to clarify the intent of how compliance can be demonstrated across the web coating lines in a facility. Additionally, a new subsection 40 CFR 63.3370(r) is also being proposed to clarify that compliance with the subpart is demonstrated using a mass-balance. While the compliance calculations included in 40 CFR 63.3370(b)–(p) are thorough, there are instances where variables in the equations are not needed, resulting in confusion by the regulated facilities and the regulating agencies as to what is required for compliance. The mass-balance summary approach proposed in 40 CFR 63.3370(r) clarifies the intent of the rule.

c. Clarification of Coating Materials Definition

The EPA is proposing to revise the coating material definition in 40 CFR 63.3310 to clarify that coating materials are liquid or semi-liquid materials, consistent with 40 CFR part 63, subpart OOOO. Additionally, we are proposing to revise the web coating line definition to clarify that coating materials are liquid or semi-liquid. These revisions will improve regulatory clarity by confirming that the weight of solid materials should not be accounted for in the compliance demonstration calculations, and that vapor-deposition coating is not covered by this subpart.

d. Addition of Web Coating Line Usage Threshold

The EPA is proposing to add a usage threshold to 40 CFR 63.3300(h), consistent with 40 CFR part 63, subpart OOOO, that requires a web coating line that coats both paper and another substrate, such as fabric, to comply with

[29] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

the subpart that corresponds to the predominate activity conducted. We are proposing to define predominant activity to be 90 percent of the mass of substrate coated during the compliance period. For example, a web coating line that coats 90 percent or more of a paper substrate, and 10 percent or less of a fabric substrate, would be subject to this subpart and not 40 CFR part 63, subpart OOOO.

e. Addition of Printing Activity Exemption

The EPA is proposing to add a printing activity exemption to 40 CFR 63.3300(i) which would allow for modified web coating lines already subject to this subpart to continue to demonstrate compliance with this subpart, in lieu of demonstrating compliance with 40 CFR part 63, subpart KK. This proposed exemption will reduce regulatory burden without resulting in increased emissions.

f. Clarification of Testing Requirements

The EPA is proposing to remove the ''by compound'' statement in 40 CFR 63.3320(b)(4) to clarify that the standard is 20 ppmv for the total of organic HAP emitted, not 20 ppmv for each individual HAP emitted. This is consistent with the test methods used in this subpart, which test for total HAP concentration.

g. Applicability to Sources Using Only Non-HAP Coatings

As identified during the development of the risk modeling input file and discussed in section III.C of this preamble, some facilities that utilize only non-HAP coatings are subject to the POWC NESHAP because they perform web coating operations and are a major source because of non-POWC source category emissions. For example, a non-HAP coating line used to produce paper towel cores may be located at a pulp and paper facility that is a major source because of emissions from the pulping operations. This facility would be required to comply with the recordkeeping and reporting requirements of 40 CFR part 63, subpart JJJJ, even though the coatings used contain no HAP, and, therefore, no HAP were emitted from the web coating lines. The EPA is requesting comment on changing the applicability of the subpart to exclude sources that only use non-HAP coatings but are located at a major source from the POWC NESHAP requirements to reduce regulatory burden.

h. Other

The following are additional proposed changes that address technical and editorial corrections:

- Revised the references to the other NESHAP in 40 CFR 63.3300 to clarify the appropriate subparts;
- Revised 40 CFR 63.3350(e)(4) to clarify 3-hour averages should be block averages, consistent with the requirements in Table 1 to 40 CFR part 63, subpart JJJJ.
- Revised the monitoring requirements section in 40 CFR 63.3360 to clarify what constitutes representative conditions;
- Revised the recordkeeping requirements section in 40 CFR 63.3410 to include the requirement to show continuous compliance after effective date of regulation;
- Revised the terminology in the delegation of authority section in 40 CFR 63.3420 to match the definitions in 40 CFR 63.90;
- Revised the General Provisions applicability table (Table 2 to 40 CFR part 63, subpart JJJJ) to provide more detail and to make it align with those sections of the General Provisions that have been amended or reserved over time; and
- Renumbered the equations throughout the subpart for regulatory clarity.

E. What compliance dates are we proposing?

The EPA is proposing that existing affected sources must comply with the amendments in this rulemaking no later than 180 days after the effective date of the final rule. The EPA is also proposing that affected source owners or operators that commence construction or reconstruction after September 19, 2019 must comply with all requirements of the subpart, including the amendments being proposed except for the electronic reporting of semiannual reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected existing facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart JJJJ until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart JJJJ. As discussed elsewhere in this preamble, we are proposing to add a requirement that initial notifications, notifications of compliance status reports, performance test results, performance evaluation results, and semiannual reports be submitted electronically. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods, and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms, install necessary hardware, install necessary software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, reliably employ electronic reporting, and convert logistics of reporting processes to different time-reporting parameters, shows that a time period of a minimum of 90 days, and more typically, 180 days, is generally necessary to successfully complete these changes. Our experience with similar industries further shows that owners or operators of this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule, and make any necessary adjustments; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the time frame needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable, and, thus, is proposing that existing affected sources be in compliance with all of this regulation's revised requirements within 180 days of the regulation's effective date. We solicit comment on this proposed compliance period, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in

changes to the proposed compliance date.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The POWC source category includes any facility that is located at a major source and is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces. All the coating lines at a subject facility are defined as one affected source. An existing source means any affected source of which the construction or reconstruction was commenced on or before September 13, 2000, and has not undergone reconstruction. Generally, an additional line at an existing facility is considered part of the existing affected source. New affected sources are new lines installed at new facilities or at a facility with no prior POWC operations.

There are currently 168 facilities in the United States that are subject to the POWC NESHAP. There is currently one known new affected source that is under construction that will be subject to the POWC NESHAP. No other facilities are under construction or are planned to be constructed which would be considered ''new facilities'' under the POWC NESHAP to the EPA's knowledge.

B. What are the air quality impacts?

At the current level of control, estimated emissions of total HAP are approximately 3,870 tpy. Compared to pre-MACT levels, this represents a significant reduction of HAP for the category. Prior to the development of the POWC NESHAP, the EPA estimated HAP emissions to be 42,000 tpy (67 FR 72331).

The proposed amendments will require all 168 major sources with equipment subject to the POWC NESHAP to operate without the SSM exemption. Eliminating the SSM exemption will reduce emissions by requiring facilities to meet the applicable standard during SSM periods, however we are unable to quantify the specific emissions reductions associated with eliminating the exemption. The requirement for repeat performance testing once every 5 years for oxidizers will ensure that the control device is operating correctly and may reduce emissions, but no method for accurately estimating such emissions reduction is available.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*i.e.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that would be required under this proposed rule. The EPA expects no secondary air emissions impacts or energy impacts from this rulemaking.

For further information, see the memorandum titled *Cost, Environmental, and Energy Impacts of Regulatory Options for the Paper and Other Web Coatings Risk and Technology Review,* in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

C. What are the cost impacts?

Startup and shutdown are considered normal operations for most facilities subject to the POWC NESHAP. The EPA does not believe removing the SSM exemption will result in additional incurred costs.

As discussed in detail in the memorandum titled *Cost, Environmental, and Energy Impacts of Regulatory Options for the Paper and Other Web Coatings Risk and Technology Review,* it was estimated that an additional 65 oxidizers will have to perform repeat performance testing every 5 years. The estimated cost for an inlet-outlet EPA Method 25A performance test (with electronic reporting of results) is $28,000 per test, for an estimated nationwide cost of $1,820,000 (2018$) every 5 years. The proposed electronic reporting requirement is not expected to require any additional labor hours to prepare, compared to the paper semi-annual compliance reports that are already prepared. Therefore, the costs associated with the electronic reporting requirement are zero.

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. To assess the potential impact, the largest cost expected to be experienced in any 1 year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each facility.

For the proposed revisions to the POWC NESHAP, the 168 affected facilities are owned by 91 different parent companies, and the total costs associated with the proposed requirements range from less than 0.000001 to 3 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. Twenty-nine of the facilities potentially affected by the proposed revisions to the POWC NESHAP are small entities. However, the costs associated with the proposed requirements for the affected small entities range from 0.0003 to 3 percent of annual sales revenues per ultimate owner; there is one facility with costs of 1.4 percent and one facility with costs of 3 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these proposed amendments.

E. What are the benefits?

Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because we did not estimate emission reductions associated with the proposal, we did not estimate any benefits from reducing emissions.

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 the 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 assessment 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.

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://www.epa.gov/stationary-sources-air-pollution/paper-and-other-web-coating-national-emission-standards-hazardous-0.* 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–2018–0416 (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://www.epa.gov/stationary-sources-air-pollution/paper-and-other-web-coating-national-emission-standards-hazardous-0.*

VIII. 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 Regulation and Controlling Regulatory Costs

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1951.08, OMB Control No. 2060–0511. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The POWC NESHAP applies to existing facilities and new POWC facilities. In general, all NESHAP standards require initial notifications, notifications of compliance status, performance tests, performance evaluation reports, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. This information is being collected to assure compliance with 40 CFR part 63, subpart JJJJ.

Respondents/affected entities: POWC facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart JJJJ).

Estimated number of respondents: 170.

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 17,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,789,000 (per year), includes $789,000 annualized capital or operation and maintenance costs.

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 October 21, 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. The small entities subject to the requirements of this action and the annualized costs associated with the proposed requirements in this action for the affected small entities are described in section V.D. above.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any 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 action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

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. It will not have substantial direct effects on tribal governments, 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. No tribal governments own facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to this action.

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 and IV of this preamble and further documented in the following risk report, titled *Residual Risk Assessment for the Paper and Other Web Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which can be found in the docket for

this action (Docket ID No. EPA–HQ–OAR–2018–0416).

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. The EPA proposes to use ANSI/ASME PTC 19.10–1981 (2010), ''Flue and Exhaust Gas Analyses,'' for its manual methods of measuring the oxygen or carbon dioxide content of the exhaust gas. This standard is acceptable as an alternative to EPA Method 3B and is available from the American Society of Mechanical Engineers (ASME) at *http://www.asme.org;* by mail at Three Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. While this standard was incorporated by reference when 40 CFR part 63, subpart JJJJ was originally promulgated (67 FR 72347), EPA is proposing to use the updated version.

The EPA also proposes to use the following six VCS as alternatives to EPA Method 24 and is incorporating them by reference for the first time in the proposed amendments:

- ASTM D2369–10 (Reapproved 2015)[e], ''Standard Test Method for Volatile Content of Coatings.'' This test method describes a procedure used for the determination of the weight percent volatile content of solvent-borne and waterborne coatings.
- ASTM D2697–03 (Reapproved 2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings.'' This test method is applicable to the determination of the volume of nonvolatile matter in coatings.
- ASTM D3960–98, ''Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings.'' This test method is used for the measurement of the VOC content of solventborne and waterborne paints and related coatings. This method is an acceptable alternative to EPA Method 24 if the regulation allows for the use of VOC content as a surrogate for HAP.
- ASTM D6093–97 (Reapproved 2016), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer.'' This test method is used for the determination of the percent volume nonvolatile matter in clear and pigmented coatings.
- ASTM D2111–10 (Reapproved 2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures.'' This test method is used for the determination of the specific gravity of halogenated organic solvents and solvent admixtures.
- ASTM D1963–85 (1996), ''Standard Test Method for Specific Gravity of Drying Oils, Varnishes, Resins, and Related Materials at 25°C.'' This test method is used for the determination of the specific gravity of drying oils, varnishes, alkyd resins, fatty acids, and related materials. This method is an acceptable alternative to EPA Method 24 for density only and may not be valid for all coatings and is valid at the designated temperature (25-degrees Celsius). This standard was withdrawn in 2004 with no replacement; there is no later version.

These standards are reasonably available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org/.*

While the EPA has identified another 19 VCS as being potentially applicable to this proposed rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would not be practical due to lack of equivalency, documentation, validation date, and other important technical and policy considerations. See the memorandum titled *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating,* in the docket for this proposed rule for the reasons for these determinations (Docket ID No. EPA–HQ–OAR–2018–0416).

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

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 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in section IV.A.6 of this preamble and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Paper and Other Web Coating Facilities,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0416).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 22, 2018.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:

■ a. in paragraph (e)(1), removing the phrase ''63.3360(e),'' without replacement;

■ b. Adding paragraph (e)(2);

■ c. Redesignating paragraphs (h)(50) through (h)(111) as (h)(52) through (h)(113);

■ d. Redesignating paragraphs (h)(19) through (h)(49) as (h)(20) through (h)(50);

■ e. Adding new paragraph (h)(19) and (51); and

■ f. Revising newly redesignated paragraphs (h)(22), (27), (31), and (81).

The additions and revisions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(e) * * *

(2) ANSI/ASME PTC 19.10–1981 Part 10 (2010), Flue and Exhaust Gas Analyses, IBR approved for § 63.3360(e).

(h) * * *

(19) ASTM D1963–85 (1996), ''Standard Test Method for Specific Gravity of Drying Oils, Varnishes,

Resins, and Related Materials at 25/25°C,'' IBR approved for § 63.3360(c).

* * * * *

(22) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3360(c), 63.4141(b) and (c) and 63.4741(a).

* * * * *

(27) ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3360(c), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4741(a), 63.4941(a) and (b), and 63.4961(j).

* * * * *

(31) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3360(c), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

(51) ASTM 3960–98, Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings, IBR approved for § 63.3360(c).

* * * * *

(81) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, Approved December 1, 2016, IBR approved for §§ 63.3360(c), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

Subpart JJJJ—[Amended]

■ 3. Section 63.3300 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a), (b), (d), (e) and (f); and

■ c. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

§ 63.3300 Which of my emission sources are affected by this subpart?

The affected source subject to this subpart is the collection of all web coating lines at your facility. This includes web coating lines engaged in the coating of metal webs that are used in flexible packaging, and web coating lines engaged in the coating of fabric substrates for use in pressure sensitive tape and abrasive materials. Web coating lines specified in paragraphs (a) through (i) of this section are not part of the affected source of this subpart.

(a) Any web coating line that is stand-alone equipment under subpart KK of this part (National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Printing and Publishing Industry) which the owner or operator includes in the affected source under subpart KK of this part.

(b) Any web coating line that is a product and packaging rotogravure or wide-web flexographic press under subpart KK of this part (NESHAP for the Printing and Publishing Industry) which is included in the affected source under subpart KK of this part.

* * * * *

(d) Any web coating line subject to subpart EE of this part (NESHAP for Magnetic Tape Manufacturing Operations).

(e) Any web coating line subject to subpart SSSS of this part (NESHAP for Surface Coating of Metal Coil).

(f) Any web coating line subject to subpart OOOO of this part (NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles). This includes any web coating line that coats both a paper or other web substrate and a fabric or other textile substrate, except for a fabric substrate used for pressure sensitive tape and abrasive materials.

* * * * *

(h) Any web coating line that coats both paper or a web, and another substrate such as fabric, must comply with the subpart of this part that applies to the predominant activity conducted on the affected source. Predominant activity for this subpart is 90 percent of the mass of substrate coated during the compliance period. For example, a web coating line that coats 90 percent or more of a paper substrate, and 10 percent or less of a fabric or other textile substrate, would be subject to this subpart and not 40 CFR 63, subpart OOOO.

(i) Any web coating line subject to this part that is modified to include printing activities, may continue to demonstrate compliance with this part, in lieu of demonstrating compliance with subpart KK of this part.

■ 4. Section 63.3310 is amended by revising the definitions of ''coating material(s)'' and ''web coating line''.

The revisions and additions read as follows:

§ 63.3310 What definitions are used in this subpart?

* * * * *

Coating material(s) means all liquid or semi-liquid materials, including inks, varnishes, adhesives, primers, solvents, reducers, and other materials applied to a substrate via a web coating line. Materials used to form a substrate are not considered coating materials.

* * * * *

Web coating line means any number of work stations, of which one or more applies a continuous layer of liquid or semi-liquid coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.

* * * * *

■ 5. Section 63.3320 is amended by revising the introductory text of paragraph (b) and revising paragraph (b)(4).

The revisions read as follows:

§ 63.3320 What emission standards must I meet?

* * * * *

(b) You must limit organic HAP emissions to the level specified in paragraph (b)(1), (2), (3), or (4) of this section for all periods of operation, including startup, shutdown, and malfunction.

* * * * *

(4) If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) on a dry basis is achieved and the efficiency of the capture system is 100 percent.

* * * * *

■ 6. Section 63.3330 is revised to read as follows:

§ 63.3330 When must I comply?

(a) For existing affected sources which commenced construction or reconstruction prior to September 13, 2000, and for new affected sources which commenced construction or reconstruction after September 13, 2000, but before September 19, 2019, you must comply as follows:

(1) Before [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the affected coating operation(s) must be in compliance with the applicable emission limit in § 63.3320 at all times, except during periods of startup, shutdown, and malfunction (SSM). On and after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] the affected coating operation(s) must be in compliance with the applicable emission limit in § 63.3320 at all times, including periods of startup, shutdown, and malfunction.

(2) A periodic performance test must be performed by [DATE 3 YEARS

AFTER DATE OF PUBLICATION IN THE **Federal Register**], and subsequent tests no later than 60 months thereafter, as required in § 63.3360.

(3) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must electronically submit initial notifications, semiannual compliance reports, and performance test reports, as required in § 63.3400.

(b) For new affected sources which commenced construction or reconstruction after September 19, 2019, you must comply as indicated in (b)(1) through (4) of this section. Existing affected sources which have undergone reconstruction as defined in § 63.2 are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment are not considered in determining whether the existing affected source has been reconstructed. Additionally, the costs of retrofitting and replacing of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs.

(1) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3320 at all times, including periods of startup, shutdown, and malfunction, immediately upon startup.

(2) You must complete any initial performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2), and subsequent tests no later than 60 months thereafter.

(3) You must electronically submit initial notifications and performance test reports as required in § 63.3400. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must electronically submit semiannual compliance reports as required in § 63.3400.

■ 7. Section 63.3340 is revised to read as follows:

§ 63.3340 What general requirements must I meet to comply with the standards?

(a) Before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after September 13, 2000, but on or before September 19, 2019, you must be in compliance with the emission limits and operating limits in this subpart at all times, except during periods of startup, shutdown, and malfunction. After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], for each such source you must be in compliance with the emission limits and operating limits in this subpart at all times. For new and reconstructed sources for which construction or reconstruction commenced after September 19, 2019, you must be in compliance with the emission limits and operating limits in this subpart at all times, immediately upon startup.

(b) For affected sources as of September 19, 2019, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**] for such sources and after September 19, 2019 for new or reconstructed affected sources, you must always operate and maintain your 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.

(c) You must conduct each performance test required by § 63.3360 according to the requirements in § 63.3360(e)(2) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, and nonoperation do not constitute representative conditions. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(d) Table 2 to this subpart specifies the provisions of subpart A of this part that apply if you are subject to subpart JJJJ of this part.

■ 8. Section 63.3350 is amended by:
■ a. Revising paragraph (b);
■ b. Revising the introductory text of paragraph (c);
■ c. Revising paragraph (d)(1)(iii);
■ d. Revising the introductory text of paragraph (e) and paragraph (e)(2);
■ e. Revising paragraph (e)(4);
■ f. Redesignating paragraphs (e)(5) through (e)(10) as paragraphs (e)(6) through (e)(11);
■ g. Adding paragraph (e)(5); and
■ h. Revising the newly designated paragraph (e)(10).

The revisions and addition read as follows:

§ 63.3350 If I use a control device to comply with the emission standards, what monitoring must I do?

* * * * *

(b) Following the date on which the initial or periodic performance test of a control device is completed to demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device used to comply with § 63.3320. You must install and operate the monitoring equipment as specified in paragraphs (c) and (f) of this section.

(c) *Bypass and coating use monitoring.* If you own or operate web coating lines with intermittently-controlled work stations, you must monitor bypasses of the control device and the mass of each coating material applied at the work station during any such bypass. If using a control device for complying with the requirements of this subpart, you must demonstrate that any coating material applied on a never-

controlled work station or an intermittently-controlled work station operated in bypass mode is allowed in your compliance demonstration according to § 63.3370(o) and (p). The bypass monitoring must be conducted using at least one of the procedures in paragraphs (c)(1) through (4) of this section for each work station and associated dryer.

* * * * *

(d) * * *

(1) * * *

(iii) You must have valid data from at least 90 percent of the hours when the process is operated. Invalid or missing data should be reported as a deviation in the semiannual compliance report.

* * * * *

(e) *Continuous parameter monitoring system (CPMS).* If you are using a control device to comply with the emission standards in § 63.3320, you must install, operate, and maintain each CPMS specified in paragraphs (e)(10) and (11) and (f) of this section according to the requirements in paragraphs (e)(1) through (9) of this section. You must install, operate, and maintain each CPMS specified in paragraph (c) of this section according to paragraphs (e)(5) through (8) of this section.

(1) * * *

(2) You must have valid data from at least 90 percent of the hours when the process is operated. Invalid or missing data should be reported as a deviation in the semiannual compliance report.

* * * * *

(4) You must determine the block 3-hour average of all recorded readings for each operating period. To calculate the average for each 3-hour averaging period, you must have at least two of three of the hourly averages for that period using only average values that are based on valid data (*i.e.,* not from out-of-control periods).

(5) You must develop a quality control program, as required in § 63.8(d). The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

* * * * *

(10) *Oxidizer.* If you are using an oxidizer to comply with the emission standards, you must comply with paragraphs (e)(10)(i) through (vi) of this section.

(i) Install, maintain, and operate temperature monitoring equipment according to the manufacturer's specifications. Calibrate the chart recorder or data logger at least quarterly.

(ii) For an oxidizer other than a catalytic oxidizer, install, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Fahrenheit, or ±1.8 degree Fahrenheit, whichever is greater. The temperature sensor must be installed in the combustion chamber at a location in the combustion zone.

(iii) For a catalytic oxidizer, install, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Fahrenheit or ±1.8 degree Fahrenheit, whichever is greater. The temperature sensor must be installed in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature rise across the catalyst.

(iv) Validate the temperature sensor at least quarterly using method (iv)(A), (B), (C), (D), or (E):

(A) Compare measured readings to a National Institute of Standards and Technology (NIST) traceable temperature measurement device or simulate a typical operating temperature using a NIST traceable temperature simulation device. When the temperature measurement device method is used, the sensor of the calibrated device must be placed as close as practicable to the process sensor, and both devices must be subjected to the same environmental conditions. The accuracy of the temperature measured must be 2.5% of the temperature measured by the NIST traceable device or 5 °F whichever is greater.

(B) Follow applicable procedures in the manufacturer owner's manual.

(C) Request the temperature sensor manufacturer to certify or re-certify electromotive force (electrical properties) of the thermocouple.

(D) Replace the temperature sensor with a new certified temperature sensor in lieu of validation.

(E) Permanently install a redundant temperature sensor as close as practicable to the process temperature sensor. The sensors must yield a reading within 25 °F of each other for thermal oxidizers and catalytic oxidizers.

(v) Conduct calibration and validation checks any time the temperature sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vi) At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

* * * * *

■ 9. Section 63.3360 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b);

■ c. Revising paragraphs (c)(1)(i),and (2) through (4); and

■ d. Revising paragraphs (d)(1) through (3), (e)(1) and (2), the introductory text of paragraph (f), and paragraph (g).

The revisions read as follows:

§ 63.3360 What performance tests must I conduct?

(a) The performance test methods you must conduct are as follows:

If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(1) Limiting organic HAP or volatile matter content of coatings.	Determine the organic HAP or volatile matter and coating solids content of coating materials according to procedures in paragraphs (c) and (d) of this section. If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to paragraph (g) of this section.

If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(2) Using a capture and control system ..	(i) Initially, conduct a performance test for each capture and control system to determine: the destruction or removal efficiency of each control device other than solvent recovery according to paragraph (e) of this section, and the capture efficiency of each capture system according to paragraph (f) of this section. If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to paragraph (g) of this section. (ii) Perform a periodic test once every 5 years for each non-recovery control device to determine the destruction or removal efficiency according to paragraph (e) of this section. If applicable, perform a periodic test once every 5 years to determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to paragraph (g) of this section.

(b) *Control Device.* If you are using a control device to comply with the emission standards in § 63.3320, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (b)(1) through (3) of this section are met.

(1) The control device is equipped with continuous emission monitoring systems (CEMS) for determining inlet and outlet total organic volatile matter concentration and meeting the requirements of Performance Specification 6, 8, or 9 in Appendix B to 40 CFR part 60 and capture efficiency has been determined in accordance with the requirements of this subpart such that an overall organic HAP control efficiency can be calculated, and the CEMS are used to demonstrate continuous compliance in accordance with § 63.3350; or

(2) You have met the requirements of § 63.7(h) (for waiver of performance testing); or

(3) The control device is a solvent recovery system and you comply by means of a monthly liquid-liquid material balance.

(c) * * *

(1) * * *

(i) Include each organic HAP in Table 3 to this subpart determined to be present at greater than or equal to 0.1 mass percent and greater than or equal to 1.0 mass percent for other organic HAP compounds.

* * * * *

(2) *Method 24.* For coatings, determine the volatile organic content as mass fraction of nonaqueous volatile matter and use it as a substitute for organic HAP using Method 24 of appendix A–7 to 40 CFR part 60. The Method 24 determination may be performed by the manufacturer of the coating and the results provided to you. One of the voluntary consensus standards in paragraphs (c)(2)(i) through (v) of this section may be used as an alternative to using Method 24.

(i) ASTM D1963–85 (1996), (incorporated by reference, see § 63.14);

(ii) ASTM D2111–10 (Reapproved 2015), (incorporated by reference, see § 63.14);

(iii) ASTM D2369–10 (Reapproved 2015)[e], (incorporated by reference, see § 63.14);

(iv) ASTM D2697–03 (2014), (incorporated by reference, see § 63.14); and

(v) ASTM D6093–97 (Reapproved 2016), (incorporated by reference, see § 63.14).

(3) *Formulation data.* You may use formulation data to determine the organic HAP mass fraction of a coating material. Formulation data may be provided to the owner or operator by the manufacturer of the material. In the event of an inconsistency between Method 311 (appendix A to 40 CFR part 63) test data and a facility's formulation data, and the Method 311 test value is higher, the Method 311 data will govern. Formulation data may be used provided that the information represents all organic HAP present at a level equal to or greater than 0.1 percent for the organic HAP specified in Table 3 to this subpart and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used.

(4) *As-applied organic HAP mass fraction.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied organic HAP mass fraction is equal to the as-purchased organic HAP mass fraction. Otherwise, the as-applied organic HAP mass fraction must be calculated using Equation 4 of § 63.3370.

(d) * * *

(1) *Method 24.* You may determine the volatile organic and coating solids mass fraction of each coating applied using Method 24 (appendix A–7 to 40 CFR part 60). The Method 24 determination may be performed by the manufacturer of the material and the results provided to you. When using volatile organic compound content as a surrogate for HAP, you may also use ASTM D3960–98, (incorporated by reference, see § 63.14) as an alternative to Method 24. If these values cannot be determined using either of these methods, you must submit an alternative technique for determining their values for approval by the Administrator.

(2) *Formulation data.* You may determine the volatile organic content and coating solids content of a coating material based on formulation data and may rely on volatile organic content data provided by the manufacturer of the material. In the event of any inconsistency between the formulation data and the results of Method 24 of appendix A–7 to 40 CFR part 60 and the Method 24 results are higher, the results of Method 24 will govern.

(3) *As-applied volatile organic content and coating solids content.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied volatile organic content is equal to the as-purchased volatile content and the as-applied coating solids content is equal to the as-purchased coating solids content. Otherwise, the as-applied volatile organic content must be calculated using Equation 5 of § 63.3370 and the as-applied coating solids content must be calculated using Equation 6 of § 63.3370.

(e) * * *

(1) *Initial performance test.* An initial performance test to establish the destruction or removal efficiency of the control device must be conducted such that control device inlet and outlet testing is conducted simultaneously, and the data are reduced in accordance with the test methods and procedures in paragraphs (e)(1)(i) through (ix) of this section. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(i) Method 1 or 1A of appendix A–1 to 40 CFR part 60 must be used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, or 2F of appendix A–1 to 40 CFR part 60, or Method 2G of appendix A–2 to 40 CFR part 60 must be used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of appendix A–2 to 40 CFR part 60 must be used for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981 Part 10 (2010), (incorporated by reference, see § 63.14).

(iv) Method 4 of appendix A–3 to 40 CFR part 60 must be used to determine stack gas moisture.

(v) Methods for determining the gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(vi) Method 25 or 25A of appendix A–7 to 40 CFR part 60 must be used to determine total gaseous non-methane organic matter concentration. Use the same test method for both the inlet and outlet measurements which must be conducted simultaneously. You must submit notice of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(b). You must use Method 25A if any of the conditions described in paragraphs (e)(1)(vi)(A) through (D) of this section apply to the control device.

(A) The control device is not an oxidizer.

(B) The control device is an oxidizer but an exhaust gas volatile organic matter concentration of 50 ppmv or less is required to comply with the emission standards in § 63.3320; or

(C) The control device is an oxidizer but the volatile organic matter concentration at the inlet to the control system and the required level of control are such that they result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(D) The control device is an oxidizer but because of the high efficiency of the control device the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Except as provided in § 63.7(e)(3), each performance test must consist of three separate runs with each run conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic compound concentrations and mass flow rates, the average of the results of all the runs will apply.

(viii) Volatile organic matter mass flow rates must be determined for each run specified in paragraph (e)(1)(vii) of this section using Equation 1:

$$M_f = Q_{sd} C_c [12][0.0416][10^{-6}] \qquad \text{Equation 1}$$

Where:

M_f = Total organic volatile matter mass flow rate, kilograms (kg)/hour (h).

Q_{sd} = Volumetric flow rate of gases entering or exiting the control device, as determined according to paragraph (e)(1)(ii) of this section, dry standard cubic meters (dscm)/h.

C_c = Concentration of organic compounds as carbon, ppmv.

12.0 = Molecular weight of carbon.

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m³) (@293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(ix) For each run, emission control device destruction or removal efficiency must be determined using Equation 2:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \qquad \text{Equation 2}$$

Where:

E = Organic volatile matter control efficiency of the control device, percent.

M_{fi} = Organic volatile matter mass flow rate at the inlet to the control device, kg/h.

M_{fo} = Organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(x) The control device destruction or removal efficiency is determined as the average of the efficiencies determined in the test runs and calculated in Equation 2.

(2) *Process information.* You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You 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, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(f) *Capture efficiency.* If you demonstrate compliance by meeting the requirements of § 63.3370(f) through (i), (j)(2), (l), (o)(2) or (3), or (q), you must determine capture efficiency using the procedures in paragraph (f)(1), (2), or (3) of this section, as applicable.

* * * * *

(g) *Volatile matter retained in the coated web or otherwise not emitted to the atmosphere.* You may choose to take into account the mass of volatile matter retained in the coated web after curing or drying or otherwise not emitted to the atmosphere when determining compliance with the emission standards in § 63.3320. If you choose this option, you must develop a site- and product-specific emission factor (EF) and determine the amount of volatile matter retained in the web using Equation 3. The EF must be developed by conducting a performance test using Method 25A of Appendix A–7 to 40 CFR part 60 and be determined by obtaining the average of a three-run test. The EF should equal the proportion of the mass of volatile organics emitted to the mass of volatile organics in the coating materials evaluated. You may use the EF in your compliance calculations only for periods that the work station(s) was (were) used to make the product, or a similar product, corresponding to that produced during the performance test. You must develop a separate EF for each group of different products that you choose to utilize an EF for calculating emissions by conducting a separate performance test for that product.

(1) Calculate the mass of volatile organics retained in the web for the month from each group of similar products using Equation 3:

$$M_{vret} = \left(C_{vi}M_i + \sum_{j=1}^{q} C_{vij}M_{ij}\right) \times (1 - EF_i) \qquad \text{Equation 3}$$

Where:

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

EF_i = Volatile organic matter site- and product-specific emission factor (three-run average determined from performance testing, evaluated as proportion of mass volatile organics emitted to mass of volatile organics in the coatings used during the performance test).

* * * * *

■ 10. Section 63.3370 is amended by:
■ a. Adding introductory text;
■ b. Revising paragraph (a);
■ c. Revising paragraph (c)(1)(ii);
■ d. Revising paragraphs (c)(2)(i) and (c)(2)(ii);
■ e. Revising paragraphs (c)(3) and (c)(4);
■ f. Revising paragraph (d);
■ g. Redesignating paragraphs (e) through (p) as paragraphs (f) through (q);
■ h. Adding new paragraph (e);
■ i. Revising redesignated paragraphs (f) through (m);
■ j. Revising redesignated paragraphs (o) though (q); and
■ k. Adding paragraph (r).

The additions and revisions read as follows:

§ 63.3370 How do I demonstrate compliance with the emission standards?

You must demonstrate compliance each month with the emission limitations in § 63.3320(b)(1) through (4). For each monthly demonstration, you may apply any combination of the emission limitations to each of your web coating lines individually, to each of one or more groupings of your lines (including a single grouping encompassing all lines of your affected source), or to any combination of individual and grouped lines, so long as each web coating line is included in the compliance demonstration for the month (*i.e.,* you are not required to apply the same emission limitation to each of the individual lines or groups of lines). You may change the emission limitation that you apply each month to your individual or grouped lines, and you may change line groupings for your monthly compliance demonstration.

(a) A summary of how you must demonstrate compliance follows:

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
(1) Use of ''as-purchased'' compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-purchased; or	Follow the procedures set out in § 63.3370(b).
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-purchased.	Follow the procedures set out in § 63.3370(b).
(2) Use of ''as-applied'' compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied; or	Follow the procedures set out in § 63.3370(c)(1). Use either Equation 4 or 5 of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(i).
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied; or	Follow the procedures set out in § 63.3370(c)(2). Use Equations 6 and 7 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(i).
	(iii) Monthly average of all coating materials used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and monthly average of all coating materials used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied on a monthly average basis; or	Follow the procedures set out in § 63.3370(c)(3). Use Equation 8 of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(ii).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
	(iv) Monthly average of all coating materials used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and monthly average of all coating materials used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied on a monthly average basis.	Follow the procedures set out in § 63.3370(c)(4). Use Equation 9 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(ii).
(3) Tracking total monthly organic HAP applied	Total monthly organic HAP applied does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(d). Show that total monthly HAP applied (Equation 10 of § 63.3370) is less than the calculated equivalent allowable organic HAP (Equation 17 or 18 of § 63.3370).
(4) Accounting for volatile matter retained in the web.	A site- and product-specific emission factor was appropriately established for the group of products for which the site- and product-specific emission factor was used in the compliance calculations.	Follow the procedures set out in § 63.3360(g) and § 63.3370(e).
(5) Use of a capture system and control device	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or oxidizer outlet organic HAP concentration is no greater than 20 ppmv by compound and capture efficiency is 100 percent; or operating parameters are continuously monitored; or	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(1) according to § 63.3370(j) if using a solvent recovery device, or § 63.3370(k) if using a control device and CPMS, or § 63.3370(l) if using an oxidizer.
	(ii) Overall organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis;	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(3) according to § 63.3370(j) if using a solvent recovery device, or § 63.3370(l) if using an oxidizer.
	(iii) Overall organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or	Follow the procedures set out in § 63.3370(h) to determine compliance with § 63.3320(b)(2) according to § 63.3370(j) if using a solvent recovery device, or § 63.3370(l) if using an oxidizer.
	(iv) Overall organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(i). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 17 or 18 of § 63.3370). Calculate the monthly organic HAP emission rate according to § 63.3370(j) if using a solvent recovery device, or § 63.3370(l) if using an oxidizer.
(6) Use of multiple capture and/or control devices.	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(1) according to § 63.3370(f)(1) or (2).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(3) according to § 63.3370(o).
	(iii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or	Follow the procedures set out in § 63.3370(h) to determine compliance with § 63.3320(b)(2) according to § 63.3370(o).
	(iv) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(i). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 17 or 18 of § 63.3370) according to § 63.3370(o).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
(7) Use of a combination of compliant coatings and control devices.	(i) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(3) according to § 63.3370(o).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or	Follow the procedures set out in § 63.3370(h) to determine compliance with § 63.3320(b)(2) according to § 63.3370(o).
	(iii) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(i). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 17 or 18 of § 63.3370) according to § 63.3370(o).

* * * * *

(c) * * *

(1) * * *

(ii) Calculate the as-applied organic HAP content of each coating material using Equation 4:

$$C_{ahi} = \frac{\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}}$$

Equation 4

Where:

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

or calculate the as-applied volatile organic content of each coating material using Equation 5:

$$C_{avi} = \frac{\left(C_{vi}M_i + \sum_{j=1}^{q} C_{vij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}}$$

Equation 5

Where:

C_{avi} = Monthly average, as-applied, volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(2) * * *

(i) Determine the as-applied coating solids content of each coating material following the procedure in § 63.3360(d). You must calculate the as-applied coating solids content of coating materials which are reduced, thinned, or diluted prior to application, using Equation 6:

$$C_{asi} = \frac{\left(C_{si}M_i + \sum_{j=1}^{q} C_{sij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}}$$

Equation 6

Where:

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ii) Calculate the as-applied organic HAP to coating solids ratio using Equation 7:

$$H_{si} = \frac{C_{ahi}}{C_{asi}}$$

Equation 7

Where:

H_{si} = As-applied, organic HAP to coating solids ratio of coating material, i.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{asi} = Monthly average, as-applied, coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

(3) *Monthly average organic HAP content of all coating materials as-applied is less than the mass percent limit (§ 63.3320(b)(2)).* Demonstrate that the monthly average as-applied organic HAP content of all coating materials applied at an existing affected source is less than 0.04 kg organic HAP per kg of coating material applied, and all coating materials applied at a new affected source are less than 0.016 kg organic HAP per kg of coating material applied, as determined by Equation 8:

$$H_L = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}}$$

Equation 8

Where:

H_L = Monthly average, as-applied, organic HAP content of all coating materials applied, expressed as kg organic HAP per kg of coating material applied, kg/kg.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(4) *Monthly average organic HAP content of all coating materials as-applied is less than the mass fraction of coating solids limit (§ 63.3320(b)(3)).* Demonstrate that the monthly average as-applied organic HAP content on the basis of coating solids applied of all coating materials applied at an existing affected source is less than 0.20 kg organic HAP per kg coating solids applied, and all coating materials applied at a new affected source are less than 0.08 kg organic HAP per kg coating solids applied, as determined by Equation 9:

$$H_S = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} C_{Si}M_i + \sum_{j=1}^{q} C_{Sij}M_{ij}}$$

Equation 9

Where:

H_s = Monthly average, as-applied, organic HAP to coating solids ratio, kg organic HAP/kg coating solids applied.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or

otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

* * * * *

(d) *Monthly allowable organic HAP applied.* Demonstrate that the total monthly organic HAP applied as determined by Equation 10 is less than the calculated equivalent allowable organic HAP as determined by Equation 17 or 18 in paragraph (m) of this section:

$$H_m = \sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret}$$

Equation 10

Where:

H_m = Total monthly organic HAP applied, kg.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(e) *Accounting for volatile matter retained in the web.* If you choose to use the equation in § 63.3360(g) to take into account retained volatile organic matter, you must identify each group of similar products that can utilize each site- and product-specific emission factor. Details regarding the test methods and calculations are provided in § 63.3360(g).

(f) *Capture and control to reduce emissions to no more than allowable limit (§ 63.3320(b)(1)).* Operate a capture system and control device and demonstrate an overall organic HAP control efficiency of at least 95 percent at an existing affected source and at least 98 percent at a new affected source for each month, or operate a capture system and oxidizer so that an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis is achieved as long as the capture efficiency is 100 percent as detailed in § 63.3320(b)(4). Unless one of the cases described in paragraph (f)(1), (2), or (3) of this section applies to the affected source, you must either demonstrate compliance in accordance with the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device, or the procedure in paragraph (l) of this section when emissions are controlled by an oxidizer or demonstrate compliance for a web coating line by operating each capture system and each control device and continuous parameter monitoring according to the procedures in paragraph (k) of this section.

(1) If the affected source has only always-controlled work stations and operates more than one capture system or more than one control device, you must demonstrate compliance in accordance with the provisions of either paragraph (o) or (q) of this section.

(2) If the affected source operates one or more never-controlled work stations or one or more intermittently-controlled work stations, you must demonstrate compliance in accordance with the provisions of paragraph (o) of this section.

(3) An alternative method of demonstrating compliance with § 63.3320(b)(1) is the installation of a PTE around the web coating line that achieves 100 percent capture efficiency and ventilation of all organic HAP emissions from the total enclosure to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis. If this method is selected, you must demonstrate compliance by following the procedures in paragraphs (f)(3)(i) and (ii) of this section. Compliance is determined according to paragraph (f)(3)(iii) of this section.

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in § 63.3360(f)(1) will be considered a total enclosure.

(ii) Determine the organic HAP concentration at the outlet of your total enclosure using the procedures in paragraph (f)(3)(ii)(A) or (B) of this section.

(A) Determine the control device efficiency using Equation 2 of § 63.3360 and the applicable test methods and procedures specified in § 63.3360(e).

(B) Use a CEMS to determine the organic HAP emission rate according to paragraphs (j)(2)(i) through (x) of this section.

(iii) You are in compliance if the installation of a total enclosure is demonstrated and the organic HAP concentration at the outlet of the incinerator is demonstrated to be no greater than 20 ppmv by compound on a dry basis.

(g) *Capture and control to achieve mass fraction of coating solids applied limit (§ 63.3320(b)(3)).* Operate a capture system and control device and limit the organic HAP emission rate from an existing affected source to no more than 0.20 kg organic HAP emitted per kg coating solids applied, and from a new affected source to no more than 0.08 kg organic HAP emitted per kg coating solids applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (o) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (j) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (l) of this section when emissions are controlled by an oxidizer.

(h) *Capture and control to achieve mass fraction limit (§ 63.3320(b)(2)).* Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.04 kg organic HAP emitted per kg coating material applied at an existing affected source, and no more than 0.016 kg organic HAP emitted per kg coating material applied at a new affected source as determined on a monthly average as-applied basis. If the affected source operates more than one capture

system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (o) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (j) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (l) of this section when emissions are controlled by an oxidizer.

(i) *Capture and control to achieve allowable emission rate.* Operate a capture system and control device and limit the monthly organic HAP emissions to less than the allowable emissions as calculated in accordance with paragraph (m) of this section. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (o) of this section. Otherwise, the owner or operator must demonstrate compliance following the procedure in paragraph (j) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (l) of this section when emissions are controlled by an oxidizer.

(j) *Solvent recovery device compliance demonstration.* If you use a solvent recovery device to control emissions, you must show compliance by following the procedures in either paragraph (j)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a monthly liquid-liquid material balance as specified in paragraphs (j)(1)(i) through (v) of this section and use the applicable equations in paragraphs (j)(1)(vi) through (ix) of this section to convert the data to units of the selected compliance option in paragraphs (f) through (i) of this section. Compliance is determined in accordance with paragraph (j)(1)(x) of this section.

(i) Determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common solvent recovery device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(iii) Determine the volatile organic content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(v) Determine and monitor the amount of volatile organic matter recovered for the month according to the procedures in § 63.3350(d).

(vi) *Recovery efficiency.* Calculate the volatile organic matter collection and recovery efficiency using Equation 11:

$$R_v = \frac{M_{vr} + M_{vret}}{\sum_{i=1}^{p} C_{vi} M_i + \sum_{i=1}^{q} C_{vij} M_{ij}} \times 100$$

Equation 11

Where:

R_v = Organic volatile matter collection and recovery efficiency, percent.

M_{vr} = Mass of volatile matter recovered in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

p = Number of different coating materials applied in a month.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(vii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 12:

$$H_e = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret}\right]$$

Equation 12

Where:

H_e = Total monthly organic HAP emitted, kg.

R_v = Organic volatile matter collection and recovery efficiency, percent.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(viii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 13:

$$L = \frac{H_e}{\sum_{i=1}^{p} C_{si} M_i + \sum_{j=1}^{q} C_{sij} M_{ij}}$$

Equation 13

Where:

L = Mass organic HAP emitted per mass of coating solids applied, kg/kg.

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ix) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 14:

$$S = \frac{H_e}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}}$$

Equation 14

Where:

S = Mass organic HAP emitted per mass of material applied, kg/kg.

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(x) You are in compliance with the emission standards in § 63.3320(b) if:

(A) The volatile organic matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(2) *Continuous emission monitoring of capture system and control device performance.* Demonstrate initial compliance through a performance test on capture efficiency and continuing compliance through continuous emission monitors and continuous monitoring of capture system operating parameters following the procedures in paragraphs (j)(2)(i) through (vii) of this section. Use the applicable equations specified in paragraphs (j)(2)(viii) through (x) of this section to convert the monitoring and other data into units of the selected compliance option in paragraphs (f) through (i) of this section. Compliance is determined in accordance with paragraph (j)(2)(xi) of this section.

(i) *Control device efficiency.* Continuously monitor the gas stream entering and exiting the control device to determine the total organic volatile matter mass flow rate (*e.g.,* by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second such that the total organic volatile matter mass flow rate in grams per second can be calculated) such that the control device efficiency of the control device can be calculated for each month using Equation 2 of § 63.3360.

(ii) *Capture efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(f) to ensure capture efficiency.

(iii) Determine the percent capture efficiency in accordance with § 63.3360(f).

(iv) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved for each month using Equation 15:

$$R = \frac{(E)(CE)}{100}$$

Equation 15

Where:

R = Overall organic HAP control efficiency, percent.

E = Organic volatile matter control efficiency of the control device, percent.

CE = Organic volatile matter capture efficiency of the capture system, percent.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common control device during the month.

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(viii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month for each month using Equation 16:

$$H_e = (1 - R)\left(\sum_{i=1}^{p} C_{ahi} M_i\right) - M_{vret}$$

Equation 16

Where:

H_e = Total monthly organic HAP emitted, kg.

R = Overall organic HAP control efficiency, percent.

p = Number of different coating materials applied in a month.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(ix) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 13 of this section.

(x) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 14 of this section.

(xi) *Compare actual performance to the performance required by compliance option.* The affected source is in compliance with the emission standards in § 63.3320(b) for each month if the capture system is operated such that the average capture system operating parameter is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(A) The organic volatile matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(k) *Capture and control system compliance demonstration procedures using a CPMS.* If you use an add-on control device, you must demonstrate initial compliance for each capture system and each control device through performance tests and demonstrate continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (k)(1) through (3) of this section. Compliance is determined in accordance with paragraph (k)(4) or (k)(5) of this section.

(1) Determine the control device destruction or removal efficiency using the applicable test methods and procedures in § 63.3360(e).

(2) Determine the emission capture efficiency in accordance with § 63.3360(f).

(3) Whenever a web coating line is operated, continuously monitor the operating parameters established according to § 63.3350(e) and (f).

(4) *No operating limit deviations.* You are in compliance with the emission standards in § 63.3320(b) if the thermal oxidizer is operated such that the average combustion temperature does not fall more than 50 °F below the temperature established in accordance with § 63.3360(e)(3)(i) for each 3-hour period, or the catalytic oxidizer temperature is greater than the temperature established in accordance with § 63.3360(e)(3)(ii) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(5) *Operating limit deviations.* If one or more operating limit deviations occurred during the monthly averaging period, compliance with the emission standards in § 63.3320(b) is determined by assuming no control of emissions during each 3-hour period that was a deviation. You are in compliance with the emission standards in § 63.3320(b) if, including the periods of no control:

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(l) *Oxidizer compliance demonstration procedures.* If you use an oxidizer to control emissions, you must show compliance by following the procedures in paragraph (l)(1) of this section. Use the applicable equations specified in paragraph (l)(2) of this section to convert the monitoring and other data into units of the selected compliance option in paragraph (f) through (i) of this section. Compliance is determined in accordance with paragraph (l)(3) or (l)(4) of this section.

(1) Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (l)(1)(i) through (vi) of this section:

(i) Determine the oxidizer destruction efficiency using the procedure in § 63.3360(e).

(ii) Determine the capture system capture efficiency in accordance with § 63.3360(f).

(iii) *Capture and control efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(e) and (f) to ensure capture and control efficiency.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common oxidizer during the month.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(2) Convert the information obtained under paragraph (q)(1) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (l)(2)(i) through (iv) of this section.

(i) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved using Equation 15.

(ii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 16.

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 13.

(iv) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 14.

(3) *No operating limit deviations.* You are in compliance with the emission standards in § 63.3320(b) if the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(4) *Operating limit deviations.* If one or more operating limit deviations occurred during the monthly averaging period, compliance with the emission standards in § 63.3320(b) is determined by assuming no control of emissions during each 3-hour period that was a deviation. You are in compliance with the emission standards in § 63.3320(b) if, including the periods of no control:

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section.

(m) *Monthly allowable organic HAP emissions.* This paragraph provides the procedures and calculations for determining monthly allowable organic HAP emissions for use in demonstrating compliance in accordance with paragraph (d), (i), (j)(1)(x)(D), (j)(2)(xi)(D), or (l)(3)(iv) of this section. You will need to determine the amount of coating material applied at greater than or equal to 20 mass percent coating solids and the amount of coating material applied at less than 20 mass percent coating solids. The allowable organic HAP limit is then calculated based on coating material applied at greater than or equal to 20 mass percent coating solids complying with 0.2 kg organic HAP per kg coating solids at an existing affected source or 0.08 kg organic HAP per kg coating solids at a new affected source, and coating material applied at less than 20 mass percent coating solids complying with 4 mass percent organic HAP at an existing affected source and 1.6 mass-percent organic HAP at a new affected source as follows:

(1) Determine the as-purchased mass of each coating material applied each month.

(2) Determine the as-purchased coating solids content of each coating material applied each month in accordance with § 63.3360(d)(1).

(3) Determine the as-purchased mass fraction of each coating material which was applied at 20 mass percent or greater coating solids content on an as-applied basis.

(4) Determine the total mass of each solvent, diluent, thinner, or reducer added to coating materials which were applied at less than 20 mass percent coating solids content on an as-applied basis each month.

(5) Calculate the monthly allowable organic HAP emissions using Equation 17 for an existing affected source:

$$H_a = 0.20\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.04\left[\sum_{i=1}^{p} M_i(1-G_i) + \sum_{j=1}^{q} M_{L_i}\right] \quad \text{Equation 17}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent coating solids content, on an as-applied basis, in a month, kg.

or Equation 18 for a new affected source:

$$H_a = 0.08\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.016\left[\sum_{i=1}^{p} M_i (1 - G_i) + \sum_{j=1}^{q} M_{L_j}\right] \quad \text{Equation 18}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent coating solids content, on an as-applied basis, in a month, kg.

* * * * *

(o) *Combinations of capture and control.* If you operate more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, you must calculate organic HAP emissions according to the procedures in paragraphs (o)(1) through (4) of this section, and use the calculation procedures specified in paragraph (o)(5) of this section to convert the monitoring and other data into units of the selected control option in paragraphs (f) through (i) of this section. Use the procedures specified in paragraph (o)(6) of this section to demonstrate compliance.

(1) *Solvent recovery system using liquid-liquid material balance compliance demonstration.* If you choose to comply by means of a liquid-liquid material balance for each solvent recovery system used to control one or more web coating lines, you must determine the organic HAP emissions for those web coating lines controlled by that solvent recovery system either:

(i) In accordance with paragraphs (j)(1)(i) through (iii) and (v) through (vii) of this section, if the web coating lines controlled by that solvent recovery system have only always-controlled work stations; or

(ii) In accordance with paragraphs (j)(1)(ii), (iii), (v), and (vi) and (p) of this section, if the web coating lines controlled by that solvent recovery system have one or more never-controlled or intermittently-controlled work stations.

(2) *Solvent recovery system using performance test compliance demonstration and CEMS.* To demonstrate compliance through an initial test of capture efficiency, continuous monitoring of a capture system operating parameter, and a CEMS on each solvent recovery system used to control one or more web coating lines, you must:

(i) For each capture system delivering emissions to that solvent recovery system, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture system efficiency; and

(ii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that solvent recovery system either:

(A) In accordance with paragraphs (j)(2)(i) through (iii), (v), (vi), and (viii) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (j)(2)(i) through (iii), (vi), and (p) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(3) *Oxidizer.* To demonstrate compliance through performance tests of capture efficiency and control device efficiency, continuous monitoring of capture system, and CPMS for control device operating parameters for each oxidizer used to control emissions from one or more web coating lines, you must:

(i) Monitor the operating parameter in accordance with § 63.3350(e) to ensure control device efficiency; and

(ii) For each capture system delivering emissions to that oxidizer, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (l)(1)(i) through (vi) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (l)(1)(i) through (iii), (v), and (p) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(4) *Uncontrolled coating lines.* If you own or operate one or more uncontrolled web coating lines, you must determine the organic HAP applied on those web coating lines using Equation 10. The organic HAP emitted from an uncontrolled web coating line is equal to the organic HAP applied on that web coating line.

(5) Convert the information obtained under paragraphs (o)(1) through (4) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (o)(5)(i) through (iv) of this section.

(i) *Organic HAP emitted.* Calculate the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (o)(1), (2)(ii), (3)(iii), and (4) of this section.

(ii) *Coating solids applied.* If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, the owner or operator must determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 13.

(iv) *Organic HAP based on materials applied.* Calculate the organic HAP emission rate based on material applied using Equation 14.

(6) *Compliance.* The affected source is in compliance with the emission standards in § 63.3320(b) for the month if all operating parameters required to be monitored under paragraphs (o)(1) through (3) of this section were maintained at the values established under §§ 63.3350 and 63.3360 and one of the standards in paragraphs (6)(i) through (iv) of this section were met. If operating parameter deviations occurred, the affected source is in compliance with the emission standards in § 63.3320(b) for the month if, assuming no control of emissions for each 3-hour deviation period, one of the standards in paragraphs (6)(i) through (iv) of this section were met.

(i) The total mass of organic HAP emitted by the affected source based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(ii) The total mass of organic HAP emitted by the affected source based on material applied is no more than 0.04 kg organic HAP per kg material applied at an existing affected source and no more than 0.016 kg organic HAP per kg material applied at a new affected source; or

(iii) The total mass of organic HAP emitted by the affected source during the month is less than the calculated allowable organic HAP as determined using paragraph (m) of this section; or

(iv) The total mass of organic HAP emitted by the affected source was not more than 5 percent of the total mass of organic HAP applied for the month at an existing affected source and no more than 2 percent of the total mass of organic HAP applied for the month at a new affected source. The total mass of organic HAP applied by the affected source in the month must be determined using Equation 10.

(p) *Intermittently-controlled and never-controlled work stations.* If you have been expressly referenced to this paragraph by paragraphs (o)(1)(ii), (o)(2)(ii)(B), or (o)(3)(iii)(B) of this section for calculation procedures to determine organic HAP emissions for your intermittently-controlled and never-controlled work stations, you must:

(1) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in bypass mode and the mass of all coating materials as-applied on never-controlled work stations during the month.

(2) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in a controlled mode and the mass of all coating materials applied on always-controlled work stations during the month.

(3) *Liquid-liquid material balance compliance demonstration.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (o)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 19 of this section:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R_v}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret}$$

Equation 19

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R_v = Organic volatile matter collection and recovery efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(4) *Performance test to determine capture efficiency and control device efficiency.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (o)(2)(ii)(B) or (o)(3)(iii)(B) of this section, you must calculate the organic HAP emitted during the month using Equation 20:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret}$$

Equation 20

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R = Overall organic HAP control efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the

compliance demonstration procedures in this section.

(q) *Always-controlled work stations with more than one capture and control system.* If you operate more than one capture system or more than one control device and only have always-controlled work stations, then you are in compliance with the emission standards in § 63.3320(b)(1) for the month if for each web coating line or group of web coating lines controlled by a common control device:

(1) The volatile matter collection and recovery efficiency as determined by paragraphs (j)(1)(i), (iii), (v), and (vi) of this section is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(2) The overall organic HAP control efficiency as determined by paragraphs (j)(2)(i) through (iv) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(3) The overall organic HAP control efficiency as determined by paragraphs (l)(1)(i) through (iii) and (l)(2)(i) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source.

(r) *Mass-balance approach.* As an alternative to paragraphs (b) through (p) of this section, you may demonstrate monthly compliance using a mass-balance approach in accordance with this section, except for any month that you elect to meet the emission limitation in § 63.3320(b)(4). The mass-balance approach should be performed as follows:

(1) Separately for each individual/grouping(s) of lines, you must sum the mass of organic HAP emitted during the month and divide by the corresponding total mass of all organic HAP utilized on the lines, including from coating materials or coating solids, for the same period. You may also choose to use volatile organic content as a surrogate for organic HAP for the compliance demonstration in accordance with § 63.3360(d). You are required to include all emissions and inputs that occur during periods that each line or grouping of lines operates in accordance with the applicability criteria in § 63.3300.

(2) You must include all of the organic HAP emitted by your individual/grouping(s) of lines, as follows.

(i) You must record the mass of organic HAP or volatile organic content utilized at each work station of each of your individually/grouping(s) of lines.

(ii) You must assume that all of the organic HAP input to every never-controlled work station is emitted, unless you have determined an emission factor in accordance with § 63.3360(g).

(iii) For every always-controlled work station, you must assume that all of the organic HAP or volatile organic content is emitted, less the reductions provided by the corresponding capture system and control device, in accordance with the most recently measured capture and destruction efficiencies, or in accordance with the measured mass of VOC recovered for the month (*e.g.,* carbon control or condensers). You may account for organic HAP or volatile organic content retained in the web if you have determined an emission factor in accordance with § 63.3360(g).

(iv) For every intermittently-controlled work station, you must assume that all of the organic HAP or volatile organic content is emitted during periods of no control. During periods of control, you must assume that all of the organic HAP or volatile organic content is emitted, less the reductions provided by the corresponding capture system and control device, in accordance with the most recently measured capture and destruction efficiencies, or in accordance with the measured mass of VOC recovered for the month (*e.g.,* carbon control or condensers). You may account for organic HAP or volatile organic content retained in the web if you have determined an emission factor in accordance with § 63.3360(g).

(v) You must record the organic HAP or volatile organic content input to every work station of your individual/grouping(s) of lines and determine corresponding emissions during all periods of operation, including malfunctions or startups and shutdowns of any web coating line or control device.

(3) You are in compliance with the emission standards in § 63.3320(b) if each of your individual/grouping(s) of lines, meets paragraphs (r)(4)(i) through (iii) of this section, as applicable, and each oxidizer control device, if used, additionally meets paragraph (r)(4)(iv) of this section:

(i) The total mass of organic HAP emitted by the effected source based on HAP applied is no more than 0.05 kg organic HAP per kg HAP applied at an existing affected source and no more than 0.02 kg organic HAP per kg HAP applied at a new affected source; or

(ii) The total mass of organic HAP emitted by the affected source based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The total mass of organic HAP emitted by the affected source based on material applied is no more than 0.04 kg organic HAP per kg material applied at an existing affected source and no more than 0.016 kg organic HAP per kg material applied at a new affected source.

(iv) The oxidizer control device(s), if any, is operated such that the average operating parameter value is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3360(f).

■ 11. Section 63.3400 is amended by:

■ a. Revising paragraph (a) and introductory text of paragraph (b);

■ b. Revising paragraphs (c)(1)(ii) and (c)(1)(iv);

■ c. Revising paragraph (c)(2) introductory text, and paragraphs (c)(2)(v) and (c)(2)(vi);

■ d. Revising paragraphs (e) and (f);

■ e. Redesignating paragraph (g) as paragraph (k) and revising the introductory text; and

■ f. Adding new paragraphs (g), (h), (i) and (j).

The additions and revisions read as follows:

§ 63.3400 What notifications and reports must I submit?

(a) Each owner or operator of an affected source subject to this subpart must submit the reports specified in paragraphs (b) through (k) of this section to the Administrator.

(b) You must submit an initial notification as required by § 63.9(b), using the procedure in paragraph (h) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) The first compliance report is due no later than July 31 or January 31, whichever date follows the end of the calendar half immediately following the compliance date that is specified for your affected source in § 63.3330. Before [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the report must be postmarked or delivered by the

aforementioned dates. On and after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the report must be submitted electronically as described in paragraph (h) of this section.

* * * * *

(iv) Each subsequent compliance report must be submitted electronically no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

* * * * *

(2) *Compliance Report Contents.* The compliance report must contain the information in paragraphs (c)(2)(i) through (viii) of this section:

* * * * *

(v) For each deviation from an emission limitation (emission limit or operating limit) that applies to you and that occurs at an affected source where you are not using a CEMS to comply with the emission limitations in this subpart, the compliance report must contain the following information:

(A) The total operating time of each affected source during the reporting period.

(B) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, the cause and duration of each failure.

(C) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(D) Record actions taken to minimize emissions in accordance with § 63.3340(a), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(E) Information on the number, duration, and cause for CPMS downtime incidents, if applicable, other than downtime associated with zero and span and other calibration checks.

(vi) For each deviation from an emission limit occurring at an affected source where you are using a CEMS to comply with the emission limit in this subpart, you must include the following information:

(A) The total operating time of each affected source during the reporting period.

(B) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, the cause and duration of each failure.

(C) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(D) Record actions taken to minimize emissions in accordance with § 63.3340(a), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(E) The date and time that each CEMS and CPMS, if applicable, was inoperative except for zero (low-level) and high-level checks.

(F) The date and time that each CEMS and CPMS, if applicable, was out-of-control, including the information in § 63.8(c)(8).

(G) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(H) A summary of the total duration (in hours) of each deviation during the reporting period and the total duration of each deviation as a percent of the total source operating time during that reporting period.

(I) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(J) A summary of the total duration (in hours) of CEMS and CPMS downtime during the reporting period and the total duration of CEMS and CPMS downtime as a percent of the total source operating time during that reporting period.

(K) A breakdown of the total duration of CEMS and CPMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(L) The date of the latest CEMS and CPMS certification or audit.

(M) A description of any changes in CEMS, CPMS, or controls since the last reporting period.

* * * * *

(e) You must submit a Notification of Compliance Status as specified in § 63.9(h). For affected sources that commence construction or reconstruction after September 19, 2019, the Notification of Compliance Status must be submitted electronically using the procedure in paragraph (h) of this section. For affected sources that commenced construction or reconstruction on or before September 19, 2019, the Notification of Compliance Status must be submitted electronically using the procedure in paragraph (h) of this section after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(f) *Performance test reports.* You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standard and you have not obtained a waiver from the performance test requirement or you are not exempted from this requirement by § 63.3360(b). 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 (f)(1) through (3) of this section.

(1) *Data collected using test methods supported by EPA's Electronic Reporting Tool (ERT) as listed on 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 EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on EPA's ERT website.

(2) *Data collected using test methods that are not supported by EPA's ERT as listed on 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 EPA's ERT website. Submit the ERT generated package or alternative file to EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (f)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on 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 EPA via

EPA's CDX as described in paragraph (f)(1) of this section.

(g) *Performance evaluation reports.* You must submit the results of performance evaluations within 60 days of completing each continuous monitoring system (CMS) performance evaluation (as defined in § 63.2) following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by EPA's ERT as listed on EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to EPA via CEDRI, which can be accessed through EPA's CDX. The data must be submitted in a file format generated through the use of EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by EPA's ERT as listed on EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the ERT generated package or alternative file to EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on 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 EPA via EPA's CDX as described in paragraph (g)(1) of this section.

(h) *Electronic Reporting.* If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to EPA via CEDRI, which can be accessed through EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Initial notifications and notifications of compliance status must be submitted as PDFs to CEDRI using the attachment module of the ERT. You must use the semiannual compliance report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to EPA. The report must be generated using the appropriate form on the CEDRI 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 EPA via EPA's CDX as described earlier in this paragraph.

(i) *Extension for CDX/CEDRI outage.* If you are required to electronically submit a report through CEDRI in EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(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 EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five 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.

(j) *Extension for force majuere events.* If you are required to electronically submit a report through CEDRI in EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majuere, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(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 five 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.

(k) For existing affected sources that commenced construction or reconstruction before September 19, 2019, before [DATE 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] you must submit startup, shutdown, and malfunction reports as specified in § 63.10(d)(5), except that the provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions do not apply unless a control device is used to comply with this subpart. On and after, [DATE 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and for affected sources that commence construction or reconstruction after September 19, 2019, this section is no longer relevant.

* * * * *

■ 12. Section 63.3410 is revised to read as follows:

§ 63.3410 What records must I keep?

(a) Each owner or operator of an affected source subject to this subpart must maintain the records specified in paragraphs (a)(1) and (2) of this section on a monthly basis in accordance with the requirements of § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this standard as indicated in Table 2 to Subpart JJJJ of Part 63, including:

(i) Continuous emission monitor data in accordance with the requirements of § 63.3350(d);

(ii) Control device and capture system operating parameter data in accordance with the requirements of § 63.3350(c), (e), and (f);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(c);

(iv) Volatile matter and coating solids content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(d);

(v) Overall control efficiency determination using capture efficiency and control device destruction or removal efficiency test results in accordance with the requirements of § 63.3360(e) and (f);

(vi) Material usage, organic HAP usage, volatile matter usage, and coating solids usage and compliance demonstrations using these data in accordance with the requirements of § 63.3370(b), (c), and (d); and

(vii) Emission factor development calculations and HAP content for coating materials used to develop the emission factor as needed for § 63.3360(g).

(2) Records specified in § 63.10(c) for each CMS operated by the owner or operator in accordance with the requirements of § 63.3350(b), as indicated in Table 2 to Subpart JJJJ of Part 63.

(b) Each owner or operator of an affected source subject to this subpart must maintain records of all liquid-liquid material balances performed in accordance with the requirements of § 63.3370. The records must be maintained in accordance with the applicable requirements of § 63.10(b).

(c) For each deviation from an emission limit occurring at an affected source, you must record the following information.

(1) The total operating time of each affected source during the reporting period.

(2) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, the cause and duration of each failure.

(3) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(4) Record actions taken to minimize emissions in accordance with § 63.3340(a), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(d) Any records required to be maintained by this part that are submitted electronically via 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 EPA as part of an on-site compliance evaluation.

■ 13. Section 63.3420 is revised to read as follows:

§ 63.3420 What authorities may be delegated to the states?

(a) In delegating implementation and enforcement authority to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (b) of this section must be retained by the EPA Administrator and not transferred to a state, local, or tribal agency.

(b) Authority which will not be delegated to state, local, or tribal agencies are listed in paragraphs (b)(1) through (3) of this section:

(1) Approval of alternate test method for organic HAP content determination under § 63.3360(c).

(2) Approval of alternate test method for volatile matter determination under § 63.3360(d).

(3) Approval of alternatives to the work practice standards under § 63.3322.

■ 14. Table 1 to Subpart JJJJ is revised to read as follows:

TABLE 1 TO SUBPART JJJJ OF PART 63—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM

If you are required to comply with operating limits by § 63.3321, you must comply with the applicable operating limits in the following table:

For the following device:	You must meet the following operating limit:	And you must demonstrate continuous compliance with operating limits by:
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall more than 50° F below the combustion temperature limit established according to § 63.3360(e)(3)(i).	i. Collecting the combustion temperature data according to § 63.3350(e)(10); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature at the inlet to the catalyst bed in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet temperature data according to § 63.3350(e)(10); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average catalyst bed inlet temperature at or above the temperature limit.

TABLE 1 TO SUBPART JJJJ OF PART 63—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM—Continued

If you are required to comply with operating limits by § 63.3321, you must comply with the applicable operating limits in the following table:

For the following device:	You must meet the following operating limit:	And you must demonstrate continuous compliance with operating limits by:
	b. The temperature rise across the catalyst bed must not fall below the limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet and outlet temperature data according to § 63.3350(e)(10); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average temperature rise across the catalyst bed at or above the limit.
3. Emission capture system	Submit monitoring plan to the Administrator that identifies operating parameters to be monitored according to § 63.3350(f).	Conduct monitoring according to the plan (§ 63.3350(f)(3)).

■ 15. Table 2 to Subpart JJJJ is revised to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

You must comply with the applicable General Provisions requirements according to the following table:

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.1(a)(1)–(4)	Yes.	
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart JJJJ specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	No	Area sources are not subject to emission standards of subpart JJJJ.
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart JJJJ.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes	Applies only when capture and control system is used to comply with the standard.
§ 63.6(b)(1)–(5)	No	§ 63.3330 specifies compliance dates.
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)(1)(i)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019, see § 63.3340(a) for general duty requirement. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter, see § 63.3340(a) for general duty requirement.
§ 63.6(e)(1)(ii)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Reserved.

TABLE 2 TO SUBPART JJJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

You must comply with the applicable General Provisions requirements according to the following table:

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.6(e)(3)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.6(f)(1)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.6(f)(2)–(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart JJJJ does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)–(d)	Yes.	
§ 63.7(e)(1)	No	See § 63.3360(e)(2).
§ 63.7(e)(2)–(3)	Yes.	
§ 63.7(f)–(h)	Yes.	
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	No	Subpart JJJJ does not have monitoring requirements for flares.
§ 63.8(b)	Yes.	
§ 63.8(c)(1) and § 63.8(c)(1)(i)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019, see § 63.3340(a) for general duty requirement. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter, see § 63.3340(a) for general duty requirement.
§ 63.8(c)(1)(ii)	Yes	§ 63.8(c)(1)(ii) only applies if you use capture and control systems.
§ 63.8(c)(1)(iii)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.8(c)(2)–(3)	Yes.	
§ 63.8(c)(4)	No	§ 63.3350 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	No	Subpart JJJJ does not require COMS.
§ 63.8(c)(6)–(8)	Yes	Provisions for COMS are not applicable.
§ 63.8(d)(1)–(2)	Yes.	
§ 63.8(d)(3)	No	§ 63.3350(e)(5) specifies the program of corrective action.
§ 63.8(e)–(f)	Yes	§ 63.8(f)(6) only applies if you use CEMS.
§ 63.8(g)	Yes	Only applies if you use CEMS.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Except § 63.3400(b)(1) requires submittal of initial notification for existing affected sources no later than 1 year before compliance date.
§ 63.9(b)(3)–(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.9(g)	Yes	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	
§ 63.9(h)(4)	No	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)(i)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.10(b)(2)(ii)	No	See § 63.3410 for recordkeeping of relevant information.
§ 63.10(b)(2)(iii)	Yes	§ 63.10(b)(2)(iii) only applies if you use a capture and control system.
§ 63.10(b)(2)(iv)–(v)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.10(b)(2)(vi)–(xiv)	Yes.	

TABLE 2 TO SUBPART JJJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

You must comply with the applicable General Provisions requirements according to the following table:

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.10(b)(3)	Yes.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(4)	No	Reserved.
§ 63.10(c)(5)–(8)	Yes.	
§ 63.10(c)(9)	No	Reserved.
§ 63.10(c)(10)–(14)	Yes.	
§ 63.10(c)(15)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter.
§ 63.10(d)(1)–(2)	Yes.	
§ 63.10(d)(3)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)(i)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter. See § 63.3400(c) for malfunction reporting requirements.
§ 63.10(d)(5)(ii)	Depends, see explanation.	No, for new or reconstructed sources which commenced construction or reconstruction after September 19, 2019. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], and No thereafter. See § 63.3400(c) for malfunction reporting requirements.
§ 63.10(e)(1)–(2)	Yes	Provisions for COMS are not applicable.
§ 63.10(e)(3)–(4)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.10(f)	Yes.	
§ 63.11	No	Subpart JJJJ does not specify use of flares for compliance.
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes	Subpart JJJJ includes provisions for alternative ASME and ASTM test methods that are incorporated by reference.
§ 63.15	Yes.	
§ 63.16	Yes.	

■ 16. Add Table 3 to Subpart JJJJ to read as follows:

TABLE 3 TO SUBPART JJJJ OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED RELATIVE TO DETERMINING COATING HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3'-Dichlorobenzidine	91–94–1
3,3'-Dimethoxybenzidine	119–90–4
3,3'-Dimethylbenzidine	119–93–7
4,4'-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2

TABLE 3 TO SUBPART JJJJ OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED RELATIVE TO DETERMINING COATING HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

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